Chapter 6

Intermediate Sanctions Within the Compliance Regime

Background

We were asked to make recommendations on the possibility of introducing intermediate sanctions. These would be new penalties that would give the regulator tools, short of deregistering an organization, with which to encourage charities to comply with the legal requirements. To make recommendations in this area, we had to consider the role of such penalties within the whole range of actions a regulatory body can take to encourage compliance.

Deregistration is the primary penalty currently under the *Income Tax Act* for charities that do not comply with the requirements. Once deregistered, an organization faces severe consequences. Not only does it lose the right to issue official donation receipts for the gifts it receives and, potentially, its tax-exempt status, it may also have to pay the revocation tax. This tax requires the organization to pay an amount equivalent to its remaining assets to another charity or to the government.

Charities can appeal deregistration to the Federal Court of Appeal. The names of deregistered organizations are published in the *Canada Gazette*, and the Canada Customs and Revenue Agency's letter listing the reasons for deregistration is a public document.

The *Income Tax Act* also includes other penalties – such as penalties for the misuse of certified cultural or ecological property and for gifts between charities that are used to cover up a failure to meet the minimum spending requirement (the "disbursement quota"). However these penalties are rarely used.

The Charities Directorate **annuls** the registration of organizations that are and have always been non-charitable – those that were registered in error. These organizations do not have to pay the revocation tax. Annulments are always consensual, although if an organization does not agree, it faces deregistration and the revocation tax. If asked, the CCRA can reveal that an organization's registration has been annulled, but no other information about individual annulments is made public.

Deregistration is an optional penalty. In practice, the Charities Directorate deregisters charities only if they:

- fail to file their annual return after repeated warnings; or
- are involved in serious or continued non-compliance.

As Table 2 indicates, few charities lose their registration for serious or continued non-compliance. Only 2% of the 500–600 audits conducted each year reveal problems serious enough for the Directorate to proceed with deregistration or annulment. A "voluntary" deregistration occurs when an organization is ceasing operations.

Table 2

Deregistrations, 1998–2002

	1998	1999	2000	2001	2002
Deregistrations: voluntary	623	727	914	613	805
Deregistrations: failure to file	1087	886	2742	2097	1606
Deregistrations: "serious"	2	6	14	13	5
Annulments	2	7	13	14	6

Factors affecting a fair and effective sanctions regime

Compliance vs. sanctions

The purpose of a sanctions regime is to obtain compliance with the law. However, people's compliance behaviour is not shaped just by the potential sanctions they face. Also involved is the perception that the penalties are legitimate, and that they are administered fairly and impartially. In practice, as well, the administrative feasibility of a sanction comes into play. If it is too easy to apply, it may be used too readily; if it is too difficult to apply, it may be used erratically and unpredictably. In both cases, the sanction is unlikely to command the respect necessary to achieve voluntary compliance. Another range of factors in compliance behaviour relates to:

- how complex the rules are and how well they are understood; and
- whether people have access to expert advice on how to comply with the rules.

Efficiency of the compliance program

Another factor shaping compliance behaviour is how well the regulator administers the compliance program. The best designed sanctions in the world will not persuade people to comply unless the sanctions are used effectively and swiftly. To deter non-compliance, people need to know there is a high probability that non-compliance will be detected and that adverse consequences will follow promptly.

Matching the sanction to the non-compliance

The legitimacy of any sanctions regime requires acceptance that the sanction is appropriate to the act of non-compliance. This implies ranking both sanctions and forms of non-compliance according to severity and assuring an adequate match. It also involves finding a sanction that logically fits the type of non-compliance. If, for example, the type of non-compliance involves the abuse of official donation receipts, then the penalty probably should focus on the tax-receipting privilege. Or if the cause of the non-compliance is ignorance of the law, then probably any compliance effort should focus on ensuring that the charity is made aware of its legal requirements.

How much discretion should there be in selecting the sanction?

If more than one sanction is available, who should be responsible for choosing the appropriate penalty? On the one hand, a case can be made for leaving a good deal of discretion in the hands of the regulatory body so that it can tailor a remedy to fit the case. On the other hand, too broad a discretion leaves charities unsure of what the consequences of non-compliance will be, and opens up the possibility of disproportionate penalties. To avoid this, it might be better to specify the entire regime in detailed legislation that said if a charity does X, then the penalty is Y. However, the consequence of giving the regulatory authority no discretion as to which penalty to impose is that this authority would also lack discretion not to impose a penalty. If a charity does X, the regulatory authority would have to impose Y, even if there were compassionate or other grounds why the penalty was inappropriate. The proper balance must be found between regulatory discretion and clear, certain penalties.

What should be in the legislation?

Some may question whether it is even possible to spell out detailed sanctions in legislation. The skeptics will say that charity cases are almost always highly context-specific. Any legislative wording would have to be so general in nature that little certainty would be gained by the exercise. Also, charity law is continually evolving, and novel ways to abuse charitable status emerge regularly. This evolution results in the legislation being out-of-date.

To counter such arguments, others contend that it should be possible to devise statutory wording that lets charities know what they need to do. They would then at least have a list of all the requirements in one place, which they could periodically refer to as a self-check of their compliance status. Still, a remaining issue is how that list, once set in legislative stone, could be readily amended to match changing circumstances.

What sorts of sanctions are appropriate against charities?

There are a number of issues related to the types of sanctions that are appropriate for charities, especially sanctions involving financial penalties. Typically, financial penalties involve complex legislative provisions, with considerable administrative machinery required to administer them. There is also debate on whether financial sanctions should be levied against the obvious candidate, the organization in question. Against whom do you levy a financial penalty if the charity has no corporate existence (such as a charity constituted as an association)? Why hurt blameless beneficiaries by depriving a charity of funds that would otherwise be spent on charitable programs? But if instead you levy the penalty on the directors or managers, what will be the impact on the recruitment of good people to these positions?

Another issue peculiar to charities is the tremendous variability of the sector. What one charity would consider a serious penalty may have little effect on another. For example, an endowed foundation that is no longer issuing tax receipts would not be affected by a penalty dealing with the right to issue these receipts. But how many different penalties are necessary? And at what point does the system become bogged down in complexity?

Transparency and public opinion

Yet another characteristic of the charitable sector that has to be borne in mind is its sensitivity to public opinion. If a particular organization is damaging the sector's reputation, perhaps the regulator should be allowed to promptly address the problem. Yet, presumably, no one wants to see that organization's rights unnecessarily or improperly diminished.

