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Preserving Independence: Does the Canadian Voluntary Sector need a Voluntary Sector Commission?

A response by The Fraser Institute to the Panel on Accountability and Governance in the Voluntary Sector’s report *Building on Strength: Improving Governance and Accountability in Canada’s Voluntary Sector*

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Executive Summary

In February 1999, the Panel on Accountability and Governance in the Voluntary Sector, chaired by the Hon. Ed Broadbent, produced its final report, *Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector*. This report was the result of a process of consultations with government and the voluntary sector, which included the publication of an interim report in May 1998, *Helping Canadians Help Canadians: Improving Governance and Accountability in the Voluntary Sector*.

There is much of value in these publications. However, the aim of this paper is to examine critically one of the central recommendations of the final report—that a new, permanent, voluntary sector commission be established on the model of the Charity Commission of England and Wales. This new commission would be charged with:

- evaluating and making recommendations on applications for charitable status
- providing support, information, and advice about best practices to voluntary organizations related to improving accountability and governance;
- collecting and providing information to the public; and assisting organizations to maintain compliance with Revenue Canada and other regulatory requirements, and investigate public complaints.

From the Panel's publications, it appears that the idea of establishing a new commission attached to the federal government, with a wide array of responsibilities, was favoured from the start. However, this recommendation failed to garner significant demonstrable support from the voluntary sector, and the arguments provided in support of it are unconvincing. No notice appears to have been taken of the actual record of the Char-

ity Commission, which has come under strong criticism in the United Kingdom over the past decade. Moreover, during the consultation period, two reports were published by the UK Committee of Public Accounts, both highly critical of the Commission's performance. Neither report is referred to in the Panel's work. At the same time, the example of the voluntary sector in the United States appears not to have been taken into consideration. In the United States, a multitude of flourishing voluntary intermediary organizations accomplish the great majority of the work envisaged for a new voluntary sector commission.

In fact, there is little evidence that a new commission as recommended by the Panel is either necessary, or likely to produce significant public benefit. Certainly there is no pressing need justifying the Panel's recommendation that such a body be established within a year. Depending on the arrangements decided by Parliament for the future determination of charitable status in Canada, there might be a role for a small body of judges and legal scholars to make recommendations to Revenue Canada in this regard, or to hear appeals of Revenue Canada decisions. All of the other functions envisaged for the new commission could be accomplished better and more cost effectively through other means, either by requiring existing government agencies to perform them, or by allowing existing voluntary sector efforts to develop naturally.

The Panel also made a number of recommendations regarding relations between the voluntary sector and governments, which indicate that the Panel's stated goal of bringing the voice of the sector to the cabinet table was more central to the exercise than might appear on first glance. Combined with the Panel's stated desire for increased government funding for "capacity building" in the sector, this raises important questions about

the future direction of the sector, which the Panel's final report does not address adequately. The Panel stresses the important role the voluntary sector plays in democracy, but some of its recommendations seem likely to undermine the independence and diversity of the sector. In particular, entwining charities more closely into governmental policy formulation, increasing government funding for intermediary organizations, making charitable registration dependent upon accession to "ethical codes," and encouraging "corporate responsibility" to the voluntary sector all seem antipathetic to independence, diversity, and voluntarism.

This paper recommends, therefore, that:

- the Panel's recommendation for a new voluntary sector commission not be adopted;
- if a new voluntary sector commission must be established, its commissioners should number no more than five, with at least two-thirds having extensive experience with the charitable sector, and (if the commission is to have a role in making recommendations on applications for charitable status) one-third having legal expertise;
- Revenue Canada should retain all regulatory, oversight, and investigative responsibilities for the voluntary sector;
- final determinations on charitable status should be left to Revenue Canada;
- if it is considered necessary to have another body to make recommendations to Revenue Canada on applications for charitable status, or to hear appeals of Revenue Canada decisions, this body should be independent from Revenue Canada and composed of people with legal expertise;
- the application procedure for charitable status should be made transparent, by authorizing and requiring the body charged with taking such decisions to make its decisions public;
- adherence to ethical codes for fundraising and financial accountability should not be made mandatory for charitable registration;
- the elaboration of voluntary ethical fundraising and financial accountability codes should be left to voluntary intermediary accrediting organizations;
- although Revenue Canada should continue to respond to enquiries, the development of additional information sources on particular charities should be left to voluntary intermediary organizations;
- Statistics Canada should be required to collect and make public additional data on the charitable sector as a whole;
- the provision of services to assist voluntary organizations improve accountability and governance should be left to voluntary intermediary organizations and the private sector;
- the Panel's recommendation that a cabinet minister be charged with responsibility for the voluntary sector should not be adopted;
- the Panel's recommendation of forming "horizontal policy units" to liaise with a new voluntary sector commission should not be adopted;
- in order to increase the capacity of the voluntary sector, government should increase the capability of individuals to donate, by increasing their disposable income; and
- any government support for a new voluntary sector commission, or for voluntary intermediary organizations, should be tied directly to their ability to achieve performance targets, including acquisition of funding from non-governmental sources.

Preserving Independence

In February 1999, the Voluntary Sector Roundtable Panel on Accountability and Governance in the Voluntary Sector, chaired by The Hon. Ed Broadbent, published its final report, *Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector*. This document, referred to henceforth as the final report, was the result of over a year's consultation between the Panel and the voluntary sector, which included response to a consultation document published in May 1988.¹

The Fraser Institute responded² to the interim discussion paper, but none of the Institute's concerns are addressed in the final report. As these concerns also were not raised by the Canadian Centre

for Philanthropy (CCP) in its own submission to the Panel,³ it would appear that the questions raised by the Institute remain unanswered.

The final report is wide-ranging, and it is not the aim of this paper to review each of its recommendations. Rather, this paper is intended to focus on one of the report's major recommendations—that a new Voluntary Sector Commission (VSC) be formed. As well, some ancillary issues attached to this proposal will be investigated. After examining the final report's proposals in these areas, the authors also will offer an alternative to the report's proposed architectural changes to the Canadian voluntary sector.

Why are New Institutional Arrangements Required?

Before proceeding to an examination of the final report's recommendations, it would be useful to look at some of the assumptions underlying the Panel's work. This will allow us to see how the Panel approached the issues, and assist us in scrutinizing its recommendations.

Both the consultation paper and final report assert throughout that the voluntary sector needs new administrative arrangements to improve governance and accountability. This conviction appears to be based upon five major assumptions (*Building on Strength*, pp. 56-57):

- the institutional machinery is antiquated and should be redesigned;
- to promote good governance and accountability, more is required than Revenue Canada's current watchdog role and auditing expertise;
- the growth of the voluntary sector is creating a new balance "in which governments need a strong, well managed sector that maintains high levels of public trust";
- the government machinery needs to be redesigned "to facilitate the improvement of the

1 Panel on Accountability and Governance in the Voluntary Sector, *Helping Canadians Help Canadians*, May, 1998.

2 Jason Clemens and Johanna Francis, *Submission to the Panel on Accountability and Governance in the Voluntary Sector*, The Fraser Institute, October 28, 1998.

