

Institutional Models

The Joint Regulatory Table was instructed to elaborate on the implications of the three future scenarios of the charities regulator presented in *Working Together*, to consult on those models and to report its findings. The Table was not instructed to make a recommendation on a preferred model.

Introduction

In fact, we considered four models. Three of the models are essentially identical to the options recommended in *Working Together*. These are:

- Model 1 – CCRA, improved as a result of the Future Directions¹ initiative currently underway and through options we propose (regardless of who the regulator is) for a new appeals process, new compliance measures, and greater transparency of the regulatory process;
- Model 2 – an enhanced CCRA with an advisory agency² as recommended in 1999 by the Broadbent Panel on Accountability and Governance in the Voluntary Sector and similar to the “agency” described in *Working Together*; and
- Model 4 – a Charity Commission that would assume all regulatory functions currently performed by the CCRA.

We added a hybrid model to reflect the full range of options that exist.

- Model 3 – a combination of Model 1 and Model 4 that would leave administrative functions in the CCRA but create a Charity Commission to handle the adjudicative responsibilities involved in registering and deregistering charities.

We were not asked to express a 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 examined the functions and administrative structure of the various models and identified a set of criteria that could be used to assess them.

¹ Near the start of the Voluntary Sector Initiative and the work of the Joint Regulatory Table, the Charities Directorate received separate funding to modernize some of its operations and determine how to provide better service.

² This is not the ministerial advisory group discussed in Chapter 3.

Certain aspects of the models are interchangeable – our task was essentially how best to arrange the various regulatory functions that must be in place and to evaluate the advantages and disadvantages of having various bodies assume some or all of those functions. For an overview of how we have assigned the regulatory functions under the different models, see Table 5.

The descriptions of the four models highlight how the various required functions have been arranged under each model and discuss some considerations linked to their implementation. The considerations identified are speculative. It is not possible to know with certainty how the models would work until implemented and none could be implemented quickly.

The functional descriptions of the models are followed by a list of evaluative criteria. The criteria are essentially those we identify in Chapter 3 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 together with provincial authorities;
- its capacity to extend its scope to the entire voluntary sector; and
- the challenge posed to make the model operational.

Table 6 summarizes our assessment of the models against the evaluative criteria.

We are aware that other models for enhancing the relationship between the Government of Canada and the voluntary sector are emerging under other aspects of the Voluntary Sector Initiative. The appointment of a minister with responsibility for the voluntary sector at the federal level was announced on October 8, 2002. New steering committees, at the government, sector and joint government/sector levels have been established. It will be necessary to determine the interplay between any model chosen and these new bodies.

In examining the models, we have considered some of the advantages and disadvantages of having some or all regulatory functions within an existing federal government agency or a standalone entity such as a commission.

There are some who argue that we should not examine any regulatory model that includes the CCRA. The assertion is that the CCRA, as a tax collector, has a conflict of mandates when it is also asked to consider an application that would exempt an organization from paying taxes and allow it to issue donation receipts to donors.

Table 5

Overview of Regulatory Functions

	Model 1 Enhanced CCRA	Model 2 Enhanced CCRA plus Voluntary Sector Agency	Model 3 Enhanced CCRA plus Charity Commission	Model 4 Charity Commission
Registration/ Sanctions (including deregistration)	CCRA (with advice from the sector)	CCRA (with advice from the Voluntary Sector Agency)	Commission (deregistration on application by CCRA)	Commission (with advice from the sector)
Compliance monitoring (T3010s)	CCRA	CCRA	CCRA	Commission
Audit	CCRA	CCRA	CCRA	Commission
Administrative policy	CCRA (with advice from ministerial advisory group)	CCRA (with advice from Agency)	Commission (with advice from CCRA and ministerial advisory group)	Commission (with advice from CCRA and ministerial advisory group)
Education and training on registration & compliance under the <i>Income Tax Act</i>	CCRA	Voluntary Sector Agency	Commission	Commission
Education and training on issues beyond registration and compliance under the <i>Income Tax Act</i> (such as board governance)	Voluntary sector umbrella groups	Voluntary Sector Agency	Voluntary sector umbrella groups	Voluntary sector umbrella groups
Public information	CCRA	CCRA or Agency for specific charities; Agency for sector	CCRA or Commission for specific charities; Commission for sector	Commission
Advisory committee	Yes to the Minister of National Revenue	Voluntary Sector Agency performs this role	Yes to Commission	Yes to Commission
Reports to:	Minister of National Revenue (MNR)	CCRA: MNR Agency: MNR <i>or</i> another Minister <i>or</i> Parliament	CCRA: MNR Commission: MNR <i>or</i> another Minister <i>or</i> Parliament	MNR <i>or</i> another Minister <i>or</i> Parliament