Public reaction also affects how transparent a compliance program should be. If the public becomes aware that a charity is subject to a penalty, the charity's reputation will suffer. However, without transparency, accountability for the operation of the compliance program becomes difficult, and there is no way to reassure the public that an effective regulatory regime is in place.

Should deregistration remain?

If intermediate sanctions are introduced, will it be necessary to retain deregistration as a sanction? If so, should the existing revocation tax stay in its present form?

Who should impose a sanction against a charity?

If the regulatory body does this, then it is combining the roles of police, prosecutor and judge. If another body at arm's length to the regulatory authority takes on this responsibility, then what sort of body should it be? And should this arm's length body impose all sanctions, or limit its sphere to only the more severe sanctions, lest the regulatory authority become hamstrung by another layer of bureaucracy? What avenues of recourse should a charity have if it disputes the decisions of the regulatory body (or those of an arm's length body)? How, in short, do you balance fairness to charities with an efficient sanctions regime?

Federal and provincial roles

As the Ontario Law Reform Commission has noted, charities are caught between federal and provincial regulation. The issue of regulatory overlap or gaps between the systems needs to be addressed in the context of compliance. A given problem brought to the attention of the federal regulator might be more properly or effectively handled at the provincial level, or vice versa. In another situation, a charity may find itself with both provincial and federal regulators at its doorstep. Information-sharing, let alone a coordinated compliance program, between the various authorities is currently impossible because each is required to operate under conditions intended to protect a charity's privacy. But is this sufficient reason to duplicate compliance expenditures at both levels, and to place a charity in a form of double jeopardy?

Other regulatory bodies

Somewhat similar is the question of what the federal charities regulator should do if it finds evidence of criminal activity or breach of another statute, such as the federal *Competition Act*. Should it have the authority to bring the evidence to the appropriate authority, on the grounds that the sooner the problem is taken care of, the faster the potential damage to the charity, its beneficiaries and the sector's reputation will be repaired? Or should the regulatory authority continue keeping its dealings with charities confidential, at least until such time as it imposes a sanction?

Reform recommendations

The purpose of a sanctions regime is to obtain compliance with the law.

Charities vary enormously in their degree of sophistication, their asset base, sources of financing, field of activity and how they administer themselves. Given this variation, we do not believe that a fair and effective sanctions regime can be achieved that relies only on a single penalty. We also believe that deregistration, currently relied upon as the sole penalty, is too severe for most types of non-compliance.

Compliance programs include measures that offer encouragement and support. In developing our proposals, we have assumed that most charities want to meet their legal requirements. Therefore, we have emphasized the need for the regulatory authority to work with charities to inform them of the law and to develop solutions to problems as they occur. The focus is on remediation – on putting things right. The aim is to make a charity stronger, not to drive it out of existence.

We also believe the regulator should take a gradated approach to compliance. Some actions the regulator takes will have a more severe impact on a charity than others. Generally, we would expect the regulator to start with actions having the least negative impact and to resort to more severe forms of enforcement only if they prove necessary. However, as both the severity of the penalty and the discretionary latitude increase, we will also be proposing safeguards to ensure the penalties are applied properly.

During the consultations, commentators told us they liked the gradated approach to compliance, along with the emphasis we placed on remediation and education. However, a number of remarks suggested that the concept of "tiers" we had originally used was potentially misleading. The "tiered" approach seemed to imply, for instance, that the regulator would only provide education at the first step in the process, or that communications between an organization and the regulator to arrive at a reasonable result ("negotiation") would only occur at the second step.

To clarify, we need to distinguish between the activities a regulator engages in and the type of enforcement action that results from these activities. A regulator engages in many different activities, including fact-finding, education and negotiation. The outcome of these activities could be a number of things, such as a remedial agreement,[1] a public notice that a charity has not filed its annual return, a sanction of one sort or another, a deregistration, an annulment or a court order.

Table 3 provides a revised overview of our proposals.

Table 3

Overview of Proposed Compliance Program

Method of Enforcement	Purpose
REMEDIAL AGREEMENT	For the charity and regulatory authority to consider the charity's specific circumstances and work out together how a problem can be resolved, with a commitment from the charity to resolve the problem accordingly
PUBLICITY (charity's name is published on website)	To obtain compliance with the requirement to file an annual return, in a situation where the facts and law are self-evident, by enlisting the community to remind a charity of the legal requirements
SUSPENSION OF QUALIFIED DONEE STATUS (charity could no longer issue tax receipts for gifts, receive grants from charitable foundations) FINANCIAL PENALTY ON CHARITY (charity loses its tax exemption, with tax payable being up to 5% of previous year's revenue, or up to 10% for repeated infractions, plus up to 100% of amounts obtained in breach of requirements)	Both methods of enforcement have two purposes: (1) To obtain compliance, with the penalty being lifted once the charity meets the legal requirements (2) To provide a penalty for (and therefore deter) non-compliance, when the infraction is repeated, irreparable harm results or private benefit is present Penalty amounts to be re-applied to charitable purposes
DEREGISTRATION	To remove non-qualifying organizations from the register Replace existing revocation tax, to ensure assets are applied for charitable purposes

[1] We are referring to what we called "negotiated settlements" in the interim report, but have changed the terminology to avoid confusion with the activity of negotiating, which we do not want to suggest should be used only in the context of these agreements.

Before looking more closely at these proposals, we want to make another important point. We have placed this chapter on Intermediate Sanctions in our report after the chapter on Appeals for a reason.

In considering how a compliance program for charities would work, we initially tried to list types of non-compliance and match them with appropriate penalties. This proved impossible. Generally speaking, there was too much variation in the acts of non-compliance and the circumstances of organizations to be able to closely tie a particular act of non-compliance with a specific penalty.[2] We identified two exceptions – not filing the annual information return and deceptive fundraising – where the pattern of non-compliance was sufficiently established that specific remedies could be considered.

In developing our proposals, we have consequently placed heavy reliance on the discretion of the regulator to produce an effective and just outcome. A large majority of those participating in the consultations endorsed this approach.