3 Canadian Centre for Philanthropy, *Submission to the Panel on Accountability and Governance in the Voluntary Sector from the Canadian Centre for Philanthropy*, September, 1998.

sector's effectiveness, both as partners in delivery of public services and as autonomous organizations"; and

- it is essential that a public window exist on the sector.

While there may be wide agreement in the voluntary sector and government that new arrangements would be desirable, the above rationale is not entirely convincing. First, new is not always better, and changes should not be undertaken just for the sake of change. Second, while improvements in governance and accountability are desirable, much could be achieved without institutional change.

Third, though the growth of the voluntary sector has been remarkable, it is debatable whether any new arrangements should be justified in terms of the needs of governments, rather than of voluntary organizations and the people they serve. Certainly, any changes should be directed towards maximizing the public good, but the needs of governments are not necessarily synonymous with the public good.

Fourth, though government machinery may need to be redesigned, it would be a mistake to assume that doing so is the only way of improving the sector's performance. As well, many voluntary organizations would object to being considered and treated as government "partners." Finally, though providing a public window on the sector is both justified and desirable, achieving this need not require substantial changes to existing ar-

rangements. Alternative arrangements will be discussed below.

There are other assertions and unstated assumptions underlying the Panel's work that it would be best to consider prior to conducting a detailed examination of its recommendations. First, there is the statement that the charitable sector comprises one-eighth of Canadian gross domestic product (GDP). While technically true, this is misleading, since, as the Panel notes itself, "...almost 60 percent of revenues in the sector are in teaching institutions and hospitals"⁴ A small proportion of these organizations is independent, but the great majority of them are government-run, and all of them are supervised by their respective ministries. As the Panel itself recommends that no substantive change be made in this regard,⁵ it would be either careless or disingenuous to claim justification for particular measures on the grounds of the technical size of the sector. The actual size of the sector the new VSC would be responsible for would be closer to 5 percent of GDP.

Second, there is the assumption that the continued growth of the sector automatically would be in the public interest. While a strong argument could be made that expansion would be beneficial, indefinite expansion is another question. As pointed out by the Supreme Court, there is an important question of public revenues involved.⁶ As well, given the increasing complexity of charitable for-profit ventures, expansion poses important questions that, although beyond the scope of this paper, need to be considered carefully.

4 *Helping Canadians*, p. 4; *Building on Strength*, p. 13. The Revenue Canada 1995 Charities Database shows that hospitals and schools comprised only 6 percent of charities, but accounted for 55 percent of the sector's revenues.

5 *Building on Strength*, p. 61, proposes only that the fundraising practices of these organizations come under the purview of the recommended new VSC.

6 *Vancouver Society of Immigrant Women and Visible Minority Women v. M.N.R.* (1999). The Court made the point in support of its view that the federal government should provide new guidelines for determining charitable status. As the Panel suggests that the new VSC have a role in determining charitable status, this must be kept in mind.

Third, there appears to be an assumption that governments need to be at the centre of any reforms.⁷ While government clearly is responsible for setting the boundaries for charitable activity and ensuring that charities conform to legislative requirements, it does not necessarily have to take up an important role in the actual operation of the sector. Other options need to be given serious consideration.

Last, there appears to be a belief that the new responsibilities and activities envisaged in the final report need to be concentrated as much as possible.⁸ Though this viewpoint is one commonly shared by administrators, in practice decentralization and specialization are more likely to produce better results because communities are better informed as to their own needs. The Panel seems not to have considered possibilities along these lines.

Considering the Options?

The Panel was assembled with the aim of improving the effectiveness and credibility of the voluntary sector. This was to be done by conducting research, by presenting draft proposals to be discussed in a broad consultation with the voluntary sector, and by offering specific recommendations in a final report. The research phase included initial consultations with government and voluntary organizations.

In its consultation document, the Panel offered four options for improving governance and accountability in the sector (*Helping Canadians*, pp. 40-44):

- an expanded role for Revenue Canada;
- a federal commission modelled on the Charity Commission of England and Wales, but respecting the jurisdictional realities of Canadian federalism;
- a federal-provincial agency with a more encompassing mandate; and

- a non-governmental body that would operate wholly within the sector, rather than being attached to government.

The Panel's preference for establishing a federal commission, though not stated explicitly, is clear in its discussion of the advantages and disadvantages of each option. Whereas, in discussing the other options, the Panel either is ambivalent or negative, in discussing the proposed federal commission it is much more positive, concluding that:

The only disadvantage is that a new institution must be created and this takes both resources and political will. (*Helping Canadians*, p. 43)

In other words, the Panel considered this option as having no operational disadvantages. This is surprising in light of the fact that the Charity Commission of England and Wales has come under sharp criticism over the past decade for the ineffectiveness of its operations. (See "The Charity

7 As discussed below, the consultation document did present the alternative of having a non-governmental body take up the role it eventually suggests for a voluntary sector commission, (*Helping Canadians*, pp. 43-44) but the option is not presented in a positive light, and subsequent strong voluntary sector support for the option was ignored.

8 The options presented in the consultation document make this clear. *Helping Canadians*, pp. 40-44.

Commission of England and Wales as a Case Study," below.)

The discussion document elicited 144 written submissions from individuals and voluntary organizations, and further discussions were held across the country (see *Building on Strength*, pp. 99-102). The final report concludes that:

[t]he creation of a new Voluntary Sector Commission by the federal government is an essential element in improving accountability and building capacity in the sector. We urge the federal government to move quickly to establish it with a goal to having it in place within a year. (*Building on Strength*, p. viii)

Given the obvious preference of the Panel expressed in the consultation document, it is not surprising to find that this VSC is little different from the originally-proposed federal commission.

This recommendation is puzzling on another score, however. Since there is no crisis necessitating such a rapid and radical departure from current arrangements,⁹ it is difficult to understand why such a near-term deadline is required. What is more, it would appear that meeting such a deadline would be extremely difficult. In the final report, the Panel itself notes that:

...discussions between the federal and provincial governments as to what roles can be combined and which must remain separate should precede implementation of a new Commission. (*Building on Strength*, p. 64)

Earlier, in the consultation document, the Panel had observed that:

At a minimum, achieving the co-operation of thirteen governments would be time consuming and cumbersome—if it could be achieved at all. (*Helping Canadians*, p. 43)

If the rationale and practicability of rushing towards the establishment of a VSC is unclear, the Panel's own role in deciding that a VSC is desirable is more obvious. The Panel reached this conclusion despite the fact that this option was not the consensus choice of organizations involved in the consultation process. As the final report itself states:

The consultation produced no consensus of opinion as to a preferred model and, in fact, opinion was quite divided with the exception that almost no one favoured an expanded role for Revenue Canada. The lack of consensus is not surprising given that participants had relatively little time to digest and comment on such a complex question. Nor did we provide enough guidance in the Discussion Paper about the specifics of function and design. (*Building on Strength*, p. 62)

In fact, organizations had some six months in which to craft their replies and the issues, although admittedly complex, were ones with which they are familiar. As well, it cannot be assumed that the provision of further information and guidance would have led to increased support for the Panel's recommended option.