We have included an analysis of what has been termed the “enhanced CCRA” model, both because our mandate directed us to do so and also because we have not found evidence to support the assertion that such a conflict does, in fact, exist. The argument that the CCRA is an inappropriate regulator of charities asserts that when considering whether to register an organization as a charity, examiners consider the forgone revenue that might otherwise be payable to government. In practical terms, this argument can only be about the tax credits available to donors to charities, since the organization would be unlikely to pay taxes in any event. If it is not registered as a charity, it is likely to be a not-for-profit organization and therefore exempt from taxes.

While we do not believe there is a conflict in mandates in having the CCRA act as the regulator, there may be other inherent conflicts, which may have implications for the models. For example, placing regulatory functions within an existing government agency means the regulator has to meet a range of objectives – those linked to its purpose and mandate plus those of the agency in which it is located. A commission would have a singleness of purpose and limited management layers. However, if the regulator remains within a government department, it would be able to take advantage of infrastructure and services, such as legal advice, corporate services and information management systems, that are already in place.

Placing regulatory functions outside a government agency may create fewer administrative difficulties. It has been argued, for instance, that creating a standalone commission may improve staff retention rates. However, some individuals may feel there is greater opportunity for advancement within a larger government agency as compared with a small, specialized commission. Others argue that the profile and visibility of a standalone regulatory body may be greater than that of a small, operational unit within a larger government agency. The commission may also be able to provide more specialized services to its clients and be seen to be more distant from both government and the sector, and as a result be seen to be more objective and impartial in its decision-making.

These and other considerations are discussed more fully below.

Model 1: Enhanced CCRA

Model 1 is closest to the current arrangement. No regulatory functions would be removed from the CCRA. The CCRA would continue to be an administratively autonomous agency administering legislation that is under the policy direction of the Minister of Finance. In other words, the CCRA administers the provisions of the *Income Tax Act* that pertain to charities, whereas the Finance Minister is responsible for the *Income Tax Act* itself including any changes to the Act.

The Director General of the Charities Directorate would continue to report through the Assistant Commissioner, Policy and Legislation, to the Commissioner of the CCRA.

The role of the Charities Directorate would be to continue to reflect the intent of Parliament through its administration of the part of the *Income Tax Act* pertaining to charities. The Directorate would apply the law in a fair, consistent and open manner through greater transparency of its decision-making processes, the publication of its reasons for decisions and greater emphasis on building the skills of its employees to deal competently with the complexities of charity law.

Applicants would be able to seek a review by an impartial authority of a decision to deny registered status. For a description of the existing appeal process and proposals for reform, see Chapter 5. The proposed appeals process is the same across all models.

A **charities advisory group** would be established to provide administrative policy guidance on such issues as the administration of the sanctions regime, mechanisms for achieving compliance and developments in charity law. It would also identify issues for consultation and strengthen the CCRA's ability to identify emerging issues and trends. As this body is not strictly advising on technical matters, it would be advisory to the Minister of National Revenue.

The advisory group would consist of non-governmental charity law specialists and representatives of the voluntary sector. Some have suggested that the CCRA would benefit from involving officials from other government departments on the committee to provide technical advice. However, public servants have a conflict of interest between their duties to ministers and their responsibilities as members of an "independent" advisory group. Therefore, government officials could only participate in an advisory capacity.

Additional resources would be provided to enable the regulator to provide greater support to charities in understanding their legal obligations. Charities Directorate staff would visit locations across the country and meet informally with charities and umbrella groups to discuss concerns, issues or questions. Also, the Directorate would broaden its outreach program to provide greater access to its educational seminars.

Additional support and information would be available through a quarterly newsletter and an enhanced website. This would assist charities in understanding the rules that govern them federally and ensure organizations interested in seeking charitable status are aware of the application process and eligibility requirements. Voluntary sector umbrella groups would provide support and assistance to charities with concerns not related to the *Income Tax Act*.

The profile and visibility of the Charities Directorate would be enhanced through a greater presence on the CCRA's website, annual reporting to the public through its website on its program activities and achievements, and increased participation in sector and allied professional conferences and symposiums.

Service improvements would also be in place as a result of the CCRA's Future Directions Initiative. Performance indicators would be established with input from the ministerial advisory group on registration, policy and communications, compliance, returns and client assistance. There would be annual public reporting on the service expected and delivered.

