Chapter 3

The Regulatory Framework

In considering ways to improve the legislative and regulatory environment in which the charitable sector operates, we reviewed and consulted on a wide range of issues. Our goal was to develop a regulatory framework that would enhance public trust and confidence in both charities and the public institution regulating them at the federal level.

In the pages that follow, we provide our response to eight questions that need to be considered when designing an ideal regulatory framework for charities. They are:

- What should be the regulator's scope and mandate?
- What guiding values should the regulator have?
- What sector support and educational services should the regulator provide?
- What public profile and visibility does the regulator need?
- What resources does the regulator need?
- What powers should the regulator have to determine charitable status?
- What relationship should a federal charity regulator have with other regulatory bodies?
- What role should the regulator have regarding not-for-profit organizations?

We also describe three administrative mechanisms and how they can be used to support the regulatory framework.

In Chapter 7, we describe four institutional models for regulating charities and evaluate them against the regulatory framework outlined in this chapter.

Scope and mandate of the federal regulator

The regulation of charities is split between the federal and provincial/territorial governments. Constitutionally, provincial governments are responsible for the establishment, maintenance, and management of charities operating in and for the province, and Parliament has given the same jurisdiction to the territories.

.

At the federal level, supervision is focused more narrowly on deciding which organizations qualify as registered charities under the *Income Tax Act*, and making sure federally registered charities meet their legal obligations and continue to be entitled to favourable tax treatment.

It is the responsibility of Parliament to set out the broad parameters in terms of the tax benefits it is prepared to grant the charitable sector. The role of the regulator – under any institutional model – is to reflect the intent of Parliament through its administration of the *Income Tax Act*. In designing the system, the regulator must strike a balance between maintaining the integrity of the tax system by protecting it from abuse and providing a supportive regulatory environment for charities. The regulator must also consider the cost of achieving these goals.

A key issue affecting the design of the system is the desire to build and maintain public trust in the regulator and the charitable sector. **Public trust in the regulator** depends to a large extent on the regulator's ability to assure the public that charities operating in Canada are being regulated appropriately, coupled with public access to information. At the same time, the regulator must minimize the cost of compliance on charities and ensure that its resources are used to maximum efficiency.

Sector trust in the regulator is linked to the perception that the regulator is:

- acting fairly and consistently in applying the law;
- committed to keeping the concept of charity up to date and in line with current social developments, statutes and court decisions; and
- involving the sector in a meaningful way in developing administrative policy.

Public trust in charities is linked, at least in part, to the willingness and ability on the part of charities to comply with the law. Another factor is the extent to which charities are seen by the public to be providing a public benefit in exchange for tax assistance.

What we heard

During our consultations, most participants who commented did not specifically respond to our assertion that the primary role of a regulator is to administer the *Income Tax Act*. Instead, most participants reflected on the role of the regulator in enhancing public trust and confidence in charities.

The majority of respondents affirmed our belief that **public trust in charities** depends on the willingness of charities to comply with the law and the extent to which charities are seen to provide a public benefit. Public credibility was seen as essential if charities are to be effective in raising funds and if their work is to be recognized as valuable and contributing to the public good. Many participants noted that the sector and the regulator have a shared responsibility for maintaining public trust.

Some respondents expressed dissatisfaction with the current level of compliance monitoring that occurs once an organization becomes a federally registered charity. They noted that with so few audits being conducted by the regulator each year, other mechanisms are being used to maintain public confidence, such as codes of good practice and ethical standards. These participants suggested that the regulator could enhance public trust in charities by conducting more audits and by disclosing information about charities found to be in serious breach of the law.

The large majority of respondents thought a federal "watchdog" was needed to ensure charities are held publicly accountable given that public funds are at stake. Of those supporting a "watchdog" role, a number added that the public looks to the registered charity number granted by the regulator as a "seal of approval" or statement that the organization adheres to certain standards of practice.

To further enhance public trust in charities, a few participants suggested that the regulator should have additional scope to act as a gatekeeper by encouraging mergers or limiting the registration of branch offices when there is a national body already registered. They noted that there has been a proliferation of charities doing essentially the same thing and that this is confusing to donors. Others suggested that the regulator should become more involved in operational decisions made by charity officers and should hold directors accountable for a charity's failure to achieve the organization's mission.

While not commented on as frequently, **sector trust in the regulator** was also identified as a key outcome of an effective regulatory regime. A number of respondents expressed frustration with the lack of transparency around administrative decision making. The comment was made that the lack of transparency leads to a perception in the sector that there is unfairness, secrecy and arbitrariness from a "distant and unfriendly bureaucracy."

Most participants in the consultation believed there is a conflict in having the regulator both enforce the rules and provide advice. While there was recognition that voluntary sector organizations may need advice when applying for registration or when they run into difficulty with the regulator, providing advice may not be an appropriate role for the regulator. In addition, a number of participants commented on the need for advocacy on behalf of the sector but felt that the regulator could not and should not perform this function.

That being said, virtually all those who commented felt the regulator has a role to play in educating the public about charities, and in providing information and education to help organizations understand the criteria for registration and, once registered, to comply with the law.

A few respondents commented specifically on the legislation, noting that the charity provisions in the *Income Tax Act*, and in particular section 149.1, are vague and in need of revision. Of these individuals, some wondered about the purpose of

reforming the regulator if the law is not changed and suggested that a new statute may be needed to make the law easier to apply and understand as well as to raise the profile of the regulator within government and with the general public.

Our conclusions and recommendations

We continue to maintain our view that the primary focus of the regulator should be the administration of the *Income Tax Act* as it relates to charities. However, the comments we received have reinforced to us that trust in both the regulator and charities should be key considerations when designing the ideal regulatory framework.

We also believe that public trust in the regulator depends to a large extent on its ability to assure the public that charities in Canada are being appropriately regulated. Public trust would be enhanced if the public knew more about the review process used to determine if an organization will be granted registered status and who to contact if they have a complaint about a registered charity.

However, we reject the idea of the regulator playing a gatekeeper role. While some charities may have similar charitable programs, we believe the only criterion that should be used by the regulator in deciding whether or not to register a charity is the ability of the charity to meet the requirements of the law.

Nor should the regulator take on a broad support function. Virtually all who commented agreed. However, the volume of comments we received on the issue of education has reinforced to us that the regulator should be more proactive in educating the public about charities, and in providing information and education to help organizations understand the criteria for obtaining and maintaining registration. We address this issue in detail later in this chapter.