Another important point to note is that, since only 0.2 percent of registered charities provided the Panel with a written response, it cannot be said to be expressing the will of the sector. Indeed, the Panel appears not even to have expressed the will of the majority of respondents to the consultation document, as it would appear that the option gar-

⁹ The Panel itself notes that "...there is no evidence that [public] confidence has declined, at least as indicated by continued high levels of donations from individuals" (*Building on Strength*, p. 42).

nering most support in the consultation process was that of a non-governmental agency:

In spite of considerable support heard during our consultations for a non-governmental agency, we have significant reservations about this approach. (*Building on Strength*, p. 62)

Since the report does not detail the precise level of support for each option, however, this cannot be said for certain. More will be said below on the Panel's reservations.

All this being the case, it is not clear what influence the consultation process had on the Panel's

recommendation for a VSC. It cannot be said, and should not be assumed, that this recommendation has the support of the voluntary sector. Undoubtedly, Panel members were motivated by the best of intentions. And of course, the fact that the argument they presented in the discussion paper failed to convince the majority of the respondents does not mean that a VSC is not the best option available. But intentions, however good, are no substitute for sound policy. The rationale for the establishment of a VSC must be reviewed critically.

Rationalizing a Voluntary Sector Commission

Although the Panel comes out strongly in favour of establishing a VSC, the final report does not contain a full discussion of responses received to any of the four options presented in the consultation document. The report does state that the Panel's recommendation for a VSC came out of "further research and consideration," (*Building on Strength*, p. 62) but it is not made clear what was involved in either case.

Undermining support for a non-governmental agency?

The groundwork of the Panel's argument appears to begin with a justification of its decision to ignore the strong support expressed by the respondents to the consultation document for a non-governmental agency:

We think the potential of a non-government agency to increase the visibility of the sector would be less than in the model we propose; its funding would probably be unstable; and, if it had the power to determine registration, it would

risk conflict with other organizations in the sector. The fact that no existing intermediary organization stepped up to volunteer for the role is a telling indicator of the potential limitations of the model, given the many functions it would have to carry out. (*Building on Strength*, p. 62)

None of these reasons are substantive. First, there is no reason given to support the belief that a non-government agency would be less capable of increasing the sector's visibility with the public. One can infer the Panel's rationale, however, in a passage in the consultation document:

a sector-based model may not serve to raise the profile of the sector sufficiently within governments. (*Helping Canadians*, p. 44)

It would appear that the Panel, in addition to its stated concern about providing Canadians with information about the voluntary sector, is also very concerned with giving the sector, or perhaps more precisely those in the body overseeing it, a

voice in government. If this is the case, then obviously a quasi-governmental body like the VSC would be more effective. Whether or not this kind of “visibility” is in the public interest will be discussed below.

Second, the Panel’s rationale regarding the issue of funding is also weak. In the consultation document, the Panel discussed how a non-governmental agency might be funded:

[g]iven that this agency would perform important public policy functions that benefit governments, there is a strong case to be made that it should be supported with core funding by both federal and provincial governments. Since a new agency of the kind we are suggesting would also have significant advantages for the private sector, some corporate contributions should be forthcoming, as well as additional possibilities of revenue generation. (*Helping Canadians*, p. 44)

Despite this, the Panel concluded that “the stability of funding is problematic” (*Helping Canadians*, p. 44) for a non-government agency. At the same time, the consultation paper and the final report assume that a VSC would be funded, apparently entirely, by the federal government. It is not made clear why government might be willing to provide full funding to a VSC led by appointees, and not to a more independent non-governmental agency.

Third, while it is true that conflicts potentially could arise from a non-governmental agency being charged with determining charitable registration, conflicts of this nature would be just as likely to arise if this power were given to a VSC. Here again, the Panel’s real rationale for this assertion appears to be discernible in the consultation document: “there may be lingering perceptions that self-regulation is not entirely appropriate” (*Helping Canadians*, p. 44). The existence of lingering perceptions, however, is not a valid argument for or against any particular course of action. In

any case, responsibility for regulation need not be delegated by government at all.

Finally, though it may be true that no voluntary sector organization volunteered for the role set out by the Panel, it is not clear that volunteers were requested. It also is not clear whether government funding was offered to support an organization taking up this role. And in any case, it is not necessary that any single body undertake all of the tasks outlined in the consultation paper—a possibility that the Panel seems to have ignored. We will return to this last point below, but at present we need only observe that, given the above, the fact that no voluntary body volunteered for the role outlined is not conclusive in any sense.

Justifying a VSC?

Having thus purported to disarm potential critics of its conclusion, the Panel then goes on to justify its decision to propose the formation of a new VSC:

[W]e recommend an institution ... attached to the federal government for two main reasons: the [Voluntary Sector] Commission would have an important role in recommending registration for new applicants ... [and] there is a compelling rationale for having one national agency that is a central repository of information about voluntary organizations and that ensures accountability, as well as national registration, rather than separate provincial and territorial agencies or processes... [I]t is simply not efficient or effective to have the proposed functions of the Commission duplicated in each province and territory.” (*Building on Strength*, p. 62)

First, and to repeat, one body need not take up all the functions outlined by the Panel. Yes, the government must ensure the integrity of the registration process, however, this already is done by Revenue Canada’s Charities Division. Even if it

were decided that this function could be performed better by a new body, no argument is made as to why such a body would do a better job.

As for the “compelling rationale,” note that “one national agency that is a central repository of information about voluntary organizations and that ensures accountability, as well as national registration” already exists—the Charities Division. The response to the consultation document indicated little support in the voluntary sector for the option involving Revenue Canada, but this option outlined an *expanded* role for the Department rather than a continuance of its current functions.

In actuality, decisions on systems of registration and compliance should not be influenced overly by what the sector wants. What is important is that any system effectively ensure that charitable status is not being abused. Nowhere in the final report is any argument made that the Department is not performing its “watchdog” role effectively. Indeed, the final report mentions the expertise of the Department in this role (*Building on Strength*, p. 62).

Even if the point is granted that a new central agency attached to government is required to undertake or assist in these registration and monitoring functions, the Panel makes no argument why such a body need take on all of the other functions assigned to it in the final report, or even why any other single body need do so. It is questionable whether centralizing these charity support and information provision functions in one body would be more effective than decentralization and specialization.

Fortunately, we have an example against which to gauge the advisability of having a new VSC undertake the wide-ranging role envisaged in the final report—the Charity Commission of England and Wales. This example is all the more germane as it is the one used in the consultation document to make the case for a new VSC. If one looks at the performance of the Charity Commission, however, it is difficult to reach the same conclusions as did the Panel about the advisability of adopting this model in Canada.