The CCRA would also retain responsibility for providing information about charities and the charitable sector to the public. Through its Future Directions Initiative, the Directorate would develop and maintain an enhanced website with a searchable database that would provide greater public access to information about charities including current status, reasons for registration, annual information returns, and any compliance actions taken. A more thorough description of our proposals for enhancing the transparency of the regulator can be found in Chapter 4.

Considerations

Since this model is closest to the current administrative structure it is the least costly and least complex to implement. While legislative amendments would be needed to implement our recommendations on transparency, sanctions and the appeals process, no significant statutory provisions would need to be introduced to implement this model.

At the same time, the Charities Directorate is a very small operational unit within a large federal government agency, and there is a long history of its being neglected in terms of resources. The Charities Directorate would need additional resources to enhance its operations and profile as well as meet performance expectations.

The CCRA is recognized for its ability and expertise in interpreting and applying the *Income Tax Act*, including the administration of a number of social benefits such as the Canada Child Tax Benefit. Indeed, the CCRA administers some 62 statutes on behalf of a variety of government departments, ranging from immigration to agriculture. It collects fees and taxes, and it waives fees and taxes. However, the Directorate's policy development capacity and external consultation program would need to be enhanced.

What we heard

A number of commentators concurred with our observation that the CCRA is recognized for its ability and expertise in interpreting and applying the *Income Tax Act*. They also suggested that the CCRA would never abandon the field of ensuring compliance with the *Income Tax Act*. Others noted that the Charities Directorate, through its participation in the Voluntary Sector Initiative and the administrative changes being undertaken through the CCRA's Future Directions Initiative, has demonstrated a willingness and commitment to better meet the needs of charities. On the other hand, some concern was expressed that once the Voluntary Sector Initiative is concluded, there would be less public pressure to listen to and address the needs of charities.

An equal number of commentators also agreed with our observation that the Charities Directorate is a small operational unit within a large federal bureaucracy and that there is a history of it having been neglected in terms of resources. A few questioned whether the CCRA has the ability to assess public benefit, and felt that the CCRA's auditors seem more preoccupied with a charity's financial statements and accounting practices than with whether its activities continue to be charitable at law. An additional concern expressed about Model 1 was that it entailed no direct support to the sector beyond educating charities on registration and compliance issues.

Finally, one written submission argued that the costs (implicit or real) of the CCRA's inability to achieve its mandate as regulator had not been addressed or evaluated. The brief further argued that there is a social cost associated with the regulator not achieving desired levels of success, and that the cost must be accounted for when considering the cost savings realized under Model 1.

Our conclusions

The consultations confirmed for us that Model 1 has been well described and its implications fully assessed.

Overall, support for Model 1 tended to hinge on the assumption that:

- the core values identified by the Table would be adopted;
- the Table's recommendations for increased accessibility and transparency, an improved appeals process and intermediate sanctions would be accepted; and,
- there would be adequate resources for the Directorate to carry out its enhanced administrative and regulatory functions.

Opposition to Model 1 tended to come from those who felt that institutional reform should go beyond augmenting resources and capacity. The CCRA, they argued, is dominated by tax considerations, lacks the mandate to administer a broad social policy function, and does not possess a philosophical understanding of the voluntary sector.

Model 2: Enhanced CCRA + Voluntary Sector Agency

Under this model, two institutions would have complementary mandates. The CCRA would continue to administer the *Income Tax Act* and make the decisions. The Voluntary Sector Agency (VSA) would conduct outreach with the voluntary sector and the public and advise the CCRA on administrative policy. To fulfil such a mandate, the VSA would report to Parliament through a minister.

The VSA, as an arm's length body, would have a presiding board composed of part-time members supported by a professional staff. The latter might be public servants appointed under the *Public Service Employment Act*, but they could also be employed by the presiding board. The head of the staff could be appointed by either the Public Service Commission or by the Governor in Council³ and the head would answer to the chair of the presiding board. The chair would have statutory authority for the management of the staff and the financial affairs of the VSA.

The length of term for which appointees would serve, reporting relationships, eligibility for re-appointment and conditions under which they could be removed would be set out in legislation.

The VSA would have the general function of promoting the effective use of charitable resources by encouraging the development of better methods of administration and by providing charity trustees and directors with information or advice on any matter affecting a charity. Some examples of areas where the VSA might provide advice include:

- matters outside federal regulatory jurisdiction;
- fundraising;
- governance practices; and
- other matters that may fall within provincial jurisdiction.