Finally, the regulator needs to be seen to be acting fairly if it is to be respected and recognized by the sector as a leader in the regulatory field. The lack of transparency surrounding its registration decisions has contributed to the perception in the sector that the regulator is acting unfairly or inconsistently in applying the law. We acknowledge this has been a long-standing concern, and have proposed specific recommendations to address this issue in Chapter 4. In addition, we believe our recommendations on appeals (see Chapter 5) will provide better means for recourse for voluntary sector organizations if they disagree with a decision of the regulator.

Recommendations

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

Even while the primary focus of the regulator should continue to be the administration of the *Income Tax Act*, we also considered how the objectives of the Voluntary Sector Initiative could be promoted through institutional reform. In particular, we asked what role the regulator can play in supporting the sector so that the sector can enhance the quality of life of Canadians.

We believe that in order to ensure there is public confidence in both the regulator and registered charities, as well as to reflect the intent of the Voluntary Sector Initiative, four core values are needed to guide the design of a supportive and effective regulatory system:

Integrity

The regulator should provide the highest level of expertise and reach decisions through an impartial, transparent and fair process.

Openness

The regulator should encourage a free exchange of ideas and promote open, timely and constructive communication with those it serves – charities and the public.

Service excellence

The regulator should be committed to delivering high quality services to its clients. It should be the source of timely and authoritative information.

Knowledge and innovation

The regulator should be forward looking and in step with society's needs and expectations and should use the best available technology to ensure its services

keep pace with changing needs. It should be committed to building its capacities in the following areas:

- **Awareness and understanding of society's needs.** To be effective and relevant to Canadian society, the regulator must be able to gather information about changes in its environment. It should be aware of shifts in public values about what is and is not regarded as beneficial to the public and take this into account in shaping the legal understanding of charity in Canada.
- **Policy dialogue.** To encourage broad participation, the regulator should see ongoing dialogue with the sector, other government departments and the broader community as an accepted way of doing business. The federal government is committed, through the Voluntary Sector Initiative, to involve the sector in developing policy. A Code of Good Practice on Policy Dialogue has been developed. The regulator should use this tool to guide its communication with the sector during the policy development process.
- **Continuous learning**. The regulator should have a good understanding of the things it does and does not do well. It should work to continually improve the way it fulfils its mandate. To be innovative and responsive, the regulator should provide opportunities for the sector, its advisors and other stakeholders to participate in developing its priorities and reviewing outcomes. This participation also will provide the regulator with an opportunity to obtain expert knowledge to supplement its expertise. Also, the regulator should promote staff training and professional development to maintain and improve internal expertise and quality of work.

What we heard

Participants in our consultations overwhelmingly supported the core values identified in our interim report. They believed that implementation of the guiding values would enhance transparency and accessibility and lessen the need for sanctions and appeals.

Integrity

Fairness was emphasized as a key element. Virtually all participants who commented agreed that to facilitate public and sector trust, the regulator must be seen to be consistent in applying the law.

Openness

Virtually all participants who commented agreed that the regulator should encourage a free exchange of ideas and communicate actively with the public and the sector. A number of respondents stressed the need for increased communication beginning at the point when an organization applies for registered status. They believed this increased communication would reduce the "fear factor" and resolve misunderstandings earlier in the application process.

Respondents recognized that transparency is a key element of openness. If charities are expected to be transparent, so too should the regulator. Respondents also linked openness to public accountability and felt that public scrutiny of the regulator's performance and decisions is needed to ensure decisions are fair and regulation is effective. A number of respondents commented that openness should also include being responsive to the needs of diverse cultures, including communities in the north and isolated regions, as well as various socio-cultural groups.

Service excellence

Virtually all participants who commented agreed that the regulator should be committed to delivering high quality services to its clients. There were a number of comments about the lack of responsiveness of the regulator and the perceived inability to provide consistent information.

Knowledge and innovation

Participants who commented agreed that the regulator should be forward thinking and in step with society's needs and expectations. In particular, participants overwhelmingly supported the idea of the regulator actively engaging the sector in developing policy and delivering education programs.

Our conclusion and recommendation

We continue to believe that the key values we identified in our interim report underlie the creation of a supportive and effective regulatory system.

Recommendation

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.**

Support and education

It is in the interest of the regulator that charities adopt good administrative practices and be effectively organized. This is particularly important since the primary role of the regulator is to provide confidence that publicly donated funds are being used for charitable purposes.

As we noted earlier, the federal role in providing support to the sector is limited to helping charities comply with the *Income Tax Act*. It is unclear, however, what amount and what kind of support is called for.

It is our view that it is the responsibility of any regulator to ensure that those it regulates have the information and understanding they require to comply with the laws and policies enforced by the regulator. Therefore, there is clearly an educational function that the regulator must take on. This function includes such things as making sure that the regulated are aware of the rules that govern them (such as ensuring directors are aware of financial reporting requirements) and have the assistance necessary to comply with those rules.

We expect that the regulator, whatever the institutional model chosen, will work actively to make assistance available to charities. In England and Wales, one of the most popular activities of the Charities Commission is its regular series of site visits. Commission staff visit various locations throughout the country and meet informally with charities to discuss concerns, issues or questions.

We acknowledge that Charities Directorate staff have, in the past, conducted seminars across the country, largely around the annual information return (T3010). These trips are helpful, but do not do enough to address the information needs of charities.[1]

More resources will be needed to make sure those regulated have the information they require to comply with the laws and policies enforced by the regulator. Site visits and information sessions, particularly in a country as large as Canada, will not be enough. Whether through call centres, computer technology or otherwise, the staff of the regulatory body must be available to provide answers – complete, timely and authoritative answers – on questions that are posed by the regulated.

However, we believe the regulator should not provide education on all matters of law and practice. Issues as complex as accreditation or best practices, and matters

[1] In 2001, for example, 7,700 organizations requested an information session but only a third of these were able to attend one of the 66 sessions held that year. There are a number of reasons for this. The Charities Directorate has little funding to allow its staff to travel to other parts of Canada and it must rely on organizations in centrally located cities to offer space to host the sessions.

as simple as dealing with questions a charity does not want to put to its regulator, are realities in the voluntary sector. Similarly, the public may not want to put the future of a charity in jeopardy by reporting minor concerns to the regulator. There must be some place for the public and charities to go with such concerns.

In its report, the Panel on Accountability and Governance in the Voluntary Sector wrote at considerable length on the need for, and value of, "industry associations" that help charities with issues beyond complying with the *Income Tax Act*. We agree with those observations.

A number of such organizations already exist in many of the fields in which charities operate. From the national umbrella groups to hospital associations to volunteer centres, some organizations provide ongoing support to their members. In many cases, however, these organizations cannot possibly be self-sustaining based on membership fees alone. The resources and diversity of the charitable sector in Canada – where 80% of charities have an annual income of less than $250,000 per year – make it difficult for these umbrella groups to survive financially if they are to serve all charities and not just those that can afford to pay.