However, this discretion cannot be unfettered. In some places, we are suggesting a role for the ministerial advisory group. More importantly, given the powerful tools we are proposing be placed in the hands of the regulator, it is essential that charities have an accessible recourse system. **We do not believe the new intermediate sanctions we are recommending (suspension of qualified donee status and suspension of tax-exempt status) should be introduced without adequate recourse in the form we have recommended in Chapter 5.**

Giving charities the means to comply

Charities must know and understand what is expected of them. Also, they should feel comfortable seeking guidance from the regulator when they are uncertain as to how to proceed. The regulator needs to:

- provide plain-language publications setting out the law;
- organize information sessions;
- promptly provide oral and written responses to questions posed by charities; and
- meet with individual charities at their request.

Charities need to know that they will receive correct information from the regulator and that they can come to the regulator for a frank discussion of problems. We propose that the regulator establish and publicize a policy emphasizing that its role is

[2] For example, the law requires a charity to issue official donation receipts containing certain information. This requirement would be infringed if a receipt did not contain the statement that it was "an official donation receipt for income tax purposes." It would also be infringed by an inadvertent mistake in filling out the amount of the gift on one donation receipt. Again, it would be infringed if an employee inflated the amount on two receipts issued to family members. And the same infraction would occur if a charity had been systematically inflating the amount of the donation on all its receipts over a period of years, after having been previously warned to desist. We believe each of these situations requires a different regulatory response.

to help charities comply with the law. Also, the policy must ensure that the regulator, to the extent that its discretion allows, will treat charities leniently when they disclose their problems to the regulator and work with it to resolve the difficulty.

However, the regulator cannot be expected to handle an educational support role single-handedly. The sector can help by developing networks of charities. The networks would bring charities together to share their knowledge and offer opportunities for the more experienced to offer guidance to the less experienced. We also recognize the need for courses, at community colleges and elsewhere, on the role of directors/trustees and on charity law.

What we heard

Education was such a pervasive theme in the consultations that we have addressed the issue more fully in Chapter 3. During the consultations, participants often referred to the turnover in volunteer board members and the resulting need for education to be provided on an ongoing basis. They also urged that information should be easily obtainable and readily understandable, with many pointing to the regulator's website as a place where plain-language instruction would be invaluable.

Our conclusions and recommendations

Although we have made recommendations on education in Chapter 3, we believe it worthwhile to signal education's importance to a compliance program by making separate recommendations in this context.

Recommendations

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 education 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: working with charities to correct a problem

Apart from education and support, remedial agreements[3] should be a prominent part of the regulator's compliance program. Assuming that virtually all charities wish to comply with the law, these settlements should be sufficient to solve the problem in the vast majority of cases.

The core idea is to obtain agreement between the regulator and an organization about the nature of the problem, what would put it right, and how to prevent it from happening again. "Nature of the problem" includes the facts and the application of the law to those facts, as well as the reasons why the problem arose. Solutions must vary according to the circumstances at hand. Indeed, if solutions are to be effective, they must reflect the unique circumstances of the case. Such a procedure is modelled on that used in the United States and represents a development from the Charities Directorate's existing practice of obtaining a charity's written promise to correct a problem.

Both the regulatory authority and the charity should treat remedial agreements as a mutual problem-solving exercise. As the two sides put their heads together, creative ways of resolving a given problem will surely emerge. If necessary, they could agree to use an outside facilitator to help reach an agreement. The regulator should keep track of the various corrective and preventive solutions, evaluate their effectiveness, and develop a list of workable ideas for use in future settlement discussions.

Our conclusions and recommendations

We heard strong support during our consultations for the use of remedial agreements. One question that came up is whether such agreements could contain a financial settlement. Our view is that financial settlements should not form part of remedial agreements. Under such an agreement, a charity might agree to undertake certain things, such as seeking professional accounting advice, that it would have to pay for, but it should not be asked to make a payment either to the Crown or another charity. In our view, any such payments should only be made in the context of a sanction legislated by Parliament, and payments like these need to be open to public scrutiny. Given the power imbalance between the regulator and an individual charity, we believe there is too much danger of an unjust result to allow closed-door deals involving a financial settlement.

A concern that was voiced was the need to provide some degree of transparency to remedial agreements, even if no financial settlements were involved. For reasons explained more fully later in this chapter, we believe that such agreements should remain confidential. However, we have always recognized that accountability is

[3] See footnote 1 earlier in this chapter.

necessary in this area to ensure public confidence. Thus, we are not only recommending that the regulator provide details in its annual report of the program (without identifying the charities involved), but also that the ministerial advisory group monitor the use of remedial agreements.

Recommendations

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

Remedial agreements attempt to solve problems that are specific to particular organizations. However, this is not a cost-effective approach to types of non-compliance that:

- occur frequently, despite the regulator's educational programs; and
- involve matters of fact and law that are not open to interpretation.

A good example of this type of non-compliance is failing to file the required annual information return. The law states that such a return must be filed, and either a charity did or it did not file the return. Some 2,000 charities are not filing their returns each year, despite a vigorous program of deregistering them for failing to do so.

The CCRA currently has no other practical means of enforcing the filing requirement short of deregistration. However, deregistration for active charities seems to be both overly severe and administratively unwieldy. Once deregistered, these charities have to re-apply for registration. This ensures the repeat applicant meets current registration standards, but the application process is being used, inappropriately, as a form of penalty. Moreover, handling re-applications creates an additional burden on the system.

We suggest that the regulator should initially use publicity, without first seeking a negotiated settlement, to handle non-filing of annual returns. When the names of non-compliant charities are published, pressure from the local community would serve as a reminder to the charity of its legal obligations. Publication could be on the regulator's website, in a local newspaper, or both.

The regulator should telephone the charity and send it a written warning at least a month before the charity's name is published. No further action would be taken if the charity sends in its return before the date stated in the warning. If the charity

has failed to advise the regulator of a change of address or phone number, so that it does not receive advance warning, then the charity is responsible for the lack of warning.

On the regulator's side, system accuracy and frequent updating would be necessary. Ideally, a defaulter's name should be removed from the list within a day or so of the return having been received and accepted. Procedures would also be needed to correct quickly (and publicize the correction of) any errors that occur in the listing.

If publishing the charity's name does not correct the problem, the regulator can decide to proceed to more serious forms of enforcement action.

What we heard

Our interim proposal – that the names of non-filing charities be publicized as a way of encouraging compliance with the filing requirement – attracted a lot of comment. Most endorsed the proposal, but cautiously so, given the potential damage to a charity's reputation that could result. Some pointed out that publishing names of non-compliant charities in local newspapers would be expensive, while others noted that non-filing organizations would typically not include those who checked the regulator's website regularly, if the listing were to be published there.