The VSA would assume the CCRA's compliance education function within its broader education role. It would essentially be a one-stop clearinghouse of information about the entire sector and on best practices in voluntary sector management and administration. This is the only model that includes the mandate to serve the broader

³ Appointments by the Governor in Council are those made by the Governor General on the advice of the Queen's Privy Council of Canada represented by Cabinet and are handled through a distinct process which recognizes the Prime Minister's prerogative to coordinate or determine all appointments. The Prime Minister is supported by the Director of Appointments within the Prime Minister's Office who, in consultation with Ministers' offices, is responsible for identifying high calibre candidates who could be considered for such an appointment. The Privy Council Office plays a supporting role to both the Prime Minister's Office and the Clerk of the Privy Council on Governor in Council appointments, and works cooperatively with the Director of Appointments in identifying vacancies and interviewing potential candidates. The Privy Council Office ensures that statutory and procedural requirements are met, and advises on issues of feasibility, remuneration and conditions of appointment.

voluntary sector and not just registered charities. The CCRA would be called upon to provide advice on developing and implementing the VSA's compliance education program for charities.

The VSA would also act as a champion and promoter of the sector. It would be an interface between government and the sector and represent the concerns of the sector to government. The VSA could potentially pull together support and consultation functions carried out in other government departments, such as Canadian Heritage, Human Resources Development Canada, Health Canada and Industry Canada. The VSA would also assume part or all of the CCRA's current responsibility for providing public information about charities.

This is the only model without an advisory group because it is assumed that the VSA would perform the advisory function. The VSA would provide the CCRA with administrative policy advice and would have the authority to review policy decisions made by the CCRA and provide comment, in aggregate, on trends. It would not, however, have the authority to review specific cases.

The VSA and the CCRA would develop guidelines on information sharing and have the ability to confer and consult at various organizational levels.

Considerations

The VSA could foster the development of the voluntary sector in Canada by increasing the profile of the sector and creating a central point of contact for information about the sector. However, there may be considerable scope for conflict between the VSA and the CCRA. The VSA's recommendations would carry significant weight, although it would not be a decision-making body. At the same time, the ability to comment on cases, even in aggregate, without having authority or responsibility for their disposition may create some tension between the two institutions if the VSA disagrees strongly with a CCRA decision or its approach to charity files. On the other hand, this input may be useful in helping the CCRA identify issues of concern to the sector and explore possible solutions. Also, having an agency dedicated to voluntary sector issues may encourage greater discussion on the health of the voluntary sector in general and the status of charity law in Canada.

Some have suggested that the VSA act as an interface between government and the sector. This could further enhance the relationship between the sector and government. However, this model may duplicate efforts. While the VSA could potentially pull together support functions in other government departments making it easier to gather information, it may be more desirable to have individual departments with technical knowledge and expertise continue to provide support and information to parts of the sector they deal with most frequently. In addition, the sharing of best practices in voluntary management, as an example, may be more effectively and efficiently undertaken by existing sector umbrella groups.

At the same time, it should be noted that a number of potential roles described for the VSA, such as the policy co-ordination and champion roles, are not currently being performed, while others are under-resourced. The question of roles and resources is presently being discussed in terms of the future governance of the Voluntary Sector Initiative, and there is recognition that these new roles have resource implications regardless of the institutional model.

What we heard

Virtually all who commented supported our observation that a separate advisory agency should provide support to the sector, noting that charities would be uncomfortable being candid with the regulator. The point was made that the sector has a “spectacularly broad mandate” and that charities need assistance with issues beyond compliance with the *Income Tax Act*. There was also agreement with our assertion that the purpose of the VSA would not simply be to assist charities but also to provide administrative policy advice to the regulator and act as a champion for the sector.

While there was agreement that the support function needed to be undertaken, participants were split on whether a new body, such as the VSA, was needed or if existing umbrella groups, professional organizations or local community groups could carry out this function. There was concern that the interests and agendas of larger charities and national umbrella groups may dominate the VSA. However, we also heard that a sector advisory committee could help to ensure representation from smaller charities.

A number of participants felt that the VSA could interact more effectively with the provinces than other models by establishing itself as an accreditation body to which all charities and regulators would look for best practices. On the other hand, the VSA was seen as a barrier to more open communication between the regulator and those regulated. There was a concern that with the creation of a VSA, the CCRA would lose touch with the voluntary sector, and that charities and the CCRA would have to communicate through the VSA. A concern was also expressed that there might be conflict between the two organizations.

Our conclusions

The consultations confirmed for us that Model 2 has been well described and its implications fully assessed.

Overall, support for Model 2 tended to come from those who felt a separate body was needed to provide a centralized source of support to charities and the broader voluntary sector on governance and accountability. Opposition tended to come from those who felt that existing sector umbrella groups and professional organizations could take on this function.