The Panel on Accountability and Governance in the Voluntary Sector suggested the regulatory body should also have a nurturing function. We have reached a different conclusion. Our view should not be taken as a feeling that the nurturing role is not required. Rather we believe it is not an appropriate role for the regulator. We suggest that the nurturing function be placed in adequately resourced umbrella organizations. We also note that there are some issues with the rules regarding the charity status of such organizations. Under current administrative policy, umbrella groups are only eligible if at least 90% of their members are registered charities. Umbrella organizations also may be disqualified if they only provide support services and do not deliver charitable programs themselves.

What we heard

In reflecting on what the regulator could do to assist charities, virtually all who commented agreed that a greater emphasis should be placed on education. However, participants did not believe it was appropriate for the regulator to provide support and education on issues beyond registration and compliance with the *Income Tax Act*. Education was defined broadly by participants to include information, advice, professional development training and public awareness. Comments generally fell under six themes.

Theme 1: Education on the legislative and common law rules affecting charities

Virtually all who commented agreed that the regulator has an obligation to provide information, on an ongoing basis, about the legislative and common law rules affecting charities.

Plain language publications, public forums, education sessions, newsletters and Internet-based training modules on the law were recommended. In addition, participants felt the regulator could make better use of communications technology. They noted that most charities have an e-mail address and that information bulletins could be sent electronically by the regulator to all federally registered charities.

A number of respondents also noted that charities have an obligation to demonstrate their willingness to comply with the law. They suggested that there be an onus on charities to ensure their board members are familiar with CCRA policies. Some participants wanted incoming boards of directors to demonstrate some knowledge of the statutes governing charities by signing a certificate indicating that they are aware of their legal responsibilities under the *Income Tax Act*.

Participants agreed that the regulator should provide information about the criteria for registration, rules affecting continued eligibility and how to complete prescribed forms.

However, there was varied opinion on whether the regulator should also provide advice. Most participants felt there was a conflict in having the regulator both enforce the rules and provide advice. It was also argued that charities are uncomfortable discussing compliance concerns with the regulator for fear that disclosure may trigger an audit. Participants suggested that another body should provide guidance to voluntary organizations that need advice and support when applying for registration or when they run into difficulty with the regulator.

Theme 2: Education about what the sector is and does

Public trust was seen to be essential for charitable work to be recognized as valuable and for charities to be effective in raising funds. However, there was a general feeling that while individual Canadians may be familiar with particular charitable causes, the public understanding of the collective contribution charities make to Canadian society is fairly limited.

While the activities of national umbrella groups continue to raise the public profile of the sector, participants suggested that the regulator could help educate the public by releasing aggregate information about charities.

At the same time, the absence of a common standard within the charitable sector for allocating fundraising expenses and administration costs is seen to make it difficult for the public and other observers to interpret charities' financial statements. Some commentators noted that some organizations allocate a portion of their fundraising costs as "education" expenses (for example, when an educational pamphlet is enclosed about the work of the charity with a direct mail solicitation), while other organizations choose not to do so. Participants suggested that stronger financial reporting standards are needed within the charitable sector, not only for prospective donors looking to support a worthy charitable organization, but also for the media when it seeks to compare organizations with very different mandates, volunteer bases and financing activities.

Theme 3: Education on how to operate a charity

Assistance with governance issues within charities emerged as a major theme during our consultations. Participants commented that more education is needed on directors' obligations beyond the *Income Tax Act*. Board training was seen as essential to raising the professional capacity of individual organizations and the sector as a whole, as well as to maintaining public trust and confidence in charities. A number of those who commented felt that the federal regulator should assume responsibility for educating charities on internal board governance and accountability.

Theme 4: Education for donors

The majority of those who commented felt that with increased public concern about deceptive fundraising practices, donors want to be more informed.

However, participants warned us that most systems of regulation will not stop fraudulent groups because these groups simply will not participate in the registration process and will rely on public ignorance to deceive potential donors. They believed that public awareness campaigns, designed to educate the public about how to give wisely and the type of tactics and clues to look for, will prove more effective in stopping fraudulent organizations than excessive layers of reporting requirements.

Theme 5: Education about other rules applicable to charities

As noted earlier in this chapter, charities have responsibilities under both provincial and federal law. While the focus of this review was the federal regulatory framework as defined by the *Income Tax Act*, a number of participants commented on the need for education on directors' legal obligations under other federal laws and in other jurisdictions.

Some participants suggested that there be a one-stop clearinghouse of information on the federal, provincial and municipal rules and regulations pertaining to operating a charity. A number of participants suggested that training modules on the rules applicable to charities be developed. Others suggested that information sessions be conducted by national umbrella organizations independently or with the participation of representatives from both federal and provincial regulators.

Theme 6: Education of the regulator

Participants felt that the regulator was not always consistent in providing answers to questions. Since charity law is complex, and staff must keep up to date on recent court decisions as well as changes to administrative policies and procedures, participants suggested that regulatory staff could benefit from ongoing professional development. Other commentators questioned the ability of auditors to assess public benefit and suggested that their training is focussed too heavily on examining financial statements. Again, staff development was identified as a key issue.

Our conclusions and recommendations

The strength of feedback on the need for education has led us to conclude that this is a critical issue for charities.

Educating the sector

We believe the regulator should have responsibility for making sure charities understand the legislated and common law rules that affect them, and for providing them with assistance in completing their annual returns. We also believe the regulator should educate organizations seeking status about the criteria and process for registration.

While we acknowledge that the Charities Directorate has held education sessions in the past, these have been too few in number to meet the needs of charities. That being said, it will never be possible to visit every community in Canada that expresses an interest in holding an information session. Partnering with local community groups and sector umbrella organizations to jointly deliver information workshops, video conferencing and on-line educational modules on a variety of topics of interest to charities are only a few examples of how the regulator could work collaboratively to deliver education to the sector. We believe the regulator needs to find new, innovative ways of delivering education.

We do not believe the regulator should assume a role in educating charities on board governance and accountability. While it is in the interest of the regulator that charities adopt sound administrative practices and are effectively organized, the primary focus of the regulator is the administration of the *Income Tax Act*. This means that educational activities carried out by the federal regulator must be linked to the charity provisions of the Act. For this reason, we maintain our view that the regulator's role in providing education should be limited to registration and compliance.