We also received other suggestions on the treatment of non-filing charities. One was to charge the charity a fee if it sought re-registration after having lost its original registration for failure to file. Respondents argued that a monetary impact would be more effective in inducing charities to file on time than the inconvenience of having to apply over again.

Our conclusions and recommendations

On balance, we believe the best approach is for the regulator to proceed with listing non-filing charities on its website, with a notice indicating the regulator intends to deregister the charity unless the annual return is received before a specified date. This listing, while public, is less likely to come to the notice of the general public and thus less likely to be damaging to the charity. At the same time, it allows those deciding whether they want to support an organization to check out its filing status, and it provides umbrella groups and other interested persons with the means of alerting the organizations at risk of losing their registration.

We agree that a re-registration fee would also encourage charities to file their returns on time. Therefore, we are proposing that an application for re-registration would have to be accompanied by a payment of $500. We would give the regulator the discretion to waive some or all of the fee where appropriate.

Recommendations

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

In our interim report, we identified three types of intermediate sanctions:

1. Suspension of a charity's status as a "qualified donee" under the *Income Tax Act*. While suspended,
   - the charity could not issue tax receipts for the gifts it receives;
   - other charities could not make gifts to it; and
   - people making a gift to the charity could not claim a tax benefit on the basis of their gift.

2. A financial penalty on an organization because it has temporarily lost its tax-exempt status. The tax payable would be up to 5% of the charity's previous year's revenue[4] for first infractions, and up to 10% of this amount for repeat infractions.

3. A financial penalty on individuals connected with a charity in certain circumstances. The circumstances appropriate for this sanction could include obtaining an inappropriate benefit as a result of their influence over the charity, or approving expenditures they know to be non-charitable. The interim report suggested a penalty equal to the amount of the benefit or expenditure, plus 25%.

We took the view that different sanctions are required to handle a variety of circumstances. A financial penalty on a charity, for example, would be of no use against a penniless organization. Nor would it be meaningful to suspend the qualified-donee status of a foundation that is no longer issuing tax receipts. And if individuals rather than an organization are responsible, then in our interim report we suggested that it might be appropriate for the penalty to fall on them rather than the organization. As will be seen below, we reconsidered this third type of sanction following the consultation process.

Suspending qualified donee status is a novel sanction. It has a number of advantages, not the least of which is its logical fit with a federal regulatory regime based on the *Income Tax Act*. However, this sanction is difficult to enforce.

[4] In our interim report, we referred here to "income." However, the correct term is "revenue," as was pointed out to us during the consultations.

As a first step, the regulatory authority should publicize the names of suspended charities, with a warning to potential donors and granting charities. This would enlist the community to monitor the situation, and enable granting charities and donors to quickly check the status of charities that they are considering funding. The charity involved would also have to inform granting charities and donors of its suspended status before accepting any gift.

The regulatory authority should also investigate the possibility of obtaining control over tax receipts, and such a system should be adopted if it is feasible. "Control" implies a system under which the regulatory authority can track the organizations that are issuing receipts and which can effectively prevent an organization from issuing receipts if the organization is suspended.[5] Such a system would also address the CCRA's existing problems with counterfeit receipts issued by never-registered groups, and deregistered organizations continuing to issue receipts.

This sanction could be reinforced by imposing a financial penalty on charities that continue to issue tax receipts while under suspension. The regulator would also have the option of proceeding to deregistration if a suspended charity continued to issue receipts despite warnings to stop.

After notice that the regulatory authority intends to impose a suspension, the organization would have 60 days[6] to decide whether to seek recourse. If the organization decides not to seek recourse, suspension would go into effect at the start of the first quarter after the 60-day period expires.

Financial penalty on charities. Conceptually, this penalty results from the loss of the organization's tax-exempt status. However, we believe that a charity's pattern of revenue and expenses are different from those of other taxable entities. It would be difficult, for example, for a charity to deduct much in the way of expenditures made for the purpose of earning income. Therefore, the suggestion is that the tax payable be set at up to 5% of the organization's revenue obtained from all sources in the previous year. Even if the organization has engaged in several forms of non-compliance, the penalty would remain at most 5%. However, if the organization subsequently repeats the same form of non-compliance, the penalty could rise to 10%.

After notice that the regulatory authority intends to impose a financial penalty, the organization would have 60 days to decide whether to seek recourse. If the organization decides not to appeal, the penalty should become payable at the beginning of the first quarter after the 60-day period expires. The penalty would be payable quarterly. For example, if a total penalty of $10,000 were imposed, $2,500 would be due at the beginning of each quarter.

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[5] Several mechanisms for controlling receipts have been proposed. For example, for paper receipts, the regulatory authority could issue the blank receipt books itself or license their printing (as banks authorize the printing of cheque books). For receipts a charity issues electronically, it may be possible to flow the transaction through a "gate" maintained by the regulator.

[6] We had originally proposed that an organization have only 30 days in which to decide whether to seek reconsideration. However, during the consultations we heard that 30 days was in practice too short a time for charities to make decisions of this nature. We are now suggesting that charities should have 60 days to decide how to proceed.

We are concerned that, wherever possible, charitable beneficiaries not be harmed by any financial penalty. Therefore, we suggest that the money collected in penalties be turned over to charitable purposes. Various ways of doing this are possible. For example, the regulator might apply to the court system for a determination of where the money should go, with the court selecting a charity or charities from the same geographic area and with similar purposes as that of the penalized charity. This procedure is probably too complex where relatively small amounts are involved, and so we suggest that, if less than $1,000 is involved, the money should simply be payable to the Government of Canada.

Financial penalty on individuals. The existing *Income Tax Act* measures that encourage compliance are not always effective in ensuring compliance by individuals who have significant influence over a registered charity's affairs. Allowing a financial penalty on directors, trustees, and certain employees of a charity could provide the regulator a more flexible and effective range of sanctions by focusing on specific individuals as well as the charity. As well, such a penalty has the advantage of not taking money from the charity itself.

Financial penalties on individuals are not intended to replace the *Criminal Code*. If a crime has been committed, then it should be prosecuted as a crime. Rather, we see certain fact patterns where these financial penalties might be useful. For example, a manager of a charity also owns a fundraising company. The charity awards a contract to this company and funds are raised in the name of the charity. However, the company retains virtually all of the money. Another example would be the case where a charity that has had its qualified donee status suspended continues to issue donation receipts, and the directors do nothing to correct the situation.