The Charity Commission of England and Wales as a Case Study

In its consultation document, the Panel emphasized a number of the perceived strengths of the Charity Commission, and in the final report this is repeated:

In some respects, the model we have proposed bears a resemblance to the Charity Commission of England and Wales. It would share with the Charity Commission several strengths: independence but connectedness (sic) to both governments and the sector; an active advisory role in promoting better administration of charities; oversight and hands-on remedial

work in helping to overcome problems; knowledge of the sector leading to respected decisions on registration; and public accessibility, including through an excellent web site. (*Building on Strength*, p. 64)

Taking one of the last points first, what is important is not that decisions on registration be respected, but that they be *correct*. Within the voluntary sector in Canada, there is a feeling that Revenue Canada has been too restrictive in its interpretation of the requirements for obtaining charitable status. However, as the Department

lacks a mandate to interpret creatively past court rulings on the subject, it quite rightly has limited itself to enforcing the law as it exists. In Canada, the constriction is caused rather by the relative conservatism of Canadian courts in adapting the definition of charity to changing conditions.¹⁰

The Charity Commission is authorized to rule on applications for charity status, and to interpret the law in doing so. It apparently performs this quasi-judicial function quite well, as its decisions rarely are questioned by the English courts (Drache, p. 48). But its justified good reputation in this regard has been gained not merely by “knowledge of the sector,” but by legal expertise.

The Charity Commission also is very visible to the public, and appears to do a good job disseminating information.¹¹ Its role in this regard, however, is much more limited than that envisaged for the new VSC, which, as we have seen, seems to be concerned at least as much with making representations to government as with providing information to the public and to voluntary organizations. The performance of the Charity Commission has not been uniformly good, however—indeed, in some areas it has been abysmal.

The Charity Commission as an oversight and regulatory body

On March 25, 1998, the British House of Commons Committee of Public Accounts (CPA) published a highly critical report on the performance of the Charity Commission.¹² The CPA reached two general conclusions: that there was a lack of active management of the Commission’s responsibilities, and that the Commission was failing to strike an appropriate balance between its responsibilities for regulating and advising charities (CPA, *Twenty-Eighth Report*, v). More particularly, the CPA found that the Commission (CPA, *Twenty-Eighth Report*, v-xviii):

- was “paying too little attention to enforcing the accountability of charities”;
- “showed a lack of management grip”;
- needed “to do more to ensure that charities already on the register [of charities maintained by the Commission]¹³ continue to merit registered status”;
- had failed “to develop a policy for dealing with lack of co-operation by so many charities [in providing annual returns and accounts]”¹⁴;

10 Arthur Drache, “Charities, Public Benefit and the Canadian Income Tax System: A Proposal for Reform,” Non-Profit Sector Research Initiative Working Paper, September 1998, p. 60.

11 As will be seen below, however, the accuracy of some of the information regarding particular charities is open to question.

12 House of Commons Committee of Public Accounts Session 1997-98, *Twenty-Eighth Report—The Charity Commission: Regulation and Support of Charities*, The Stationery Office, London, 1998. As the hearings were held on December 3, 1997, and the report was published on April 2, 1998, it would be expected that the Panel would have taken note of the report. CPA reports are posted on the internet as they are published. They are available at www.parliament.the-stationery-office.co.uk.

13 Organizations are entered on the register when the Charity Commission grants it charitable status. Once on, they are supposed to keep the information current, but insufficient resources and the Commission’s reluctance to use its authority has meant that this has not occurred routinely. The register currently is undergoing a complete review. See Charity Commission, *Review of the Register: Framework for the Review of the Register of Charities* (1998); RR1—*The Review of the Register of Charities* (1999); and *Review of the Register: Maintenance of an Accurate Register of Charities Discussion Document* (1999). These documents are available at <http://www.charity-commission.gov.uk>.

14 “In 1996, almost one quarter of charities failed to provide annual returns and one third failed to provide annual accounts.” CPA, *Twenty-Eighth Report*, vi.

- seemed “unclear about the appropriate target for accuracy, and about the likely effectiveness of its planned measures to improve the register”;
- had “not had procedures in place to check that the prospective trustees of newly registered charities had not previously been removed from such posts by the Commission or the Courts”;
- had not made sufficient efforts with other public sector organizations to arrange routine receipt of information regarding potential trustees;
- had failed to meet its targets for obtaining charity accounts;
- had set targets for account submission that did not meet the legal requirement¹⁵;
- had failed to use its powers to ensure submission of accounts;
- had not always followed up matters of concern in a timely manner;
- had displayed “a lack of rigour during the testing of its new monitoring arrangements and [had failed] to use the material generated about individual charities”;
- lacked “a clear policy for dealing with charities which consistently ignore its requests for information about their activities and financial standing”;
- should keep the Committee informed of its progress “in developing an effective monitoring relationship with charities”;
- was slow in generating “management information about support work” and inefficient in exploiting fully that information;
- had accorded low priority to responding to charities’ requests for support, once the target time limit for responding to requests was passed;
- needed “to demonstrate that it is responding to charities’ suggestions for improvements in charity support”;
- needed to improve its record in rectifying “cases involving inefficiency or irregularity”¹⁶;
- should increase substantially the resources devoted to investigations;
- should review, in light of the lack of evidence supporting it, its assumption that abuse and maladministration were minor problems in the sector;
- saw its role as “first and foremost to support and promote charities” despite the fact that under legislation its “overriding aim is to promote public confidence in the charitable sector”;
- employed only 8 percent of staff on investigative work,¹⁷ more than a quarter on charity support work, and nearly a third on resource management tasks such as personnel, training, finance, and information systems;

15 “The Commission expects to set more demanding targets for larger charities’ returns, including a 100 percent rate for charities with an income of £250,000 or more; but this is not enough. We urge the Commission to consider a target of obtaining 100 percent of accounts from all charities with an income of £10,000 or more, in line with the legal requirement” (CPA, *Twenty-Eighth Report*, vii).

16 Over a nine-month monitoring period, only 17 percent of such cases were rectified (CPA, *Twenty-Eighth Report*, vii-viii).

17 This proportion was an increase on former levels, resulting from previous recommendations of the CPA. As a result of the 1998 report, the proportion has been increased again.

- “had made limited use of some of the powers” granted it under the Charities Act of 1993, and “had not yet set indicators or targets to reflect the requirements under the Act”¹⁸;
- had “achieved only eight of 22 performance targets in 1995/96, half of its targets in 1996/97, and expected to meet only two-thirds of its targets in 1997/98, despite the strengthened legislation” and a restructuring of management in 1995;
- “did not [systematically] pursue individual cases of concern arising from the questionnaire returns” sent out in the development phase of the new computerized monitoring system;
- “did not have a target for reducing the number of charities with no recorded income”¹⁹ despite its acknowledgement “that there were likely to be a lot of inaccuracies, particularly at the smaller end of the charitable sector”;
- had “failed to deliver the accuracy of the register [of charities] promised”²⁰;
- had failed to meet its legislative responsibility to maintain “a publicly available register of all persons removed as trustees by the Commission or the Courts”;
- could not demonstrate that recommendations for remedial action made to charities were followed up on a routine basis;
- had “frequently left outstanding for a long period [survey cases referred to the support or investigation division] with little or no action taken, or [with] relevant paperwork ... missing or ... destroyed”;
- had failed to use its power to demand response by charities to its mailings; and
- did not pursue potential matters of concern in a timely and thorough manner.