Although board governance falls outside the mandate of a federal regulator, there is recognition within the Voluntary Sector Initiative that there is a broader need to be addressed. Networks have begun to emerge at the provincial and municipal level as a result of the Voluntary Sector Initiative. These groups would be logical partners to share best practices on board governance issues. National voluntary sector umbrella groups are also logical partners. Some umbrella groups are already administering voluntary programs of accreditation to enhance organizational integrity and accountability. We encourage the sector to continue to provide leadership in this area.

We also do not believe the regulator should assume responsibility for educating charities about the relevant rules in other jurisdictions. We believe the regulator should provide information on its rules and steer people to other resources for information on other federal laws affecting charities as well as provincial and municipal requirements.

Recommendations

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 maintaining federally 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

We believe the regulator should assume some responsibility for educating the public about charities.

When a donor gives money to a charity, he or she has a right to see how it is spent. We believe the public should be given more information about how their donations are being put to work and what to do if they suspect their donation is not being spent properly.

However, we are concerned that the public may have difficulty interpreting charities' financial statements. Part of the problem is that there is some confusion among charities about how to record management and general administration expenditures. Some charities record expenditures on charitable work under management and general administration. Others err in the other direction and include management and general administrative items or fundraising expenditures under their charitable work. The lack of consistency in reporting among charities may encourage people to make inaccurate or invalid comparisons.

We believe the public wants assurance that most of a charity's funds are used for charitable purposes, and that administrative and fundraising expenses are kept to a reasonable level. While the regulator and the sector can provide additional information to help the public understand these statements, we believe the ideal solution

would be for the accounting profession, the sector and the regulator to develop improved reporting standards for charities.

We also believe that the sector would benefit as a whole if the public were provided with more information about charities. We believe the regulator can play a limited role in educating the public by releasing aggregate statistical information such as the number of charities registered, amount of donations made, amount of charity expenditures and number of tax receipts issued. However, we believe the sector is better placed to provide public education about what charities collectively do.

Finally, it appears that Canadians are becoming increasingly concerned about how to distinguish fraudulent organizations from legitimate charities and how to ensure their donations will be used for charitable programs. We believe the regulator can play a role in educating the public about issues to consider when making a gift to charity.

Right now, the regulator can confirm whether groups are set up for charitable purposes and provide free information about their programs and finances.

Unfortunately, too few Canadians know they can go to the CCRA website to find out if a fundraiser who knocks on the door is soliciting funds for a *bona fide* charity. Our recommendation that the regulator increase its institutional presence should help the public become more aware of the fact that there is a place they can go to find out more about a charity before they give. But it is unrealistic to expect the regulator to closely monitor every charity in Canada. Donors need to be educated on how to ensure their donations are going to a reputable cause and that the money is being spent on charitable work. They also need to be encouraged to do their homework before making a gift. The sector, and especially national umbrella groups, also have an important role in educating Canadians about the issues to consider when making a gift to charity.

Recommendations

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.**

Educating the regulator

The comments received on consistency in applying the law and carrying out audits reinforced our view that more professional development of regulatory staff is needed. We address this issue and make recommendations later in this chapter under Resources.

Profile/visibility of the regulator

One of the purposes of any regulatory system is to assure the public that someone is supervising the activities of the regulated to ensure compliance with the applicable laws. While we know that Canadians have a high degree of trust in charities, we also know that they expect charities to be monitored. One of our concerns is that few Canadians know that there is any formal monitoring of charities and even fewer know who provides that monitoring.

In *Talking About Charities,* a study released in 2000 by The Muttart Foundation and the Canadian Centre for Philanthropy, 51% of the 3,900 respondents did not believe there was a body responsible for overseeing the activities of charities. Another 21% were uncertain that such a body existed. Of the 28% who believed such a body existed, only a small minority knew that it was the CCRA who had at least some such responsibility.[2]

A survey commissioned by the CCRA had similar results. The survey, conducted by Ipsos-Reid, examined public awareness, knowledge and behaviour regarding charitable donations. The vast majority of Canadians (87%) said they were aware that charities must be officially registered before they can issue tax receipts.

However, the survey findings revealed that Canadians had little knowledge about other elements of charity registration. When asked to name the organization responsible for determining whether a charity qualifies to be officially registered, two in three respondents (65%) had no idea and only one in ten (11%) correctly identified the CCRA.

The findings also suggested that Canadians desired more information about the registration of charities. Six in ten respondents (62%) believed knowing the name of the organization responsible for registering charities was very important.[3]

---

[2] *Talking About Charities,* The Muttart Foundation and the Canadian Centre for Philanthropy, 2000. With the sample size in this study, results are considered to be accurate within ±0.8 percentage points, 19 times out of 20.

[3] A total of 2000 Canadian adults were surveyed in two waves of telephone interviews between December 4 and December 13, 2001. The results are considered to be accurate within ±2.2 percentage points, 19 times out of 20, with statistically reliable results for each major region of the country.

Public trust and confidence are minimized when there is limited knowledge that regulation exists. Therefore, it is important for the regulatory body to make sure that it has a public profile. Such a profile does not come only – or even primarily – from regulatory actions that are taken. There must be a determined effort by the regulator to appropriately establish its presence. Canadians must be aware that the regulator exists, what it does, and what registration as a charity does and does not mean.

What we heard

Most of those who commented agreed that trust in charities would be enhanced if donors knew there was a public institution monitoring and providing information about charities at the federal level. To ensure the regulator is more visible in the minds of donors, some participants suggested that the regulator's name be published on income tax receipts provided to donors by charities.

A few felt that the credibility of a charity is based on what they hear about an organization from local sources rather than what the regulator reports. There was also a caution voiced that the regulator may be driven, in seeking visibility, to make administrative policy changes or conduct investigations that are unwarranted. On balance, however, the comments favoured increasing the profile of the regulator to maintain public confidence and trust in charities.

Our conclusions and recommendations

We believe a requirement to publish the regulator's name on income tax receipts will give greater confidence to donors that someone is monitoring the activities of charities. However, we also believe that the regulator needs to do more to enhance its institutional presence.

Recommendations

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

To instil public confidence and trust, the regulator must have the physical, financial, human and technological resources to perform the duties expected of it.

In recent years, a number of concerns have been voiced about the service standards within the Charities Directorate and, in particular, the speed with which applications are processed.

Since the announcement of the Voluntary Sector Initiative, there have been some promising signs. The Charities Directorate has received additional resources to allow it to undertake a "Future Directions" program – a modernization effort aimed at closing the gap between potential and current performance.

Yet much remains to be done. The Directorate's offices are scattered around the National Capital Region. It has several computer systems that are not able to communicate with one another. The record-keeping technology has not been updated for many years and no longer meets the management needs of the Directorate. The Directorate has little funding to allow its staff to travel to other parts of Canada.