Model 3: Enhanced CCRA + Charity Commission

As with Model 2, Model 3 would divide responsibility for the regulation of charities. The Charity Commission would assume most responsibilities associated with administering the *Income Tax Act* as it relates to charities. The CCRA would provide compliance monitoring and auditing functions.

The role of the commission in this model is somewhat narrower than the commission model outlined in the 1999 Report of the Joint Tables. In *Working Together*, the role of the commission was described as follows:

A quasi-judicial commission would undertake most of the functions currently carried out by the Charities Directorate. It would provide authoritative advice to the voluntary sector, and expert adjudication of appeals on decisions by its Registrar. At the same time, such a commission would have a support function not unlike Model B's agency.⁴

The commission described here and in Model 4 would have a narrower role. It would not have a support function beyond compliance. An impartial authority outside the commission would perform expert adjudication of appeals. The commission would simply assume the current regulatory powers of the CCRA to administer the law. At the same time, one of the overall purposes of the commission would be to re-examine the issue of registration.

The commission would not be able to create legal precedent or recognize new charitable purposes where an analogy to a previously recognized charitable purpose cannot be found or developed. However, as in Model 1, an applicant would be able to seek a review by an impartial authority if its registration were denied. The Minister of National Revenue could also initiate reconsideration of a charity's registration by applying to the commission but the commission would make the final determination. The Minister of National Revenue would have the right to launch an appeal if the Minister disagreed with a decision of the commission.

As in Model 1, an advisory group would provide policy advice but in this case to the commission. This is an unusual feature of the model since generally multi-member boards and commissions see themselves as capable of seeing the viewpoints of the sectors involved. It has been retained to ensure the commission has a sense of the full diversity of the charitable sector.

⁴ Model B referred to in *Working Together* is equivalent to our Model 2.

As in Model 2, the commission would be supported by a professional staff. They could be public servants appointed under the *Public Service Employment Act*, but they could also be employed by the commission. The head of the staff could be appointed by either the Public Service Commission or by the Governor in Council and would answer to the commission chair.

The chair would have statutory authority for the management of the staff and the financial affairs of the agency as a whole. The length of term for which appointees would serve, reporting relationships, eligibility for re-appointment and conditions under which they could be removed would be set out in legislation.

Members of the commission's board could be drawn from the institutional community (charity law specialists, senior voluntary sector officials) and have some level of expertise from a legal, sectoral or government perspective. Specific requirements for the composition of the commission could be laid out in statute.⁵ The staff complement would be of comparable size to the Charities Directorate.

Considerations

It is difficult to predict whether the residual role of the CCRA for compliance monitoring and audit would pose undue complications. There are concerns that if the CCRA is pursuing its own statutory-based program responsibilities this may result in conflict between the two organizations. There is, however, an example in the *Income Tax Act* where responsibility for administering tax law for a particular domain has been divided between two institutions. The Canadian Cultural Property Export Review Board (CCPERB) may provide a partial model for retaining a role for CCRA in administering charities' compliance with all aspects of the tax law.

To encourage philanthropy, the *Income Tax Act* and the *Cultural Property Export and Import Act* provide tax incentives to persons who wish to donate significant cultural property to Canadian custodial institutions⁶, which have been designated⁷ to receive or purchase such property. The CCPERB is an independent tribunal within Canadian Heritage, which certifies cultural property for income tax purposes⁸. In addition to certifying whether or not such property meets certain criteria, the Board may also determine the fair market value of the property. Like the CCPERB, under this model the commission would make determinations for the purposes of the *Income Tax Act* and provide advice to government on matters under its jurisdiction.

⁵ For example, the Canadian Human Rights Commission has up to eight appointed members. The Chief Commissioner and Deputy Chief Commissioner are appointed for seven years. The other Commissioners have their own professions and contribute to the work of the Commission on a part-time basis. The Commissioners come from different parts of Canada and a variety of backgrounds. There is a balance of men and women. Commissioners meet regularly throughout the year to review cases and discuss the work of the Commission. Another example is the Canadian Cultural Property Export Review Board whose nine members are also appointed by government. Four are drawn from museums and galleries while the remaining members represent the private sector, collectors, appraisers and dealers.

⁶ Generally, Canadian museums, art galleries, archives and libraries.

⁷ Institutions and public authorities, which meet the legal, curatorial and environmental requirements for designation, and have been so designated by the Minister of Canadian Heritage.

⁸ The CCPERB reviews 1500 applications for certification per year.