Although the CPA noted that the Commission was improving in certain areas,²¹ this record cannot be described in any other than highly negative terms. It could be argued that this poor performance was the responsibility of the current commissioners, but previous reports by the CPA in 1988 and 1991 had been equally critical of the performance of previous commissioners. Even passing the Charities Act of 1993, which granted increased powers to the Commission in order to assist it to achieve its mandate, appears not to have improved matters materially. From the minutes of evidence of the CPA’s proceedings, held on December 3, 1997, it is clear that the members of the CPA considered the Commission’s poor performance an ongoing problem, related as much to the structure and mission of the Com-

18 The Act provided for “new reporting and accounting arrangements and extra powers for the Commission to use in investigating charities and safeguarding charitable resources” (CPA, *Twenty-Eighth Report*, p. ix). Although portions of the Act did not come into force until March 1996, the Commission obviously had not made use of the three intervening years to prepare itself for its new responsibilities.

19 The National Audit Office found in 1997 that some 28 percent of charities had no recorded income.

20 “The Commission had set itself a target of obtaining comprehensive information on at least 90 percent of all active charities by 1993; but by 1997 it had only achieved 76 percent” (CPA, *Twenty-Eighth Report*, p. xi).

21 The abstract of the Commission’s 1998 Annual Report, *CC10—The Work of the Charity Commission for England and Wales in 1998 (1999)*, available at www.charity-commission.gov.uk, though it makes no mention of the CPA’s report, appears to indicate that some progress is being made. Given the history of the organization and the conflicted nature of its mandate, however, it is debatable whether the Commission deserves the benefit of the doubt, and doubtful whether any improvements will be sustained.

mission itself as to its management. (See Appendix A for extracts from the minutes.)

Inland Revenue and the Charity Commission

Happily for the United Kingdom, the Charity Commission does not have sole responsibility for supervising charity compliance with legislation. Inland Revenue's Financial Intermediaries and Claims Office (FICO) also plays a role, by monitoring tax exemptions claimed by charities. This is done simply by administering the existing tax regime, since the right to tax exemptions is decided by the Charity Commission.

On July 1, 1998, the CPA published a report²² examining FICO's performance, and concluded that FICO was performing its role effectively. Indeed, FICO received praise for developing new risk-based criteria for determining which charitable organizations should be audited, and for its educational work with charities. This is not surprising given the fact that FICO has a clear mission and the expertise to carry it out.

As well, it was apparent from the testimony given to the CPA that both FICO and the CPA regarded FICO's relationship with the Charity Commission to be less than ideal. Opinion was that difficulties stemmed partly from the fact that the Charity Commission reported to the Home Office and FICO to the Treasury, partly from legislatively-imposed restrictions on exchange of information and, in the eyes of at least one Committee member, partly from the differing agendas of the two organizations. Among other findings, the CPA concluded that the inac-

curacy of the register of charities maintained by the Commission posed a risk to the Exchequer. (See Appendix B for the detailed findings of the report.)

Lessons from the British experience

As detailed above, the Charity Commission experienced difficulty performing the oversight and regulatory functions assigned to it, seeing itself more as a friend and facilitator for the voluntary sector. This would appear to be a systemic problem, and an explanation is readily discernible. Under its current mandate, the Charity Commission must act both as friend and enforcer simultaneously. Given the natural sympathies one would expect to develop in people working with the charity sector, it should not be surprising that the Commission is a fairly good friend to the sector and a very poor enforcer of legislative requirements. Almost inevitably, any organization with similarly conflicting goals would experience problems of this kind.

In its consultation document, the Panel argued against expanding Revenue Canada's role in relation to charities, on the basis that the Department is primarily designed to be a "policeman," rather than a friend to charities, and that a culture change within the Department would be required if it was to perform effectively the other functions considered necessary to improve governance and accountability in the voluntary sector (*Helping Canadians*, p. 41). This point is valid, but the rationale applies equally on the other side. As it is not easy to see how a new VSC would not adopt the "friendly" culture of the Charity Commission,²³ it would appear wise

22 CPA, *Fifty-Fifth Report—Inland Revenue: The Monitoring and Control of Tax Exemptions for Charities* (1998), paras. 3-4. References are to the online version of the document at <http://www.parliament.the-stationery-office.co.uk>.

23 This is particularly likely in light of the fact that the staff of the VSC apparently are not envisaged as being civil servants, but rather long-term employees from the voluntary sector.

that “enforcement” responsibilities be reserved for Revenue Canada. Indeed, part of the Charity Division’s unpopularity in the voluntary sector may be attributable to its efficiency as an enforcement and regulatory body.

There is another phenomenon that is apparent in reviewing the CPA’s report on the Charity Commission—complacency. Over a period of years, under different management, the Charity Commission has demonstrated itself to be incapable of adapting itself to undertaking the roles expected of it, or indeed of improving materially its own efficiency, despite repeated injunctions for it to do so.²⁴ The Commission was not even conducting some of its charity support functions adequately. It is almost inconceivable that a body dependent on funding from the private sector would have survived with a similar record for so long.

The lessons of the British experience, therefore, would seem to be that:

- combining regulatory and charity support functions in one organization is inadvisable;

- revenue departments are well suited to conducting regulatory oversight work on charities;
- the Charity Commission model has shown itself to be an ineffective means of monitoring charities’ compliance with legislation;
- the Charity Commission’s performance in supporting charities has not as effective as would be expected;
- the Charity Commission functions well as a quasi-judicial body authorized to make determinations on charitable status; and
- the performance of a monopoly body with guaranteed funding and lacking full accountability is likely to be poorer than expected by advocates of centralization.

Overall, the Charity Commission model does not seem to be very attractive if one is considering administrative efficiency and effectiveness of regulatory oversight.

How Would the New Voluntary Sector Commission Work?

Bearing these lessons in mind, we can now proceed to examining the functions that the proposed VSC would assume. The Panel would have it that the new VSC would not have the same powers as the Charity Commission:

In Canada, jurisdiction over charitable organizations is shared, with federal jurisdiction limited primarily to matters related to the *Income Tax Act*; this alone

would cause a federal commission to be more restricted in its role than is the case for the Charity Commission in the UK” (*Building on Strength*, p. 64).

However, if one compares the aims and functions of the Charity Commission and the proposed VSC, they are remarkably similar.

²⁴ The CPA last reported, very negatively, on the Charity Commission in 1991 and 1988. Presumably the problems identified in 1988 had existed for some time previously.

