

Voluntary Sector Initiative  
Joint Regulatory Table

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# Improving the Regulatory Environment for the Charitable Sector

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**Interim Recommendations**

August 2002



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## Preface

This report contains a number of terms widely used within the charitable sector. To facilitate an understanding of the issues discussed and enable everyone to fully participate in the consultations that the Joint Regulatory Table will hold across Canada, this preface provides clear explanations of the following terms:

### **Accessibility and Transparency**

The *Income Tax Act* generally prevents the Canada Customs and Revenue Agency (CCRA) from releasing any information about the people and organizations with which it deals. The Act does, however, allow the Charities Directorate to release a fair bit of information that it collects about charities. This helps guide the choices of people who want to give to charity. But much of the decision-making inside the Directorate continues to be guarded by confidentiality rules.

### **Appeal**

An organization that does not agree with a decision of the Charities Directorate has only one formal remedy – appealing the decision to the Federal Court of Appeal. This is a high level court, with formal proceedings, and very few cases actually go to court.

### **Charities**

Charities form one segment of the broader non-profit sector.

The concept of charities is not defined in legislation. The courts decide what is charitable.

To be called a charity, an organization must (amongst other qualifications) have a purpose that the courts have classified as charitable. The courts have recognized a wide range of such purposes. For example, the following types of organizations can all be charities:

hospitals	museums	volunteer fire departments
food banks	churches	homeless shelters

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schools	heritage societies	conservation areas
daycares	nursing homes	community halls

### **Charities Directorate**

The Directorate is the part of the CCRA that administers the *Income Tax Act* provisions that relate to registered charities. The Directorate is located in Ottawa and has some 175 employees, who:

- decide which organizations qualify for registration, according to the law of charity developed by the courts and the provisions of the *Income Tax Act*;
- check that, once registered, organizations continue to qualify;
- de-register organizations that no longer qualify;
- answer questions from charities – by letter, phone, publications, and in person; and
- provide the public with information about charities.

### **Registered charities**

A charity that is registered with the CCRA can issue special receipts when it receives gifts. These receipts in turn entitle the people who made the gifts to claim a credit when they fill out their tax return.

To keep its registration, the charity has to meet certain conditions set out in the *Income Tax Act*. One condition is filing an annual information return, which is available to the general public.

### **Regulating charities**

The *Income Tax Act* makes the CCRA responsible for administering the Act's charity provisions. In some countries, an institution other than the tax authority decides which organizations qualify as charitable. In other countries, decisions like this are shared among different bodies, including some with representatives from the charitable sector.

The *Income Tax Act* is just one way charities are regulated. Canada's constitution gives to the provinces the power to pass legislation

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covering charities. Only a few provinces have passed such legislation, and of these, only one has set up a body to enforce the legislation.

Traditionally, the Attorney General, as the principal law officer of the province, and the courts have played a role in protecting charities from abuse.

## **Sanctions**

If a charity does not follow the rules in the *Income Tax Act*, the Charities Directorate can take away its registration. The way this penalty works can seriously affect an organization. Often it has to shut down as a result. Because de-registration can be so severe, it may only be appropriate in the worst cases. For lesser cases of non-compliance, however, there are currently no other legal penalties available.

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## Introduction

The Voluntary Sector Initiative (VSI) announced in June 2000 is a joint task of the voluntary sector and the Government of Canada. It is a unique opportunity to focus on the voluntary sector of Canadian society, a sector equal in importance to the public and private sectors.

The long-term objective of the VSI is to strengthen the voluntary sector's capacity to meet the challenges of the future, and to improve the relationship between the sector and the federal government and their ability to serve Canadians.

Improving Canada's quality of life within healthy and economically strong communities requires a robust voluntary sector. A vibrant sector plays an important role in reinforcing social trust, social networks and common values. For many federal government departments, partnerships with the sector are essential to the fulfillment of their mandates and are a cornerstone to the delivery of programs and services.

The 1999 landmark document called *Working Together*<sup>1</sup> was a product of a joint policy exploration process undertaken by a group of voluntary sector leaders and senior government officials. This joint exercise, which has come to be known as the Joint Tables Process, delineated three distinct areas requiring strategic investment and attention:

1. improving the relationship between the government and the sector,
2. enhancing the capacity of the sector to serve Canadians, and
3. improving the legislative and regulatory environment in which the sector operates.

To address the third area, a Joint Regulatory Table was formed in 2001.<sup>2</sup> The Table has a four-part mandate.

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<sup>1</sup> *Working Together: A Government of Canada/Voluntary Sector Joint Initiative*, 1999.

<sup>2</sup> Members of the Table are listed in Appendix 3.



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The first area for study and recommendation is accessibility and transparency of the regulatory regime. The concern has been that there is not enough information available about registered charities and about how the CCRA makes decisions - especially decisions on registration and de-registration. The Table is trying to find a balance between allowing individual organizations to deal confidentially with the regulator and providing the public with more information on charities and regulatory decision-making.

The second area for study and recommendation is the possibility of introducing intermediate sanctions for charities that are not complying with the rules for continued registered status. Currently, under the *Income Tax Act* there is only one consequence for non-compliance - de-registration - a penalty that is considered by many to be too harsh except for severe breaches of the law. The Table is examining various alternative sanctions to allow for an appropriate regulatory response when infractions of the law occur.

We are also looking at a system of recourse for organizations that disagree with decisions made by the regulator. Currently, appeals of CCRA decisions to deny or revoke charitable registration must be made to the Federal Court of Appeal. The Table is considering how the appeal process can be made easier without making it more cumbersome and costly for charities. At the same time, we are looking at how to bring more cases before the courts, so that the decisions can clarify charity law in complex or novel cases.

Finally, the Table is also examining the issue of institutional reform. We have more fully developed the range of regulatory models outlined in the 1999 Joint Tables process. The models being examined include an enhanced Charities Directorate that would continue to operate within CCRA, a complementary agency that would work alongside CCRA, and an independent commission. In examining these models, the Table is working to:

- ensure public confidence in voluntary organizations,
- maintain the integrity of the tax system, and
- ensure a supportive and enabling environment for voluntary organizations.

Through its deliberations, the Joint Regulatory Table has addressed each of these issues. The results of these deliberations, including interim

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recommendations are contained in this report. The views presented are not necessarily those of all members of the Table.

Consultations with Canadians and representatives of the voluntary sector on the interim recommendations will be conducted between September and November 2002. Based on those consultations, the Joint Regulatory Table will make its final recommendations to the government no later than March 2003.

To learn how you can provide comments and/or participate in the planned consultations, go to [www.vsi-isbc](http://www.vsi-isbc).