Some have suggested that the commission should report directly to Parliament and not to a cabinet minister. Delegating regulatory powers to a new body with direct access to Parliament may increase its visibility and profile through more public reporting to Parliament. It may also increase its independence from political interference. However, there are very few examples of arm's length regulatory bodies reporting directly to Parliament, except on issues of national importance such as access to information and privacy. This would be very difficult to achieve in the short term.

What we heard

A number of those who commented asked for clarification concerning the possible relationship between the CCRA and the Charity Commission. Would the CCRA's Rulings Directorate accept compliance advice given to a charity by the commission? How would a charity that spent little on charitable purposes be dealt with if the CCRA has the power to conduct audits but only the commission has the power to deregister? Would the division of regulatory functions make it difficult for the Minister of National Revenue to carry out the responsibilities assigned under the new *Charities Registration (Security Information) Act*?

Of those who commented in support of the division of regulatory functions, the majority felt this model would address the perceived conflict of interest in having the tax authority act as the regulator. In addition, they felt the commission would attract more attention and resources than the Charities Directorate does within the CCRA. On the other hand, there were an equal number of comments from those who believed it would lead to conflict and jurisdictional debates between the two agencies, add unnecessary expense, and create greater confusion for charities and the public as to how charities are actually regulated.

Our conclusions

We were asked if the CCRA's Rulings Directorate would accept compliance advice given to a charity by the commission. It is our view that the commission and the CCRA would work closely together in providing opinions on fact specific cases in much the same way that the Rulings Directorate and the Charities Directorate do now. In terms of outlining what body would have responsibility for providing what advice, it would depend on the issue. On tax specific issues, it would be the CCRA, while on charitability issues it would be the commission.

We were also asked to clarify how charities that spend little on charitable purposes would be dealt with if the CCRA has the power to conduct audits but only the commission would have the power to deregister a charity. In this instance, we believe the CCRA would conduct an audit based on instructions provided by the commission. It is our feeling that this is consistent with the existing situation where the regulator selects charities for audit and instructs the field auditor on what to examine. The auditor would provide the results of its examination to the commission, which would determine what compliance action is warranted.

Commentators suggested that Model 3 would be incompatible with the responsibilities assigned to the Minister of National Revenue under the new *Charities Registration (Security Information) Act*. The Act gives the Minister the power to jointly sign a certificate with the Solicitor General, and if the certificate is upheld as reasonable by a judge of the Federal Court, it disqualifies an organization from registration. These commentators suggested that dividing the registration and compliance functions would pose real difficulties in terms of the role CCRA assumes under this legislation to try to identify applicants that have connections to terrorist groups. We believe this issue could be addressed since the commission would be a part of government. However, a problem would exist if the regulatory body were to sit outside of government.

With these clarifications, we believe Model 3 has been well described and its implications fully considered.

Model 4: Charity Commission

The commission described here, as in Model 3, would have a narrower role than the one described in *Working Together*. It would not have a support function beyond compliance. An impartial authority outside the commission would perform expert adjudication of appeals. The only difference between this commission and the one described in Model 3 is that it would assume the powers of the CCRA to administer the law. This model differs from Model 1 only in terms of its governance structure, visibility and cost. There would be no direct residual role performed by the CCRA.

However, cooperative information linkages would have to exist, since many aspects of compliance work, such as the checking of tax receipts, would be severely compromised if there were no communication between the Charity Commission and the CCRA. Care would need to be exercised to ensure that such routine exchanges would not affect the independence of the commission.

Considerations

The stand-alone commission model resolves the problems of divided responsibility. Otherwise, the characteristics and comments about the commission in the preceding model apply.

Regulatory bodies, no matter how much at arm's length from government, are obligated to apply the law as passed by Parliament and elaborated through regulation (where authorized). There is no formal barrier to a minister – or a commission – exercising a more interpretive, flexible regulatory authority provided Parliament grants the necessary authority. If this authority was considered appropriate, because of the need for transparency and objectivity, it may be preferable for it to be

assigned to an arm's length body such as the Charity Commission described here and in Model 3.

What we heard

Those who commented in favour of Model 4 argued that charities could never identify with a regulator housed in a government department or agency. The supporters of this model felt a commission would bring unity to a disparate sector, and this would have practical benefit for charities. They also felt a commission had greater potential for a higher profile than a body placed inside a larger government agency.

Those who opposed the creation of a commission argued it would require a significant investment without a clear indication that it would be any more competent or effective than the current model. Of these, a number commented that the need for a commission could only be justified if jurisdiction for the regulation of charities was not split between different levels of government and/or if it were given responsibility for the various pieces of federal legislation that govern the charitable sector beyond the *Income Tax Act*, including the *Canada Corporations Act* and the *Competition Act*.