What is of particular concern are the demands that are put on people who regulate charities, and the question of how the regulator can better attract and retain qualified staff.

One of the long-standing concerns of Directorate management, commentators and charities has been the relatively low classification level and pay of those who must decide on the registration or deregistration of charities.

In many, perhaps most, regulatory bodies, there is a firm set of laws and regulations that are enforced. Contrast that with the Charities Directorate, where there is no clear definition of what the word "charity" means.

Staff in the Directorate are asked to look at applications – many of them filed by well-meaning volunteers with little legal expertise – and determine whether the organization's purposes are charitable. In doing so, they must know charity law well and be capable of taking a wider view of the social and economic circumstances of the day. This task requires considerable skill. Staff require not only suitable background, but also substantial expertise and ongoing professional development.

Few of the people who move into the Charities Directorate do so to make it a career. While staff turnover is common across government, it is particularly harmful for the client groups involved – including those charities providing services to marginalized groups and vulnerable citizens.

What we heard

The issue of resources was identified as the single, most important factor in determining the success of regulatory reform.

Those participating in the consultation agreed that the regulator must have sufficient physical, financial, human and technological resources to perform the duties

expected of it. A few stated that many of the problems being examined by the Table could have been avoided if the Charities Directorate had not been chronically underfunded since its inception. In addition, the observation was made that insufficient funding has contributed to selective enforcement and more resources are needed for monitoring ongoing compliance to instil donor confidence.

A number of cautions were voiced about raising operational expectations without a strong commitment for funding and some doubted whether additional dollars would be made available to implement our recommendations. Participants acknowledged that new resources had been given to the Charities Directorate since the creation of the Table. They noted that the level of service had improved dramatically over the past two years. However, they feared that, with the end of our mandate, the situation would revert to the less-than-acceptable past.

Our conclusions and recommendation

We continue to believe in the need for improved funding of the regulator.

We acknowledge the significant new resources that were allocated to the Charities Directorate to allow it to undertake the CCRA's Future Directions Initiative. We also acknowledge – as have other commentators – that there have been demonstrable results from that initiative. Those results have helped ensure faster and better service by introducing improved management models into the Directorate.

We do not criticize those who have served in the Directorate in the past. They did as much as they could, given the resources that were made available to them.

We are proposing that the workload increase even beyond that which has been achieved through Future Directions. Requirements such as the publication of reasons, the development of new informational material and significant additions to technology will all require resources in the form of people and equipment. Without these resources, the improvements will not take place, and there will be continuing demand for a different model of regulation.

We had neither the time nor the expertise to cost out all of the improvements that we think are required. As Ministers consider our recommendations, they will require such detailed financial information from the public service. However, it is clear to us that whatever regulatory model is chosen, additional resources are going to be required in a number of areas. The two most significant areas are described below.

Staffing

In our interim report, we noted the concerns, raised internally and externally, about the turnover of staff within the Charities Directorate. We obviously do not want to hamper the ability of any public servant to pursue a suitable career path. At the same time, we believe that there should be opportunities for reasonable compensation,

development and promotion within the regulator itself as an incentive to people to remain and become expert in what can be a difficult area of law to administer.

The issues go beyond an examination of classification and pay scales. Our recommendations will add significantly to the workload of the regulator. It is critical that the staff complement match the workload we are proposing.

In addition to an examination of the classification levels and pay scales within the regulator, we believe it would be useful for resources to be made available for travel and professional development.

Currently, there is little money available to allow Charities Directorate staff to move about the country. Funding for the information sessions that are held is insufficient to meet demand. There are few opportunities for the regulator's staff to meet with individual charities. This has led to a feeling among some that the regulator is "out of touch" with what happens "in the real world." While we see it as likely that decision-making on charities will remain centralized, we believe there should be resources available to allow more interaction between charities and the regulator.

Professional development has proven, in any number of fields, to be an incentive for people to remain with an employer, and has resulted in increased productivity. We believe additional resources are needed to allow staff to attend conferences and seminars. We would go further and encourage consideration of such things as staff exchanges and secondments. We believe that there is also the potential for improved service if the regulator had the funds necessary to host staff seminars, delivered by people from the charitable sector, explaining the way charities operate across the country.

Technology

Throughout our report, we call for increased use of technology to make information available more quickly and readily than is currently possible. These changes will require resources probably more significant than might originally be considered. For example, the development of the new annual information return (T3010) consumed about half of the amount allocated for the entire regulatory reform exercise, with most of that attributable to the development of the information-technology systems needed to support the processing of information reported on the new form. Future developments, including the possibilities of allowing charities to file returns electronically, will also require resources.

While all of these will be welcome and necessary changes, one must not lose sight of the day-to-day information-technology needs of the regulator. As previously noted, the Charities Directorate currently uses several different information systems that are not compatible. These systems were designed in a different era and no longer provide the type or level of information necessary to allow for appropriate management.

Whatever the future regulatory body looks like – whether it remains within CCRA or some other model is chosen – it will require the resources necessary for a major overhaul of existing systems. The Table encourages ministers to make such work a priority.

As a final conclusion, we want to make the point that investment in the regulator will benefit government, the sector and society as a whole. For government, the effectiveness of fiscal policy will be maintained by ensuring that the tax expenditure associated with charitable donations supports true charitable activity. For the sector, there will be assurance that charities of all stripes operate on a level playing field with each other, that donation dollars will not be siphoned off to non-legitimate purposes, and that the public confidence which is vital to their continued operation is maintained and enhanced. For society as a whole, there is greater certainty that their donations and tax dollars serve the intended purpose, and that the myriad of voluntary services they may depend upon will be there when needed.

Recommendation

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

A number of commentators have suggested the CCRA may be too conservative in its interpretation of the law and, in particular, in its approach to registrations. We have examined this issue and found that the CCRA approves applications for registration at a rate that is comparable to that of other jurisdictions, including England and Wales and the United States. However, similar complaints have been voiced in those jurisdictions as well.

One reason for being cautious when registering charities may be the fact that registrations are based almost exclusively on materials submitted by the applicant. There is no systematic process to identify and correct wrongful registrations. Also, there is little ongoing regulatory supervision once the CCRA makes a decision. The process really stops to a large extent at the decision to register.

The definition of charity has also provoked much discussion. Some argue that there should be a legislative definition of charity. The courts have said that they are ill equipped to make social policy and that those decisions should be made by Parliament or by elected officials. The Panel on Accountability and Governance in the Voluntary Sector proposed such a solution and recommended that Parliament reconsider the definition every 10 years.