Generally, we would expect that only individuals who participated in the activity, agreed to it, or were negligent would be penalized. Penalties could be based on the value of the funds wrongly disbursed plus an amount of up to 25% of those funds.

After notice that the regulatory authority intends to impose a financial penalty, the individual would have 60 days to decide whether to seek recourse. If the individual decides not to appeal, the full amount of the penalty would become payable once the 60-day period expires.

As with financial penalties on charities, we suggest that any amounts over $1,000 collected in financial penalties on individuals be re-applied for charitable purposes. However, if a charity has suffered harm from the actions of the penalized individuals, it should be allowed to present a case for the penalty amount to be paid over to it. The regulatory authority may choose to contest this if it has evidence that the charity was negligent or partly responsible for the non-compliance.

Selecting the intermediate sanction. We have concluded that selecting the sanction to be imposed should be left up to the regulatory authority. It will often be obvious which is the most appropriate sanction. Where there is doubt, such as

between suspending qualified-donee status and imposing a financial penalty on an organization, we suggest that suspension is preferable because it does not take funds the charity has already collected from the public.

We also suggest allowing the regulatory authority to apply more than one of the intermediate sanctions at the same time. Certainly, it is possible to foresee circumstances where both the organization and individuals are equally to blame for the non-compliance. There may even be rare circumstances where both suspending an organization's qualified-donee status and imposing a financial penalty on it are called for, such as a charity that is again abusing its tax-receipting privilege and has previously received a suspension for this reason.

Application of the intermediate sanction. These sanctions can serve two different purposes – as an inducement to comply and as a penalty.

As an inducement to comply, the sanctions are intended to persuade organizations to comply with the law. A charity would be able to avoid the sanction entirely if it satisfied the regulatory authority that it had corrected the problem before the date the sanction was due to go into effect. Once the sanction has gone into effect, it would run for a year, but the sanction could be lifted earlier if the charity complied at some point during the year.

However, we believe these sanctions should be used as a **penalty** in the following circumstances:

- in the case of repeat offences, where the message that the charity must meet its legal requirements needs reinforcing;
- where the harm done to beneficiaries and public confidence in the sector cannot be undone; and
- where charitable status has been abused to the private advantage of individuals or to the damage of the public treasury.

As a penalty, a sanction on an organization would be imposed for one year. It would continue to run even if the organization corrected its problems in the course of the year. There would be no ability to avoid the penalty.

Recourse. The procedures described in Chapter 5 for registration and deregistration decisions would also apply to the regulatory authority's decisions to impose intermediate sanctions. The individuals and charities affected could seek recourse by way of internal administrative review and afterwards from the court. The effect of seeking recourse would be to delay the imposition of the sanction.

We have some concern that recourse procedures not be used to unduly delay the application of justifiable sanctions. This is limited to some extent by the requirement proposed for all recourse procedures, that those affected indicate their intention to object within 60 days and that the internal administrative review is completed

within 60 days, unless both parties agree to extend the process. Also, as discussed below, the regulatory authority would have the option of seeking an injunction from the court in cases where an individual's or an organization's ongoing non-compliance was creating irreparable harm.

What we heard

Suspending qualified donee status. Some commentators opposed this intermediate sanction as potentially having too severe an impact on an organization. However, two umbrella groups felt that the willingness of people to give to a cause even without tax receipts and the existence of reserves would enable an organization to continue through the period of suspension. A somewhat larger number supported the proposal unconditionally. However, the largest group of all, while admitting the sanction was conceptually attractive, had questions or doubts about its administrative feasibility.

Suspending tax-exempt status. Opinion on this sanction was divided. Most of those who opposed argued that its impact could be too severe. Again, some umbrella groups felt that a charity's reserves would carry it through the suspension.

One observer took a different perspective, in noting that even 5% of revenue might not cover the amount that a charity obtained as a result of breaching a legal requirement, such as by carrying on an unrelated business.

Some questioned whether the federal government could or should "tax" government grants and suggested that only receipted income be subject to the tax.

The idea of re-applying the monies raised by the tax to charitable purposes was unanimously supported. There was some suggestion that all amounts should be treated the same way, and not just those of over $1,000 as we proposed. While we did not specify how these monies should be re-applied, about a third of the participants suggested that they should be paid into the fund, proposed in Chapter 5, to subsidize certain appeal cases.

Financial penalties on individuals. We specifically asked during the consultations whether we should also recommend a financial penalty on individuals who abuse a position of influence in a charity's affairs.

Opinion on this proposal was sharply divided. Those opposing it did so primarily because:

- it would have an adverse impact on charities' ability to recruit volunteers and staff;
- other legislation like the *Criminal Code* already has adequate provisions to check abuse;

- it would be difficult to draft in legislation and to administer; and
- the primary responsibility for checking abuse lay with charities and the community.

Nevertheless, an equal number of participants endorsed the proposal, either outright or under certain conditions, such as the availability of a due diligence defence. We received relatively little guidance in specifying the type of misbehaviour that should attract a financial penalty on an individual. Many questions were raised, such as how the line between acceptable and unacceptable benefit would be drawn, and how responsibility should be allocated between full-time staff and volunteer board members.

Our conclusions and recommendations

Suspending qualified donee status needs to be accompanied by a system that would enable the regulator to track the issuing of official donation receipts. Any such system, it goes without saying, should not impose an undue burden on the great majority of charities that are complying with the law. But if such a system could be devised, it might provide the answer to a number of compliance issues, including:

- the non-filing problem (no annual return, no tax receipts); and
- the problem to be addressed below of deceptive fundraising campaigns.

Thus, we reinforce our original recommendation that the regulator pursue research into developing such a system by urging that a report on the subject be submitted to the ministerial advisory group within two years.

We still believe that this sanction should be implemented without waiting for a system for controlling receipts. We have suggested back-up measures the regulator can take to promote compliance with the sanction. While a number of technical questions remain to be worked out, these do not appear to be insurmountable.

We continue to see **suspending tax-exempt status** as a necessary component of an intermediate sanctions program. Charities that do not rely to any great extent on fundraising would be little affected by suspending their qualified donee status. Suspending tax-exempt status provides a sanction that would affect them. We would also add that the regulator, in developing policies on what level of tax to impose, would need to keep in mind what an organization can reasonably afford to pay.