As in Model 3, some commentators expressed concern that the commission would be dominated and driven by the needs of larger charities and that it would not be possible to constitute its board as a representative body. In addition, some asked for clarification on the commission's ability to assume the CCRA's investigative powers, including making workplace searches.

Our conclusions

Commentators expressed concern that the interests of larger charities may dominate the commission and that its governing board would not be representative. We wish to clarify that the role of the regulator under any of the models is to interpret and apply the law. The commission's staff would be comprised of public servants and its presiding board would be made up of Governor in Council appointees.

As such it would be an expert body rather than a representative body. Input and advice from the sector would largely be provided through the ministerial advisory group as in Model 1, although it is reasonable to assume that some of the appointments to the board and management may be individuals with experience in the sector. In addition, we anticipate that the ministerial advisory group would bring a wide range of perspectives to the table, including the viewpoint of small charities.

Commentators also asked for clarification on the commission's ability to assume the CCRA's audit powers, including making workplace searches. Enabling legislation would be needed to allow the commission to assume this power.

With these clarifications, we believe Model 4 has been well described and its implications fully considered.

Assessment of the institutional models

In Chapter 3, we identified a number of core values and critical success factors in our evaluation of the characteristics of an ideal regulator. These have been further developed as a result of our consultations. The core values and critical success factors identified in Chapter 3 are summarized below to serve as evaluative criteria when considering the implications of various models, their costs and benefits, and the degree to which the models meet the needs of various stakeholders. The following evaluative criteria do not appear in any particular order of importance.

Evaluative criteria

Focus of mandate

This criterion speaks to the purpose of a regulator under each model. Comments we received during our consultations have reinforced our view that the mandate of the regulator should continue to be the administration of the charity provisions of the *Income Tax Act* but some additional functions are suggested under Model 2 that may broaden its mandate.

Integrity

As we heard in our consultations, integrity means the regulator will treat people fairly and apply the law fairly.

Openness

The comments received in our consultations reinforced the need for the regulator to communicate openly about its decisions and performance to ensure decisions are fair and regulation effective.

The regulator should be open and approachable. It should be responsive to the needs of diverse cultures and regions.

Service excellence

As confirmed in our consultations, this criterion speaks to the capacity of the regulator to be committed to delivering consistent and timely decisions and information to its clients.

Knowledge and innovation

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

Support

The regulator should have responsibility for making sure charities understand the legislative and common law rules that apply to them and have the assistance they need to comply with those rules.

Based on our consultations, we have broadened this criterion to also include:

- education of the sector about the requirements and process for registration;
- education of the public about what charities do and about giving wisely; and
- education of regulatory staff to encourage consistent application of the law, professional development and staff retention.

Public profile/visibility

Public trust and confidence is decreased when there is limited knowledge that regulation exists. Therefore, it will be important for the regulatory body to ensure that it has a public profile. Such a profile does not come only – or even primarily – from regulatory actions. There must be a determined effort by the regulator to establish an “institutional” identity. Canadians must be aware that the regulator exists, what it does, and what registration as a charity does and does not mean.

Resources

This financial criterion addresses two considerations: the direct expense required to establish the new institutional elements and the additional costs to operate that system in comparison to the current arrangement.

Legal principles and powers to determine charitable status

An effective regulator is one that is both enforcing the law and interpreting the law in light of changing social conditions through the use of analogy. This criterion speaks to the ability of the regulator to participate in the evolution of the law by eliminating outdated purposes, developing analogies and creating administrative precedents in consultation with the sector.

Coordinated regulation

A significant part of the authority to regulate charitable activity is vested in the provinces and territories. Our consultations reinforced our view that there is benefit to formally exploring opportunities to develop a better coordinated system of regulation.

This factor speaks to the ease and ability of the institutional arrangement to accommodate or work with provincial and territorial authorities to foster a consistent and coherent set of rules for charitable regulation across jurisdictions.

Broader voluntary sector

The Voluntary Sector Initiative was designed to look at more than just registered charities. It was designed to strengthen voluntary sector organizations. While at the federal level supervision is focused more narrowly on charities and we have

therefore focused our attention on issues connected with registered charities, we recognize there is an important support role that may be needed to strengthen the voluntary sector. This criterion highlights support that would be available to the entire sector beyond the assistance provided by the regulator to help charities comply with the *Income Tax Act*.

Transition challenge

There is an element of complexity involved with managing the change implied under each model. This criterion addresses the challenges of improving service levels, transferring regulatory functions and creating new institutions across the range of possible models.