The aim of the Charity Commission is to give the public confidence in the integrity of charities. This aim is underpinned by the following objectives:

- to develop an effective legal and accounting framework for charities; [this includes making decisions on charitable status]
- to promote the accountability of charities;
- to encourage standards and good practices in charities;
- to deal with abuse and poor practices; and
- to promote awareness of the role of charity and the Charity Commission.²⁵

In comparison:

[t]he four primary functions of the [Voluntary Sector] Commission would be [to]:

- [p]rovide support, information, and advice about best practices to voluntary organizations related to improving accountability and governance;
- [c]ollect and provide information to the public;...
- [e]valuate and make recommendations on registration of new applicants; [and]...
- [a]ssist organizations to maintain compliance with Revenue Canada and other regulatory requirements, and investigate public complaints (*Building on Strength*, pp. 58-61).

A closer look at the details concerning the VSC's relationship to government brings the similarity into sharper focus (*Building on Strength*, p. 63):

- it would be headed by government-appointed independent commissioners;
- it would report to Parliament through a minister;
- it would table an annual report with Parliament; and
- it would be funded by the federal government.

In each of these particulars, the VSC mirrors the Charity Commission. The Panel admits that "[I]n some respects, the model we have proposed bears a resemblance to the Charity Commission" (*Building on Strength*, p. 64), but in fact, it is difficult to spot differences between the two organizational structures and the responsibilities of each.

It also is of interest that the proposed functions and structure for the VSC are precisely the same ones outlined for a federal commission in the consultation document, though the wording is slightly different (*Helping Canadians*, p. 41). This being the case, it is puzzling to see the justification for the Panel's claim (*Building on Strength*, p. 62) that its recommendation for the establishment of a new VSC is based upon a blend of the discussion paper options for a federal commission and for a non-governmental agency.

If the rationale for this claim is not clearly discernible, the Panel at least lays out the basic principles that guided its thinking in regard to the establishment of a new VSC (*Building on Strength*, p. 63):

- the need for including expertise from the sector;

25 *Home Office Annual Report 1998-99, Part 9, Chapter 24: The Charity Commission*, para. 24.1. Available at <http://www.homeoffice.gov.uk/annrep/1998/hoar25.htm>.

- the desirability of enhancing the functions of intermediary and other voluntary organizations;
- the necessity of avoiding being either large or bureaucratic;
- the desirability of working through partnerships with the sector and others;
- the requirement of being accessible to the sector and the public;
- the need for secure and stable funding;
- the advantageousness of being insulated from political interference; and
- the desirability of being flexible enough to evolve over time.

Let us examine each of these principles in relation to the VSC's four primary functions stated above, as elaborated upon in the final report.

Expertise from the sector

This obviously would be a desirable ingredient, and the Panel foresees the VSC hiring a number of people with experience in the sector to fill key roles (*Building on Strength*, p. 64). However, it would appear that these employees would fill secondary positions, since the commissioners would be appointed by the federal government, on the basis of "expertise and merit." Of these five to seven appointees, only one third necessarily would be required have had extensive experience working or volunteering in the sector (*Building on Strength*, p. 63), which seems an insufficiently small proportion given the stated bases for appointments.

The Charity Commission, on the other hand, has only three to five commissioners chosen from the civil service, and at least two of them must be

qualified lawyers.²⁶ Given that the proposed VSC is to make recommendations on charity status, it would seem advisable that a requirement be instituted for a portion of its commissioners to have a background in charity law. The Panel notes that "[t]he strength of Revenue Canada is its expertise in auditing, not in determining charitable purposes in the first place" (*Building on Strength*, p. 59), but it is hard to see how commissioners lacking legal expertise could be much more expert in the matter. We will return to the question of determining charitable status below.

Enhancing the functions of intermediaries and other voluntary organizations

Many charitable organizations would welcome assistance in improving their performance, and undoubtedly improvements could be made in accountability and governance standards in the voluntary sector. The report envisages the VSC's efforts in this regard as being complementary to the work already being done by intermediary organizations, foundations, and other organizations. The VSC would operate primarily as a clearing house for information and ideas, in order to facilitate the wide distribution of innovative approaches. The VSC also would be authorized to provide funding for particular projects, though the overall level of funding that should be made available is not specified.

Though these activities might well be useful, past experience with government-sponsored information and education programs is not entirely positive. Part of the reason for this is that mass distribution is not necessarily the most efficient means of disseminating information. Organizations receiving this information might consider it interesting, but then they might not. The true test of whether information is useful is whether or not

²⁶ Charity Commission of England and Wales, CC2—*Charities and the Charity Commission*, p. 2.

it is put to use, and organizations intent upon improving themselves will seek the information that they need.

To be fair, the report does recognize that the main responsibility for capacity building and education should remain with the voluntary sector (*Building on Strength*, pp. 60-61), however, the case is not made that a new agency is required to take on any role in this area at all. There are number of initiatives being undertaken in this area by non-governmental organizations,²⁷ and in the internet age the importance of having a “one-stop shop” for information is declining every day.

Of course, there is another way of enhancing the functions of voluntary organizations, other than by improving their efficiency—by providing additional funding. If the justification for a VSC role in disseminating information is entirely convincing, the involvement of such a body in distributing federal funding is even less so. There are many existing agencies that fulfil this role. In any case, the federal government would be better advised to implement further measures to increase charitable contributions from individuals and corporations, most importantly by working to increase individual disposable income, one of the primary determinants of charitable giving.²⁸

Avoiding size and bureaucracy

The Panel does note a desire for economy in the VSC, though it is not clear from the wording of

the final report whether this desire stems from conviction or perceived necessity:

Although we believe that there is strong need for the new kind of agency we are proposing, we recognize that there is little appetite among governments or the public for the creation of large and expensive new machinery. The agency we are proposing, however, would be neither (*Building on Strength*, p. 63).

On this note, the final report states that the VSC:

...should have a small staff. Although it is difficult to estimate numbers at this point, a staff of less than 100, about the current size of the Charities Division of Revenue Canada, would probably be appropriate. (*Building on Strength*, p. 64)

Granted, it is difficult to estimate numbers, but a comparison with the staffing levels of the Charity Commission is instructive. According to the consultation paper, the Commission employs 700 people to deal (not so well, as we have seen above) with some 182,000 charities.²⁹ Currently in Canada, there are some 78,000 charities (*Building on Strength*, p. 13), and the staff of the VSC would be undertaking basically the same functions as their British counterparts, with the additional complications involving provincial jurisdictions. As well, given the widespread demand for a relaxation in the legal definition of charity, the new agency probably would be faced initially with a deluge of applications for charitable status.

27 The Drucker Award, The Donner Prize, CCP ethical fundraising and financial management codes, www.charityvillage.ca, and the accreditation procedures of the United Way and the Canadian Council of Christian Charities, to name a few.

28 Jason Clemens and Johanna Francis, “Charitable Tax Donations and Tax Incentives”, *Fraser Forum*, June 1999, pp. 12-14.

29 *Helping Canadians*, p. 42. The date for these figures is not given, though they are recent. In 1995-96, the Commission had 600 staff (CPA, *Twenty-Eighth Report*, p. viii) and in 1997-98 it had 549 (Charity Commissioners of England and Wales, *CC10—The Work of the Charity Commission for England and Wales in 1998*, p. 5). In April 1999 there were 186,823 registered charities (Charity Commissioners of England and Wales, *Press Notice 10/99*, April 28, 1999, p. 1).