We acknowledge that, in some circumstances, a charity that is breaking the rules may gain more than it would lose under our interim proposal. Therefore, we propose that the tax be set as a percentage of total revenue plus up to 100% of revenue obtained as a result of a breach of a legal requirement under the *Income Tax Act*.

As to the suggestion that only receipted income should be taxable, a major reason for proposing this sanction is to provide an effective deterrent to organizations that rely on sources of revenue other than donations. We would also point out that the proposal is not to tax government grants, but to tax an organization. Further, in our view it is fully within the competence of the *Income Tax Act* to determine which organizations should and should not be tax-exempt.

We continue to believe re-applying monies to charitable purposes should only apply to amounts over $1,000. Our thinking remains that the procedure is probably too complex for relatively trivial amounts. However, we are sympathetic to the view that charitable dollars should stay within the charitable sphere, and so we would suggest that the subject be re-visited once some experience with the procedure has been obtained.

Our interim report did not propose any particular mechanism for re-applying the monies to charitable purposes. However, we do not think they should be paid into the appeal fund because this does not respect the purposes for which the monies were originally received. Instead, we are now proposing that the amount should be transferred to the regulator, which would then redirect it to one or more existing charities that are selected by the original organization according to its own dissolution clause and that are approved by the regulator. The regulator's consent is necessary, we believe, to ensure the amount is passed to an unrelated charity that is free of compliance problems. If the regulator and the charity cannot agree, then the regulator should seek the court's direction.

We are not ready to recommend introducing **financial penalties on individuals** in Canada. The consultations raised unanswered questions, and opinion was sharply divided. As well, the United States has had difficulty implementing its sanctions against excess benefit. We still believe there may be a role for such penalties, but further work is required to specify more closely the type of abuse that would require this type of penalty to check.

Recommendations

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

In our view, deregistration must remain as a last-resort sanction when all other compliance actions have been unsuccessful, or when the non-compliance is of a particularly serious nature and not capable of remediation.

Recourse, in the case of a proposed deregistration, would follow the procedures described in Chapter 5.

However, we believe the existing revocation tax is flawed. It is unjust because of its disproportionate impact on some charities depending on their funding sources and the type of assets they hold. Further, as an attempt to protect tax-subsidized donations from being diverted to non-charitable uses, the revocation tax is only loosely connected to this objective. We have considered several reformulations of this tax, and found none to be satisfactory.

Instead, we believe the best approach is that recommended by the Ontario Law Reform Commission in its *Report on the Law of Charities* (1996: 378):

> If deregistration is applied as a penalty, then the one hundred percent penalty tax should be imposed in a way that ensures compliance with provincial *cy-près* law. There should also be some type of interim sequestration or receivership intervention available to [the CCRA]. In both cases – deregistration and interim sequestration – [the CCRA] should cede jurisdiction as soon as possible to the relevant provincial authorities.

The existing provisions for "voluntary revocations" should remain largely unchanged. These are requests by a registered charity that its registration be revoked. They occur when an organization is ceasing operations so that any remaining assets should pass according to the dissolution clause in its governing documents. Such clauses are checked before registration to ensure that any remaining assets will continue to be applied for a charitable purpose. Nevertheless, the charity should be required to file a return with the regulatory authority, showing it has properly disposed of its assets. Where there is any question in this regard, the regulatory authority could seek an appropriate order from the court to direct the proper disposition of the assets.

It is unfortunate that a charity regulator must also occasionally deal with people who are less than honest, and whose actions potentially bring the sector into disrepute. Once the regulator is made aware of a potentially serious problem (for example, by a call from the local police), it has to go out and gather the evidence of such serious non-compliance as would justify deregistration. Often the organization has not done anything that would clearly put it in breach of the legal requirements; it has simply been collecting money from the public.

The first clear-cut act of non-compliance comes when the organization cannot meet its disbursement quota, which usually falls some 30 months after registration. Add in the various delays for notices and establishing a date for the hearing, and another year could pass. At this point the organization (along with the money) typically disappears. It then re-applies under a different name, with different people named as directors, and with an application that would arouse no suspicion.

To counter these cases, it may be useful to add another reason for deregistering a charity – that the registration was obtained on the basis of false or misleading information supplied by the organization in its application for registration. This measure would encourage everyone to take the application process seriously, but it is intended specifically to deal with organizations that use little or none of the funds they collect from the public for charitable work, and whose application for registration misleads both the public and the regulatory authority. Under the proposal, the regulatory authority would not need to establish the existence of non-compliance with the conditions for registration, only that the registration was obtained on the basis of false information. The organization concerned would have the usual means of recourse.

Sometimes the regulator will see the same individuals who ran one registered charity off the rails turning up at its door with a fresh application. While naturally suspicious, the regulator may have no legal reason to reject the application. The second organization then goes astray and is eventually deregistered. To handle these situations, one possibility is to introduce a requirement that a charity cannot become or remain registered if a person occupying an influential position within the charity has, within the past five years, been convicted of fraud involving a registered charity or has been subject to the financial penalty on individuals, discussed above as a possible intermediate sanction.

What we heard

There was no disagreement with our interim conclusion that deregistration had to remain in the regulator's toolkit as the ultimate sanction. As to what to do with the existing revocation tax, we received only a few comments. About half supported our tentative endorsement of the proposal of the Ontario Law Reform Commission in its *Report on the Law of Charities.* Others felt the procedure was too cumbersome. These respondents favoured instead either that the assets should be distributed according to the organization's dissolution clause or that they should be paid into the appeal fund or a foundation for the general support of charities.

No opposition was voiced to our first proposed mechanism to tackle deceptive fundraisers – that obtaining registration on the basis of false or misleading information become a new reason for deregistration. A couple of commentators pointed out that an equivalent mechanism is already found in other parts of the *Income Tax Act*.[7]

Virtually every commentator also strongly approved our second proposal – that no person occupying a position of influence in a charity should, within the last five years, have been convicted of fraud involving a charity or been subject to the financial penalty on individuals that we had outlined in the interim report. Some went beyond our proposal, calling for various extensions such as a public database of non-qualifying individuals. Several commentators suggested that the model of security exchange commissions barring individuals from trading be adapted to bar unethical persons from serving with other charities.

Our conclusions and recommendations

We confirm our original recommendation calling for the retention of deregistration as the ultimate sanction against a non-compliant organization. We also confirm our call for a reformulation of the revocation tax, although we are aware that further work needs to be done in this area. We continue to believe, however, that the

[7] See, for example, subsections 125.4(6) and 125.5(6) on films ("an omission or incorrect statement was made for the purpose of obtaining the certificate"), and subsection 149.1(6.5) on national arts service organizations ("an incorrect statement was made in the furnishing of information for the purpose of obtaining the designation").

