Executive Summary

The Joint Regulatory Table was formed in November 2000, as part of the federal government's Voluntary Sector Initiative, to continue the work on regulatory issues that had begun in *Working Together*. The Table was asked to consider three issues and make recommendations to government. These issues were:

- increasing the transparency of the regulatory process;
- improving the system for appealing decisions made by the regulator; and
- introducing a range of penalties for non-compliance with legal requirements.

The Table was also asked to develop and discuss further the institutional models, identified in the *Working Together* report, within which the regulatory function could be exercised.

In August 2002, we released our interim report and then held public consultations in 21 cities across the country. Many of our interim recommendations received support. However, as a result of the views we received, we have modified some of our initial ideas.

An effective and supportive regulatory framework

The role of the federal charities regulator is to carry out Parliament's intent, as expressed in the relevant parts of the *Income Tax Act*. This involves preventing abuses of the tax system, but it also requires respect for the underlying purpose of the tax law – to encourage support for Canada's charitable sector.

People will support charities if they can see that the regulator is acting effectively, and that charities are meeting their legal obligations. Regulatory effectiveness, in turn, depends on charities seeing that the regulator:

- acts with integrity;
- is open about its decisions and performance;
- is committed to high standards of service; and
- is willing to work with the sector in seeking knowledge and innovation.

Our proposals for reforming the transparency of the regulator's work, the appeals system and intermediate sanctions will work best if they are accompanied by changes in the way the regulator operates.

First, the regulator needs to play a more active role in:

- educating the sector about legal requirements; and
- providing the general public with information about the regulatory process, and the information that is available about charities and how they operate.

Second, the regulator should also work to increase its visibility so the public is aware of what it does and how people can contact it.

Third, to perform its work properly, the regulator needs the human, technological and financial resources to carry out its mandate.

Fourth, new guidelines are needed on the nature and extent of the regulator's authority to register new types of organizations under the *Income Tax Act*.

Fifth, an effective regulatory system for charities in Canada – one that the public understands and that reduces the regulatory burden on charities – implies a measure of federal-provincial-territorial co-ordination. The different authorities need to be able to share information and discuss issues of common concern, especially when dealing with organizations that can harm the reputation of the sector.

Sixth, the federal regulator should adopt new mechanisms to enhance communications and outreach to the sector, including:

- a ministerial advisory committee to provide advice on administrative policy;
- increased and ongoing policy consultations; and
- an annual report on the regulator's performance and activities.

Accessibility and transparency

Our recommendations focus on increasing trust in:

- the regulator by making its operations more transparent, and
- the sector by making more information about charities accessible.

Regulatory transparency should be enhanced in the registration process. Currently, only limited information is available on request about organizations that succeed in obtaining registration. We recommend that the regulator publish reasons for each registration decision – both positive and negative. The same documents that are now available on request for registered organizations should also be available for organizations that are denied registration.

Transparency could also be extended to the publication of the results of the regulator's compliance program – namely audits. However, because of the potential of unnecessarily harming an organization's reputation, we recommend not releasing specific information about these audits. Instead, aggregate results from the compliance program should form part of a proposed annual report published by the regulator. Only if a major sanction is imposed should an organization be identified.

The basis on which the regulator makes its decisions should also become more transparent. The regulator's website should include its policies and the research database used by its employees.

Finally, trust in the sector will be enhanced by providing more information about charities to the public. To this end, the public should have access to the financial statements that charities have to file with the regulator.

Appeals

In the current system, the first level of formal appeal of a decision by the regulator is the Federal Court of Appeal. Our recommendations deal with the types of recourse that should be available before a case reaches the Federal Court of Appeal.

The regulator should develop an independent unit to review charity cases, including both applications for charitable status and penalties against a charity.

The recourse system should encompass a hearing *de novo*. We conclude that the Tax Court of Canada is the logical and most accessible venue for such a hearing and recommend that careful consideration be given to making the Tax Court the first level of court to deal with appeals from the regulator's decisions.

Because charity law is based on the decisions of the courts, the regulator and the sector need court decisions to clarify the state of the law. However, the cost of court proceedings is often prohibitive, especially for new organizations. Funding should be provided to bring appropriate cases before the court. The Court Challenges Program is a possible model to adopt.

Intermediate sanctions

Currently, the primary penalty available to the regulator is deregistration. This sanction is considered too severe to be an effective remedy. While the need for sanctions can be reduced though education, the regulator needs better tools to handle those cases where charities fail to follow the rules.

The fact patterns found in most cases of non-compliance are highly variable, and thus the regulator needs a good deal of discretion to fit the "punishment" to the "crime." **This discretion must be balanced by a properly functioning recourse system, and our recommendations on intermediate sanctions are made conditional on the existing recourse system being reformed.**

Two new intermediate sanctions are proposed:

- suspending a charity's "qualified donee status" (which means that the organization would not be able to issue official donation receipts for gifts it receives while suspended or to receive grants from foundations); and
- suspending a charity's tax-exempt status (with the tax payable being set as a percentage of the organization's revenue from all sources).

Deregistration would remain the ultimate sanction, but the existing revocation tax needs reformulating. We support the idea put forward by the Ontario Law Reform Commission for a mechanism to re-apply any "tax" monies (including amounts resulting from the loss of tax-exempt status) to charitable purposes.

Two types of compliance problems are sufficiently common for us to propose specific remedies. The first is the failure of some 2,000 charities each year to meet the basic requirement of filing their annual information returns. We believe the regulator's website should be used to identify the charities that are in danger of losing their registration because they are late filing their returns. Also, if a charity loses its registration because it ignores warnings to file its annual return, it should pay a $500 re-registration fee when it re-applies for registration.

The second recurring compliance problem relates to deceptive fundraisers, where donors are asked to support a cause but little if any of their contributions are actually used for charitable purposes. We propose two measures to address deceptive fundraisers. First, presenting false information in order to obtain registration would justify immediate deregistration. In addition, the Federal Court should be able to order an organization to cease fundraising where there are reasonable grounds to believe the public is being harmed.

Finally, 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.

Institutional models

Working Together identified three possible institutional models for a federal regulator:

- an improved Charities Directorate within the CCRA;
- an improved Charities Directorate, plus a new voluntary sector agency; and
- a Charity Commission that would assume the regulatory functions currently performed by the CCRA.

We have identified an additional model that falls within this spectrum and, for the sake of completeness, have included it in our report. Under this model, functions would be shared between a Charity Commission and the CCRA, with the Commission concentrating on the regulatory responsibilities involved in registering and deregistering charities.

We were not asked to express our preference for one model over another, but rather to provide more information about each of the models to enable a discussion about their respective merits to take place. To this end, we identify a set of criteria that could be used to assess them. The criteria are essentially those we identify as necessary conditions to the operation of any effective regulator of charities, including:

- clarity of its scope and mandate;
- its capacity to operate with integrity, professionalism, innovation and openness;
- its capacity to raise its public profile;
- its capacity to deliver education to the public and the sector;
- its chances of securing adequate resources;
- its capacity to work with charity law in an evolving society;
- its capacity to work with provincial authorities;
- its capacity to extend its scope to the entire voluntary sector; and
- the challenges posed in making the model operational.