In addition (and contrary to the practice of the Charity Commission), it appears that VSC staff would be involved (in a manner not made entirely clear in the final report) in “bringing the voice of the sector to the cabinet table” and in helping co-ordinate policy between government departments. These endeavours, which will be examined in detail below, would impose further work on VSC staff.

It would seem, therefore, that the Panel’s staff estimate is clearly far too low. Using the information quoted by the Panel, it would appear that, on a simple proportional basis, 300 staff would be required just to replicate the work of the Charity Commission.³⁰ This is further reason to examine carefully the scope of activities proposed for the VSC.

The Charities Division does manage with a staff of only a hundred or so, but this comparison is not meaningful, since the staff there is devoted primarily to registration and compliance work. They devote little time to the other activities envisaged for the VSC.

Working through partnerships with the sector and others

The primary VSC function most closely affected by this principle is that of assisting organizations

to maintain compliance with regulatory requirements. The VSC is to achieve this by working closely with Revenue Canada and voluntary organizations (*Building on Strength*, pp. 60-61). As we have seen in Britain’s case, ensuring co-operation on these issues between the revenue and a semi-autonomous body is easier said than done.

The report makes several concrete suggestions as to how this would work in practice, but unfortunately these raise more questions than they answer. To begin, it is recommended that the VSC would conduct an initial review of information returns, and help organizations complete them. It is not stated whether the returns subsequently would be forwarded to the Charities Division, but one would assume so.

The first observation to be made is that the staffing requirements for conducting a check of all information returns would be prohibitive.³¹ This being the case, the VSC would have to adopt a selective approach, but what this approach would be is not made clear.³² What is clear is that Revenue Canada personnel undoubtedly would be better qualified to conduct selective assessments than would VSC personnel, at least initially. What is more, Revenue Canada staff is motivated by the desire to minimize the loss of public funds,

30 Using the latest figures, the proportional staff requirement for a new VSC would be 235.

31 If one assumes that 15 minutes would be required to review each of the 78,000 returns (a conservative estimate since, at least at the start, few if any of those involved would have any experience in this task), a total of 19,500 person-hours would be required to perform the initial review. In all likelihood, the time required to contact and assist organizations not providing complete and correct returns would exceed this total. Assuming that the VSC would devote a quarter of its proposed staff to this activity (the Charity Commission devotes just over a quarter to charity support functions of all kinds) full time (7 hours a day), it would take some 111 working days, or *over five months just to review all the returns*. All other charity support work would have to be abandoned for that time, and the VSC still would not have helped any charity to complete its information return.

32 The final report does not offer any suggestions in this regard, the Panel apparently considering it possible that all returns could be scrutinized. It appears, however, that the Panel shares the outlook of the Charity Commission, that “a lack of capacity in very small organizations accounts for most of the problems, not wilful attempts to mislead or subvert the regulations” (*Building on Strength*, p. 60). Whether this belief would lead the VSC to concentrate its efforts on helping smaller organizations, or instead on checking up on those it considered to be wilfully subverting the regulations is an open question.

while the staff of the proposed VSC would be torn between conflicting motivations.

Presumably, since the submission of returns to the VSC would be mandatory, and since the VSC is to be funded by the federal government, voluntary organizations would not be charged a fee for having the VSC review their returns. This being the case, no doubt many charities would use this free service and request that their returns be reviewed. Given its mandate and its envisaged role as “coach,” it would be difficult for the VSC to refuse such requests. Since the VSC’s first response to improper filing would be to offer assistance, there would be a substantial incentive for organizations initially to be less than careful and thorough—in effect, to count on the VSC to complete what is properly their own work.

Quite apart from the workload created, it is difficult to justify having a federally-funded organization provide a free review service to voluntary organizations. Part of the expectation placed upon organizations benefiting from tax expenditures or direct government support must be that they be minimally efficient administratively. This includes proper filing of information returns. It makes little sense to provide a further indirect subsidy that has a side effect of encouraging laxity. The Panel is right in proposing less stringent reporting requirements for smaller organizations (*Building on Strength*, p. 31), however, proper reporting by charities should not be viewed as a burden imposed by government, but rather as a serious responsibility for voluntary sector organizations, related to their qualification for charitable status. Lack of resources is no excuse, since charitable status is a privilege entailing responsibilities, not a right to be used to invoke further taxpayer support.

Of course, the VSC could charge for the review service, but then it could hardly be made mandatory. And if it is not mandatory, there is little rationale for a single organization attached to the federal government being involved in the process. Other voluntary intermediary agencies, or indeed private sector organizations, could provide the same service.

The Panel sees the VSC being involved in another way, recommending that the VSC be empowered to impose intermediate sanctions in cases of continuing non-compliance. The final report provides only one example of such intermediate measures—publicity.³³ It is unclear how such a measure would relate to existing legislative restrictions on the release of tax-related information. As well, since negative publicity can entail serious and lasting financial consequences for charities, and as it cannot be expected that Revenue Canada will agree with all of the VSC’s decisions, using this sanction against an organization might expose the VSC to legal action brought by the organization. In cases where such intermediate sanctions proved insufficient, matters would be referred to Revenue Canada, where, it must be said, they properly should reside from the beginning.

To complicate matters further, the final report recommends that the VSC investigate public complaints. Currently, this function is performed by Revenue Canada, and there is no indication given in the report that it is doing this ineffectively. Again, as any decisions by the VSC resulting from investigation of complaints would be open to review by Revenue Canada, it is unclear why the VSC should play a role at all. Finally, it is assumed in the final report that the VSC would be working closely with the Department in all these areas, though it is not difficult to foresee problems arising from the proposed measures.³⁴

33 It is difficult to think of any others.

Being accessible to the sector and the public

The Panel recommended that the new VSC should be accessible and decentralized, qualities that undoubtedly are desirable in any publicly-funded body. The reasoning behind this recommendation is that the Panel considered it very important that a VSC be involved in collecting information and providing it to the public (*Building on Strength*, pp. 58-59). Measures to these ends suggested in the final report include “a sophisticated, but user-friendly web site, partnerships, regional offices ... and ... regional advisory groups” (*Building on Strength*, p. 64). Though commendable, this decentralization could well impose additional requirements for staff and resources. And if regional offices and advisory groups are considered necessary, why need they be combined into one central organization?

One rationale given for increasing public awareness is that Canadians, though holding a high opinion of the voluntary sector, know little about it. Increasing public awareness is said to be important because visibility enhances both accountability and public confidence. To this end, the Panel argues that:

...members of the public also need to have ready access to consistently reported information about specific organizations in order to make comparisons and personal decisions about their own giving and volunteering. (*Building on Strength*, p. 59)

Undoubtedly it is most important that donors take the responsibility for ensuring their donations are used appropriately, and the provision of such information might well be useful. However,

it is not clear why a new VSC is required to provide it. As the Panel itself notes, much information of this kind already is collected by Revenue Canada. Admittedly, however, although most of this information is available to the public, and although the Department is making efforts to improve accessibility, improvements could still be made.