Introduction to the analysis matrix

Table 6 takes the various models and tests them against the evaluative criteria we have identified. The models are not mutually exclusive. It is possible to take some aspects from various models and piece them together to create a regulatory body that is not specifically outlined in this report.

In some cases our assessment of a model is necessarily speculative. For example, in the case of the Charity Commission (Model 4), much will depend on who the Commissioners are and the rules that they formulate. Similarly, it is not possible to predict how the Charities Directorate's Future Directions Initiative will affect its ongoing operation.

Table 6

Assessment of Models				
	Model 1 Enhanced CCRA	Model 2 Enhanced CCRA plus Voluntary Sector Agency	Model 3 Enhanced CCRA plus Charity Commission	Model 4 Charity Commission
Focus of mandate	Focus is on administering the law	Different mandates for different institutions: CCRA focused on administering the law; VSA focused on support, information provision and nurturing the sector	Focus is on administering the law with responsibilities shared between two institutions	Focus is on administering the law
Integrity	Regulator would apply and interpret the law acting on the same basis as the courts. Decisions would be subject to review by an impartial authority	Same as Model 1	Same as Model 1	Same as Model 1
Openness	Possible through advisory body, public consultation, annual reporting, and a website where annual returns, the decisions and policies of the regulator, impending legislative amendments, and a searchable database of court decisions are displayed	Perhaps greatest potential in that organizational focus of VSA is advice and communication	Same as Model 1	Same as Model 1

Table 6 (Continued)

Assessment of Models				
	Model 1 Enhanced CCRA	Model 2 Enhanced CCRA plus Voluntary Sector Agency	Model 3 Enhanced CCRA plus Charity Commission	Model 4 Charity Commission
Service excellence	Possible, performance indicators would need to be established	Same as Model 1 – in addition, the VSA could provide a watchdog role	Same as Model 1	Same as Model 1
Knowledge and innovation	Possible through greater connection to other government departments and the sector through the advisory body, roadshows, consultations, attendance at annual sector conferences, staff development opportunities, etc.	Gathering and sharing information would be key role of new VSA	Perhaps greater opportunity (as a new body) than in Model 1 to be innovative and tailor its organizational culture to its organizational mandate	Same as Model 3
Support	Possible through enhanced publications, site visits, call centre and website. Support would include education of the sector about the requirements and process for registration, education of the public about the charitable sector and giving wisely, and education of regulatory staff	Perhaps greatest under this model. In addition to registration and compliance education provided by the CCRA as in Model 1, VSA would provide the sector with education on board governance and accountability and the rules affecting voluntary sector organizations in other jurisdictions and could potentially coordinate support functions in other government departments	Same as Model 1	Same as Model 1

Table 6 (Continued)

Assessment of Models				
	Model 1 Enhanced CCRA	Model 2 Enhanced CCRA plus Voluntary Sector Agency	Model 3 Enhanced CCRA plus Charity Commission	Model 4 Charity Commission
Public profile/visibility	Possible through website, annual report, increased communications capacity and CCRA's name on income tax receipts	Greater than in Model 1 due to presence of new Agency and requirement to report to Parliament through a Minister	Similar to Model 2	Similar to Model 2
Resources	Additional resources to carry out the recommendations in this report	Higher operational costs than in Model 1 because of new support function and emphasis on broader voluntary sector and not only charities. New infrastructure would be needed for a separate Agency	Greater than Model 1. Operational costs expected to be slightly higher than in Model 1. Also, there would be a one-time cost associated with creating a new Commission	Same as Model 3
Legal principles and powers to determine charitable status	Possible – capacity to enforce and interpret the law enhanced through development of clear guidelines on the extent of the regulator's authority to identify new charitable purposes, training for examiners and improved research capabilities	Same as Model 1	Same as Model 1	Same as Model 1

Table 6 (Continued)

Assessment of Models				
	Model 1 Enhanced CCRA	Model 2 Enhanced CCRA plus Voluntary Sector Agency	Model 3 Enhanced CCRA plus Charity Commission	Model 4 Charity Commission
Coordinated regulation	Possible – by entering into discussions with other regulators, greater sharing of information between jurisdictions and a regulator’s forum. CCRA has already demonstrated a capacity to coordinate in area of tax collection with some provinces and territories	Possible	Possible	Possible
Support of broader voluntary sector (non-profits that are not charities)	Not included	Included as support and education function provided by VSA	Same as Model 1	Same as Model 1
Transition challenge	Minimal	Moderate – Not much change on the regulatory side. New support function developed and placed inside new Agency	Complex – Most regulatory functions (with the exception of compliance monitoring) transferred to new body	Complex – All regulatory functions transferred to new body requiring the development of new practices and procedures