Ontario Law Reform Commission proposal has merit, particularly in that it recognizes that jurisdiction over charitable property rests with the provinces.

We also confirm our suggestion that obtaining registration on the basis of false or misleading information should become a new reason for deregistration.

However, we have reconsidered the proposal to bar charities from registration if certain non-qualifying individuals occupy a position of influence within them. It is not simply that we are recommending against proceeding at this time with one of the proposed reasons for disqualification (the individual has been subject to a financial penalty). Rather, we have become increasingly hesitant about the equity of and federal jurisdiction for, in effect, barring people from employment in or volunteering for charities. We do not think that federal jurisdiction would extend to something like the trading bans used by security exchange commissions. We are now proposing that the regulator be given the means to address the problem somewhat more directly (see the section on Orders later in this chapter).

Recommendations

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

There are two related matters that are best considered separately. First are annulments. Annulling a registration means treating it as if it had never occurred. The power to annul a decision is inherent in any regulatory body as a means of correcting a decision made in error. However, it would be advisable to spell out in legislation (or regulations), the situations where annulment is justified. This would give a legislative basis for the CCRA's practice of not attempting to reclaim any tax advantages obtained by either the organization or donors during the period before the error is discovered. It could also provide a recourse mechanism.

In cases of annulment, we suggest that the current practice of not applying the revocation tax (or its replacement) should continue.

We propose that annulment of a registration be possible in cases where the registration was approved:

- as a result of an administrative error; or
- as a result of an application submitted in innocent error by an organization.

An example of the second instance would be where a subordinate entity mistakenly obtains independent governing documents and applies for registration on the basis of them, when the constitution of its parent body does not permit the creation of independently established units within itself.

According to existing practice, annulments are consensual, and it may be desirable to make this a requirement in the legislation. However, if the organization disagrees with the regulator's assessment that it is not and has never been a charitable entity, currently it has no direct avenue of recourse.[8] The organization should have access to the recourse system to argue that it is indeed a charity.

All organizations that are under deregistration proceedings should also be allowed to use the recourse system to argue that they should not be deregistered, but rather their registration should be annulled because they never "ceased to comply" with their legal requirements and the regulator erred in initially granting them registration. Whether or not it makes its case, the organization will no longer be registered, but if it obtains an annulment it will not be subject to the revocation tax (or its replacement).

Our proposal that the reasons for annulling a registration be spelled out in the legislation attracted little comment during the consultations. However, the question was raised as to how to treat charities that, at some point after being correctly registered, cease to be charitable owing to changes in the law or policy. We believe this raises a valid issue, but do not think that annulment is the proper response since annulment implies the registration was void from the start. Instead, the regulator could resort to the other way of ending a registration already mentioned in subsection 149.1(15) of the *Income Tax Act* and "terminate" the registration as of the date the organization ceased to be charitable.

Recommendations

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.

[8] The organization has only an indirect means of recourse. It could refuse to accept the offered annulment, wait until the regulatory authority deregisters it, and then appeal the deregistration.

Special case: orders

The second related subject involves the use of injunctions by the regulatory authority. Occasionally, the regulator is confronted with situations where immediate action is needed to protect the public interest or to prevent the loss of tax-assisted charitable assets. The actual or potential harm is of sufficient magnitude and irreversibility as to justify the regulator seeking a court injunction to curtail the damage until the matter can be sorted out under normal procedures.

This power already exists, although in undefined form. We propose giving a judge of the Federal Court Trial Division the power to issue such orders, and legislatively defining "public harm" to include situations where there is reason to believe that:

- tax-subsidized donations from the general public are not being applied for charitable purposes; or
- the general public is being misled to believe that they can use their contributions to claim a charitable tax benefit, or that their contributions will be used for a charitable purpose.

No opposition to these proposals emerged during the consultations. Some commentators specifically pointed out that, while a recourse system with its inevitable delays was a necessary component of the compliance program, there were certain circumstances where immediate action was needed. These circumstances included deceptive fundraising. We agree, and accordingly would specifically include the immediate suspension of a charity's qualified donee status among the measures the court could order. This would have the effect of putting a stop to the collection of tax-assisted donations until the organization's status as a charity could be established.

To clarify, we are recommending that such orders be *ex parte* orders. That is, the order would be issued without the need for the organization to be present in court.

Recommendation

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

In our view, certain of the requirements for registration are not spelled out clearly enough for charities (or even the regulatory authority) to easily understand the law.

We recommend deleting all the specific reasons for deregistration contained in the *Income Tax Act*.[9] Instead, there should be one general reason for deregistration – failure to comply with the requirements for registration as a charity.[10] Then, a separate section should provide a complete, plain-language listing of what these requirements are, including:

- to be resident in Canada;
- to file a return;
- to maintain proper books and records;
- to meet the disbursement quota; and
- to issue tax receipts properly.

To permit the legislation to adapt quickly to any new abuses, it should allow new requirements for registration to be introduced by regulation, although only within sufficiently specified areas, such as with regard to private benefit. Specifying areas where regulations could be used would eliminate the possibility of undue discretion on the part of the regulatory authority in identifying compliance issues.

Regulations could also be used to clarify some of the requirements (for example, by defining what "resident" in Canada means). However, if the government wishes to introduce any new conditions that specifically call for deregistration as the consequence for non-compliance, our view is that this should only be done by amending the legislation itself.

This proposal represents more than a cosmetic change. First, many of the current specific reasons for deregistration (such as carrying on improper business activities, not meeting the disbursement quota, not keeping proper books and records, not filing the annual return, or issuing tax receipts improperly) are all forms of non-compliance

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[9] The following summarizes the specific reasons for deregistration listed in the Act.