The Supreme Court of Canada, in *Vancouver Society of Immigrant and Visible Minority Women*,[4] also suggested that Parliament address this issue. However, others in the charitable sector oppose a legislated definition, saying it would create too "rigid" a system and that it would lead to a situation where only "politically palatable" organizations would obtain registration.

Concerns have also been expressed about the current approach to political activities on the part of charities. The law states that a charity cannot have a political purpose or be engaged in partisan political activities. Engaging in political activities is allowed to the extent that those activities are non-partisan and a very minor part of the activities of a charity. This is a broad rule that has created some confusion about what is and is not permitted.[5]

[4] *Vancouver Society of Immigrant and Visible Minority Women v. MNR* [1999] 1 S.C.R.

[5] The treatment of political activities was not part of the Table's mandate. However, the Table did receive comments from participants on this issue during the consultation. Finance Canada and the CCRA are reviewing the administrative and legislative issues related to political activities and charitable status. They have met with representatives from the sector and a number of government departments to discuss concerns in this area. Following these discussions, the CCRA released draft guidelines on allowable political activities in an attempt to clarify the rules surrounding political activities.

Many of these concerns are not matters of institutional reform, but rather how the regulator applies and interprets the law. The Directorate, acting on the same basis as the courts, works within and interprets the legal rules that determine whether an organization is charitable. These are mainly laid down in decisions of the courts on particular cases rather than set out in Acts of Parliament. Because there is not a precise definition of charity, the Charities Directorate must look closely at those purposes that have already been recognized as charitable.

There may not always appear to be any direct court precedent. In such cases, the Directorate then has to decide (using fundamental legal principles) whether efforts to address problems raised by changing social needs are legally charitable in the same sense as those already accepted as charitable. In reviewing applications, the Directorate must consider whether the courts would or would not allow a particular organization to be recognized as charitable. The Directorate does not have the power to change the law beyond the flexibility that is implied in the decisions of the courts. Any changes beyond that would need to be made by the courts or by Parliament.

While in some cases a sufficiently close analogy may be found, in others an analogy may only be found by following the broad principles laid down by the courts. Unfortunately, the small number of court cases dealing with what is or is not charitable in Canada does not give the Directorate the guidance it would have if a larger number of legal precedents were available.

What we heard

Virtually all who commented asked for clarification about our assertion that the regulator has no capacity to set precedents. It was argued that "making the law" can happen administratively, and that the Charities Directorate is already establishing what is charitable through its decisions to register organizations since positive decisions are not appealed. In this way, they suggested, the Directorate is administratively expanding the boundaries of what is charitable, organization by organization.

There was some criticism of how the current regulator applies and interprets the law. Many commentators would like to see a regulator more actively pushing the boundaries of what should be charitable as supported by reasoned analysis and an awareness of changing social conditions. However, the point was made that the regulator is in a difficult position since the courts are restrained by previous decisions and are reluctant to expand on the traditional heads of charity, even in light of changing needs and circumstances, without further direction from Parliament. The resulting administrative approval system is not perceived as working fairly or consistently.

Our conclusions and recommendations

To clarify, the regulator does not have any inherent authority outside the *Income Tax Act* to interpret what is charitable, in contrast to superior courts. However, the regulator has the authority to draw reasonable analogies in determining what should be registered. The approach of reasoning by analogy has been outlined by the Supreme Court of Canada in *Vancouver Society of Immigrant and Visible Minority Women.* Using this approach, the courts have endeavoured to keep charity law evolving as new social needs arise or old ones become obsolete. However, in the absence of clearly defined principles for determining whether a particular purpose is charitable, the courts, and perhaps also administrative decision makers who rely on judicial decisions, may become too narrowly tied to existing categories.

We believe that an effective regulator is one that is both enforcing the law and interpreting the law in light of changing social conditions through the use of analogy.

However, we acknowledge that those responsible for making registration decisions need clear policy guidelines on the nature and extent of their authority under the *Income Tax Act* to recognize new purposes. In addition, improved training programs for examiners (both upon their hiring and on a continual basis) are needed. Finally, improved research capabilities for decision makers, such as electronic access to previous decisions of both the regulator and the courts, would allow examiners to better identify similar fact situations and more consistently interpret the law.

Recommendations

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

Regulation of charities is shared between the federal, provincial and territorial governments.[6] Constitutionally, the provinces have been given the authority to make laws regarding the "establishment, maintenance, and management of charities in and for the Province" by the *Constitution Act, 1867*.[7]

The federal government's regulatory involvement is premised currently on its authority to make rules regarding income taxes.[8] Because donations to registered charities create a tax credit, the federal government, through the *Income Tax Act*, has developed a series of rules regarding the operation of charities.

Among the powers exercised by the federal government, a significant one for the sector is the power to determine which organizations can be registered as charities under the *Income Tax Act.* Supervision of the sector at the federal level is focused on making sure organizations that are federally registered as charities under the *Income Tax Act* comply with the Act and continue to be entitled to favourable tax treatment.

In examining new institutional arrangements, we recognize the important role that provinces play in regulating the charitable sector. While our review focused on the situation at the federal level, we also examined areas where both levels of government are involved and found instances where regulation may not be consistent across jurisdictions. Several examples of this situation emerged in our analysis:

- An organization that is considered to be a charity under provincial law may not qualify for registration as a charity under the *Income Tax Act* and a federally registered charity may not be considered charitable for all purposes (e.g., gaming) in a particular province.
- The provinces have involved themselves in the regulation of charities to different degrees, ranging from virtually no regulation to a significant supervisory authority.
- The *Income Tax Act* does not define the term "gift" and organizations in Quebec are entitled to the application of the Civil Code in determining whether or not a contribution is a gift. This means "gift" can have a different meaning in different parts of the country.[9]

[6] Some municipalities have enacted bylaws that also can impact the charitable sector, ranging from taxation of property to regulation of fundraising.

[7] Subsection 92(7).

[8] This is not to imply that the *Income Tax Act* is the only federal legislation that affects charities. See footnote 2 in Chapter 1.

[9] However, in December 2002, a technical amendment to the *Income Tax Act* proposed to define the "eligible amount of a gift" for tax purposes.

- It is not clear who has jurisdiction over charities that are not "in and for the Province" such as a national organization or an organization that operates in more than one province or on the Internet.

Multiple regulatory structures and rules can create an additional compliance burden on charities. They can also negatively affect public confidence by creating confusion about who is regulating the sector. There is potential for poor co-ordination and overlapping of duties.