Provision	Applies to	Reasons for deregistration
149.1(2)(a)	Charitable organizations	Carrying on an unrelated business
149.1(2)(b)	Charitable organizations	Not meeting disbursement quota
149.1(3)(a)	Public foundations	Carrying on an unrelated business
149.1(3)(b)	Public foundations	Not meeting disbursement quota
149.1(3)(c)	Public foundations	Acquiring control of a corporation
149.1(3)(d)	Public foundations	Incurring impermissible debts
149.1(4)(a)	Private foundations	Carrying on any business
149.1(4)(b)	Private foundations	Not meeting disbursement quota
149.1(4)(c)	Private foundations	Acquiring control of a corporation
149.1(4)(d)	Private foundations	Incurring impermissible debts
149.1(4.1)	All charities	Inter-charity gifting to avoid failing to meet disbursement quota
168(1)(b)	All charities	General provision: not meeting requirements for registration
168(1)(c)	All charities	Not filing annual return
168(1)(d)	All charities	Issuing improper donation receipts
168(1)(e)	All charities	Not keeping proper books and records

[10] This does not mean that ignoring any particular requirement would lead to automatic deregistration, but rather that the regulatory authority could decide as a last resort to deregister for non-compliance with any of the listed requirements.

that would be more effectively and appropriately dealt with by methods short of deregistration. Second, by singling out some types of non-compliance for special mention, the Act seems to say that these are the most serious breaches of the law, when in fact other types of non-compliance (such as conferring a private benefit or ceasing to operate in an exclusively charitable manner) may be more significant. Third, the *Income Tax Act*, as it is currently structured and worded, stands in the way of an effective compliance program. With all the requirements for registration in one place and the meaning of each provision made clear, charities would better understand what is expected of them.

Further simplification of the legislation may also be achievable by deleting certain existing penalties faced by charities and letting the problem be handled by the proposed intermediate sanctions. For example, one of the provisions that could potentially be removed is the penalty against inter-charity gifting when used to evade the disbursement quota (ss. 188(3) and (4)).

Many other penalties in the Act target forms of non-compliance that charities may be implicated in, but are not exclusively directed at charities. These include:

- improper disposition of ecological or cultural property (ss. 207.3 and 207.31);
- misrepresentation by third parties in tax planning arrangements (s. 163.2); and
- failure to remit source deductions (ss. 227.1(1)).

In our view, it would be difficult to justify treating charities differently from others in regard to these penalties, which are designed to target specific infractions.

There was general agreement during the consultations that the existing legislation needs clarification.

Recommendation

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.

Coordinating the compliance regime with the work of other regulatory agencies

The regulatory authority's mandate currently extends only to the *Income Tax Act*. What then should it do if its investigations disclose evidence that an individual connected with a charity is engaged in fraud or another offence? What if these investigations strongly indicate that the charity itself is in breach of a statute (such as the *Competition Act*)? In our view, the answer is to allow the regulatory authority to disclose the evidence to the appropriate authority. Problems like this will almost always come to public attention anyway, and it is better for all concerned, including the reputation of the sector as a whole, that they be addressed.

More difficult is the case of what to do if the federal regulatory authority's investigations reveal a problem that falls partly or wholly within provincial jurisdiction as in the case of deceptive fundraising.[11] There is a good deal of overlap between federal and provincial roles, and the public is unclear which authority has responsibility for what. We suggest that public confidence in the sector is not helped by this lack of clarity. Charities also are often uncertain about the roles of the federal and provincial authorities. Potentially, they could have investigators from both jurisdictions wanting to see their books at the same time.

We encourage the federal regulatory authority to enter into discussions with the provinces to explore opportunities to reassure the public and to reduce any conflicting demands and duplicative administrative burdens on charities. All governments would need to consider the advantages and disadvantages of allowing a freer flow of information among the various authorities.

The Table's recommendations on this subject can be found in Chapter 3, under "Coordinated regulation."

[11] See footnote 10 in Chapter 3 for an example of what can be achieved when provincial and federal authorities work together to handle deceptive fundraising.

Accountability and transparency in the proposed compliance regime

Accountability and transparency are a fundamental aspect of an effective compliance regime. However, the regulatory authority's first duty is to provide the individual charity in question with a full and prompt report of the findings from its monitoring activities.

In considering what to publish and when, it is necessary to balance the potential harm to an organization's reputation against broader considerations, such as:

- reassuring the public, both by demonstrating the regulatory authority is active and by placing the dimensions of the problem – whether large, small or non-existent – in the open;
- allowing the sector and the public to judge the regulator's use of its discretionary powers;
- providing a learning tool for both the sector and the public, by pointing out wider lessons in any reports;
- encouraging the community as a whole to serve as a watchdog; and
- creating an intermediate sanction, which we believe almost all charities would consider a powerful disincentive, but which is cost-effective, both in that it does not directly touch a charity's financial resources and in that it would cost relatively little to administer.

However, because of the power imbalance between the regulator and an individual charity, there is the danger that the regulator's definition of the situation may be given undue emphasis. For this reason, our proposals on transparency are shaped to limit public reporting that names the charity involved to situations where:

- the facts and law are self-evident;
- the organization is not contesting the regulator's interpretation of the facts and law; or
- a court has established the facts and law.

Table 4 on the following page uses the above criteria to summarize the proposed transparency regime.

Table 4

Transparency in the Compliance Program

Method of Enforcement	Degree of Transparency by Regulator	Comments
Remedial agreements	Reporting without identifying the charity	Although the facts and law are agreed to as part of the settlement, this type of compliance action presupposes a good-faith effort by both parties to resolve a problem. While reassurance of the public, full regulatory transparency, and the community watchdog role are potentially important in these cases, on balance we believe these factors do not justify the potential harm to a charity's reputation that might result from naming it. The ministerial advisory group would maintain policy surveillance of this area. The regulator would publish a generalized account of these agreements in its annual report.
Publicity	List names of charities on the website, with short explanation of the reason for listing the charity	The cases are likely to be numerous. The facts and law are self-evident. Publication is specifically designed to assist compliance.
Suspensions of qualified donee or tax-exempt status	List names of charities on the website, with a short explanation of the reason for imposing the sanction	The facts and law are likely to be contested, but publication would only occur after recourse rights have been exhausted. These decisions need to be published in a readily accessible fashion, because the public and the sector have to know particularly if qualified donee status has been suspended. Publication in this instance also serves as an additional inducement to comply.
Deregistrations	List names of deregistered organizations on the website, with a short explanation of the reason for deregistration. The letter setting out the reasons for deregistration would continue to be available on request.	Any publication would only be made after the charity has exhausted its recourse rights. The regulator should include in its annual report a summary of any court decisions involving proposed deregistrations.
Annulments/ Terminations	List names of organizations on the website, with a short explanation of the reason for the annulment/termination	The facts and law would either be agreed to as between the regulatory authority and the organization, or determined in the recourse system.
Orders		These would be public unless the court directs otherwise.