A number of possibilities have been suggested. One option is to establish a national regulatory body through which federal, provincial and territorial governments could better co-ordinate the regulation of charities. Another possibility is for some kind of agreement among governments, which would take into consideration specific needs of individual provinces and territories.

What we heard

Virtually all who commented felt that split jurisdiction over the charitable sector between the federal government (through the tax system) and the provinces (over charities in the province) is a source of confusion for charities and the public.

Participants also noted that regulatory overlap creates confusion among donors and the general public, about what level of government is responsible for what aspect of supervision. There was overwhelming agreement that both levels of government need to find ways to work more closely together.

Some people noted that various provinces house responsibility for charities in different departments. In some, the Attorney-General has that responsibility. In other cases, it may be the Minister of Finance or the Minister of Government Services or some other minister. This means that charity regulation does not get on the agenda of federal-provincial ministers because no such gathering brings together the disparate ministers responsible for the issue. Overwhelming support was given to the idea of establishing a mechanism to ensure ongoing communication between different levels of government.

Provincial government representatives noted that the *Income Tax Act* and freedom of information legislation limit the meaningful sharing of information between the provinces and the federal regulator until a case is brought before the courts. The inability to share information about investigations of complaints both during and after investigations was seen to result in a duplication of work for regulators and added burdens for the charitable sector.[10]

Many participants also noted that most provinces do not have the resources to monitor or enforce compliance and that a combined effort would be more efficient. In addition, there is no mechanism that allows the provinces and the CCRA to consult formally with one another to ensure a consistent approach with respect to the interpretation of the law. This can result in inconsistencies in the way regulators interpret and apply the common law, and can lead to situations where an organization is considered charitable under one jurisdiction but not the other. Some suggested that common forms and standard objects be developed for use by provincial and federal regulators, to avoid duplication of effort and reduce administrative costs to charities.[11]

A number of those who commented also stated the duplication of regulation and the lack of consistency across jurisdictions is a problem at the municipal level as well. One umbrella organization noted that there has been some confusion regarding the treatment of religious charities in some municipalities, and this has affected their eligibility for municipal grants. Similarly, we heard that municipalities use widely varying criteria in deciding which charities should benefit from property-tax exemption.

Some concern was expressed that there would be no political will to tackle coordination of regulation once the Voluntary Sector Initiative is concluded.

[10] One case brought to the attention of the Table during the consultations illustrates the potential of greater coordination between jurisdictions. A provincial regulator was involved in investigating a charity where there were allegations that all of the charity's funds were being used for fundraising and administration expenses and that no funds were used for the charitable objects. The CCRA had received a complaint about the same charitable organization and had conducted an audit. The charitable organization signed a release allowing the provincial regulator to obtain a copy of the CCRA's audit file and for the offices to exchange information about the charity. The provincial regulator was able to use the CCRA's findings in its court application. At court, the provincial regulator was successful in obtaining orders requiring the directors of the charity to pay back funds that they had improperly received. In addition, those directors were prohibited from being involved in the running of other charitable organizations. This example shows how valuable it was to use the information obtained by CCRA in the provincial proceeding and to discuss the issues during the investigation. In this case, provincial trust law provided a mechanism to recover misapplied funds, and the operation of federal law resulted in the charity being deregistered.

[11] One example of coordination of regulation is the simplified incorporation process used in Ontario. In 1999, the Office of the Public Guardian and Trustee, in cooperation with the Ministry of Consumer and Business Services, developed a streamlined process for the incorporation of Ontario charities. The process included the development of standard object clauses, in consultation with the Charities Directorate, for use by proposed charitable corporations. The object clauses were accepted by the CCRA and are in use today. This process simplified the incorporation process for Ontario charities and made it easier for them to become a registered charity under the *Income Tax Act*.

Our conclusions and recommendations

There is benefit in exploring opportunities to develop a better coordinated system of regulation.

Charities and their beneficiaries are not well served when faced with multiple levels of sometimes conflicting regulation. A more consistent approach to the way regulators interpret and apply the law is needed.

Nor is the public well served when they do not know which level of government is responsible for monitoring various aspects of a charity's operations. The public interest is not adequately protected when regulators cannot share information about investigations that have uncovered serious issues of non-compliance or public fraud.

The comments received indicate that the sector would like the federal government to take a leadership role in opening up a dialogue on this issue. We believe there is serious merit in the suggestion that a forum be created to discuss the challenges and opportunities of coordinated regulation.

Recommendations

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

The Voluntary Sector Initiative was designed to look at more than just registered charities. It was designed to benefit voluntary-sector organizations, whether incorporated or not, whether a registered charity or not-for-profit organization that, for whatever reason, is not registered as a charity.

The challenge of developing a regulatory system that encompasses all charities and not-for-profit organizations, however, is a formidable task.

For example, some not-for-profit organizations could be registered as charities except for their political activities.[12] In other cases, an organization may have no wish to accept donations for tax-credit purposes, but is clearly serving a public benefit. In still other cases, a group of professionals may band together for mutual benefit. Their interest, while private, is nonetheless acceptable for consideration as a not-for-profit organization. Comparing a condominium association with an organization whose members organize walkathons to raise funds for wheelchairs is difficult. Designing a common regulatory system borders on the impossible, at least within the time and resources available to us.

As a result, we focused our attention on issues that pertain to registered charities. However, we believe there may be merit in exploring this issue further.

What we heard

Virtually all who commented agreed that, given the time and resources available, it made sense to focus the review exclusively on federally registered charities. On the other hand, many noted that the public does not distinguish between charities and the rest of the non-profit sector, and, for this reason, accountability should be extended to the broader non-profit sector. In a written brief, one organization argued that the definition of a non-profit organization in section 149(1)(l) of the *Income Tax Act* is dysfunctional and no longer necessary. Another suggested that if regulation could not be extended to include non-profit organizations, efforts should be made to develop standards/codes of good practice that the entire sector could adopt.

Our conclusion and recommendation

Given that a more thorough review of this issue was not possible, we recommend that further study be undertaken.

Recommendation

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

[12] The Table does not comment on whether the existing rules related to political activities are appropriate or not. Indeed, it accepts that some legal advisors to charities advise their clients to establish both a charity and a not-for-profit as a matter of course.

Administrative mechanisms

We have explored a number of administrative mechanisms through which the characteristics of an ideal regulator and the critical success factors identified above could be supported. These mechanisms include:

- public consultation on new policies;
- annual reporting by the regulator; and
- implementing an advisory group to the minister.

Public consultation

The Charities Directorate has, in the past, often consulted with interested stakeholders prior to introducing new policies. However, we believe more could be done to identify areas of mutual concern and create more opportunities for dialogue and feedback, particularly in exploring the boundaries of what is and is not charitable. The regulator, for example, could broaden public input into the administration of charity law through widely advertised consultations. Ongoing public consultation would also enable the regulator to identify new trends, contribute to available knowledge about the sector, gather intelligence on areas of concern and plan how to monitor Canadian charities with the input of those most affected.

What we heard

We received few comments on the need for more public consultation. However, it was evident from comments we received on other subjects that the sector would appreciate the opportunity to contribute to administrative policy development. In addition, some provincial government representatives called for greater communication and discussion on applications for charitable status. By discussing problematic charitable objects or applicants whose purposes are questionable, a more consistent approach could be adopted by the various regulatory authorities.

Our conclusions and recommendations

We believe that policy dialogue is essential to ensure the regulator's policies benefit from the sector's experience, expertise, knowledge and ideas.

We acknowledge the Charities Directorate has conducted public consultations prior to introducing new policies. This has enabled the sector to bring forward its views and resulted, we believe, in the development of better policy. However, we feel more could be done to engage the sector in regular dialogue so that concerns could be communicated at various stages of the policy development process, rather than only after policy has been drafted.

To do this, the regulator should draw on the full range of methods available including written consultations, opinion surveys, focus groups, user panels, meetings and various Internet-based approaches.

Recommendations

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

Annual reporting could allow the regulator to communicate to stakeholders on its activities and performance. Such reporting could include:

- statistical information on charity applications, denials, registrations, trends, etc.
- aggregate results of audits and compliance measures,
- extent of support provided to charities to assist them with compliance,
- outreach and communication activities, and
- levels of expenditure.

Other more general information such as trends in the type of organizations seeking registered status and reasons for deregistration could also be summarized. An annual report may also increase the profile of the regulator with the general public.

What we heard

Those who commented supported the introduction of an annual report to provide aggregate statistical information about the regulator's performance and activities, including, for example, the number of applications for registered status received, number of charities registered, number of applications rejected or withdrawn and types of sanctions imposed. In addition, commentators noted that one of the weaknesses of the charitable sector is that so few members of the public are aware of its positive impact on Canadian society and communities. In a written submission, one national umbrella organization argued that trust in the sector would be enhanced if the public were provided with more information about the sector on a consistent

basis. They suggested that information be provided on the number of charities registered, funds raised, how much charities spend and how money is raised.

Our conclusions and recommendation

We believe an annual report is needed and agree that it should include aggregate information about registered charities. Other suggestions on the information the annual report should contain are made in the chapters that follow.

Recommendation

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

A charities advisory group with membership from the voluntary sector and government departments could advise the government on improving the regulator's policy framework. This body would report to a minister and would oversee a staff team who would be responsible for carrying out the advisory group's work plan.

The advisory group would play a key role in encouraging the free exchange of ideas and promoting open and constructive contact between the regulator and the regulated. Its guidance would help senior regulatory officials become sensitive to developments in the sector and make sure that all key internal and external groups are involved in policy development.

The members of the advisory group could represent a wide range of interests and multiple viewpoints, including:

- the voluntary sector;
- regions;
- the general public;
- allied professionals; and
- a range of government departments with a policy interest in the regulatory affairs of charities, including the Department of Justice Canada, Canadian Heritage, Finance Canada, Health Canada and Industry Canada.

Because government officials have a conflict of interest between their duties to ministers and their responsibilities as members of advisory bodies, we suggest they sit in an ex-officio capacity – meaning they would have no decision-making role. The ministers of the relevant departments would have the authority to appoint employees to the advisory group. The government would appoint non-governmental members of the charities advisory group.

This consultative body would meet on a periodic basis and would have a number of responsibilities and levels of involvement:

Administrative policy advice. The primary role of the advisory group would be to provide administrative policy advice on such issues as mechanisms for achieving compliance, the interpretation of the law on charitable status and other areas under the administrative authority of the regulator.

The charitable sector is vast in terms of both numbers and operational practices. This body would provide those involved in regulation with a "touchstone" against which they can assess proposed policy initiatives, test new ideas and confirm the service required and delivered. As such, it could play a key role in the regulator's cycle of planning, monitoring, evaluating and reporting of results through a minister to Parliament and citizens.

The advisory group would also have the authority to review, in aggregate, registration and compliance decisions made by the regulator and provide comment on trends and the quality of decisions being made.

Communication. To promote open communication and transparency, the advisory group would report on its activities, initiatives and findings as part of the regulator's annual reporting process.

Consultation. The advisory group would take a lead role in assisting the regulator with prioritizing among various initiatives and ensuring development is timely, policy is written in a clear, concise manner and consultation begins early in the development cycle. The advisory group would assist the regulator in exploring issues of concern and increase the capacity for institutional learning.

We considered whether this body should be asked to review and provide direction on specific cases before a final decision is made by the regulator and, in this way, create an opportunity to resolve cases before turning to the courts. In our Interim Report, we rejected this idea. It was our view that access to a fair and impartial review process was a more appropriate mechanism through which to resolve disputes and seek guidance. For a full discussion of our proposals for reform of the appeal process, please see Chapter 5.

An advisory committee was created within the Charities Directorate in the mid-1980s, but it did not meet regularly, was not adequately funded and no longer exists. Its purpose was to provide the Charities Directorate with administrative policy advice and act as a sounding board for new communications initiatives. Representatives were selected from a cross-section of charities, sector umbrella groups, government departments and charity law specialists. We see a significantly expanded role for the charities advisory group. However, experience of the past illustrates the requirement that this advisory group, if implemented, be adequately funded and supported. To accomplish the tasks outlined for the charities advisory group, there is a need for dedicated staff support.

What we heard

Participants overwhelmingly supported our proposal to establish a ministerial advisory group. There was also general agreement that the advisory group should have broad representation from the voluntary sector, national umbrella organizations, lawyers and other allied professionals.

A number of suggestions were made on the functions of the advisory group. A few respondents felt it should have regulatory decision-making powers. It was suggested in a number of cities, for example, that the group be involved in internal reconsideration of denied applications for registration (see Chapter 5). Others felt the advisory group should decide which cases merit funding, should the government decide to establish an appeal fund.

Our conclusions and recommendation

We believe a sector advisory body would provide the regulator with the opportunity to test its strategies and ideas with representatives from its client groups. This group could also help the regulator to disseminate draft policy more widely within the sector and provide a sector lens to the development and implementation of future regulatory policy.

However, we are not convinced that the advisory group should be involved in the actual decision making involved in internal reconsideration or in selecting cases for support by the appeal fund.

Various additional roles have been given to the advisory group in the chapters that follow.

Recommendation

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.