The Panel’s proposed solution is to integrate the databases of the VSC and Revenue Canada, and make non-confidential data on individual voluntary organizations available free of charge on the VSC’s internet site (*Building on Strength*, p. 59). If a single, centralized database is desired, however, there is no reason why Revenue Canada could not accomplish this on its own, given the requisite authorization and resources.

Why a single, centralized, publicly-accessible database is necessary, however, is not clear. The Panel itself recognizes that donors typically are not interested in obtaining information about *all* charities, but rather about all charities of *a certain type*, or charities in their local area. In any case, whatever reporting requirements are imposed, potential donors are likely to contact charities directly for more complete information, and to get to know the staff. Furthermore, raw information on particular organizations of the kind now collected by Revenue Canada is not necessarily the most useful to potential donors. Alternatives to the centralized model will be discussed below.

Another issue related to transparency is the current restriction on Revenue Canada from releasing information regarding applications for charitable status. This undoubtedly causes much wasted effort both on the part of applying organizations and the Department. The Panel uses this

34 For example, late submission of returns to the VSC, direct submission of returns to the Charities Division, appeals by organizations directly to the Charities Division, disagreements between the VSC and the Charities Division on specific cases, conflicting guidelines being issued, delays in forwarding of returns from the VSC to the Charities Division, organizational rivalries, clashing organizational cultures, etc.

point to argue that the VSC should be involved in making recommendations to the Department on applications for charitable status, saying that the VSC could then make the information public. This by itself, however, is not reason enough to involve the VSC in this process, for as above, Revenue Canada could simply be authorized and required to make public its decisions in this regard.

Finally, the Panel raises the valid point that it is necessary that adequate information be collected on the sector as a whole. They suggest that the VSC:

work with Statistics Canada to ensure that adequate data are collected about the sector as a whole, and that they are available to those in the sector, and to those seeking information about it... (*Building on Strength*, p. 59)

Although it would be desirable for Statistics Canada to collect and make public additional data on the sector, it is unclear why Statistics Canada should require the assistance of a VSC to accomplish this task. In any case, the voluntary sector already is establishing information sources of its own,³⁵ and further resources of this type will develop as demand for them grows over time. What is more, university and in-sector researchers are generating increasing amounts of information and analysis about the voluntary sector, and this work is being made accessible. Considering all the above, it is hard to see how a VSC could justify its involvement in gathering or disseminating information on the sector.

Secure and stable funding

The Panel believed that it was necessary for the new VSC to have secure and stable funding, and

recommended that this funding be provided by the federal government (*Building on Strength*, p. 63). There are a number of observations to be made in this regard.

First, it is the dream of every organization to obtain secure and stable funding, and such a situation does have its advantages: it encourages long-term planning, and reduces the amount of work required to keep the money flowing in. Security and stability do have side effects, of course. Historically, organizations with assured funding tend to be less productive, less innovative, and less responsive than those who have to work hard to keep themselves afloat. The Charity Commission is a perfect example of this phenomenon. Another consideration to keep in mind is that, as we have seen in recent years, government funding for particular programs cannot be assured. There is no reason to expect that a VSC would be immune from this danger.

Diversification of income sources is another way of achieving stability, one that should be considered as an alternate arrangement to full government funding. The new VSC could charge for its services and, if it were not given any regulatory powers, it could raise money through donations from the corporate³⁶ and voluntary sectors. Were this latter course to be pursued, however, the rationale for having a VSC attached to the government would be weakened somewhat.

There is another reason, however, why diversifying income sources would be advisable. Any organization completely dependent for funding on the body to which it reports is highly susceptible to being influenced by that body. If this appears not to have been the case with the Charity Commission, this is because the British Parliament, though willing to criticize the Commission's per-

³⁵ The best example in Canada is www.charityvillage.com. The Fraser Institute, the CCP, the Canada West Foundation, and the Voluntary Sector Roundtable also are involved in initiatives along these lines.

formance, so far has not been disposed to interfere directly in its operations. One could not expect this inclination to persist if the Charity Commission's performance continued at its current level.

Insulation from political interference

In its reports, the Panel stresses the importance of maintaining a degree of independence for the new VSC (*Building on Strength*, p. 50; *Helping Canadians*, p. 42), like that enjoyed by the Charity Commission. But we have seen that such an arrangement does not seem well suited to ensuring good performance. There are a number of aspects of the final report, however, that appear to indicate that a somewhat closer relationship than this is foreseen, or that one would develop naturally over time. Although this might well improve government oversight of the VSC, it would seem to undermine the rationale for having an arms-length body.

The first thing that catches the eye in this regard is the proposed arrangements for the "independent" commissioners. To begin, it is difficult to understand why five to seven commissioners would be required to run a staff of 100, when the Charity Commission has three to five commissioners to run a staff of 700. More to the point, it is not clear in the final report either that these commissioners would lend credibility to the VSC, or

that they would be insulated from political interference. It is stated that the commissioners would be appointed on the basis of expertise and merit, but it is only required that one-third of them have any extensive experience in the sector, and no requirement is mentioned for the legal expertise necessary to making decisions on charitable status. This leaves the nature of the expertise and merit of the other two-thirds open to question. On their own, these two qualities are not sufficient to ensure public confidence in an organization, as may easily be seen if one considers public perceptions of the Canadian Senate. If commissioners are to be appointed, they should be fewer in number, at least a two-thirds of them should have extensive experience in the sector and, if the VSC is to have a role in determining charitable status, at least one-third of them should have the requisite legal expertise.

More troubling is the Panel's recommendation that:

...the federal and provincial governments ensure that the voluntary sector has a voice in government policy making, by assigning responsibility for the sector to a specific Minister, and by creating small, horizontal policy units to help coordinate the activities of various departments engaged with the sector. (*Building on Strength*, p. iv)

³⁶ The report notes (*Building on Strength*, p. 19) that corporations prefer to give money directly to service organizations rather than to intermediary groups, and raises the question (*Building on Strength*, pp. 20-21) of corporate "responsibility." Though this issue is beyond the scope of this paper to address in detail, some observations should be made. As the report itself acknowledges, corporate support for charity is motivated by business strategy, not philanthropy. This is as it should be. It is unclear why shareholders, whose portion of corporate earnings are taxed both at the corporate and individual levels, and who, additionally, are subject to capital gains tax, should be considered as having a greater responsibility than others to support charity. The Panel's recommendations regarding corporations' reporting their support for charities, and the setting of targets for levels of corporate support, are therefore misguided. Such matters are best left to individual businesses to decide on their own, and no government pressure should be brought to bear on them in this regard. As the final report notes, the goal of charity legislation is "to provide an incentive for people to give to causes that we, as citizens, deem to be of benefit to society." (*Building on Strength*, p. 50). Placing public pressure on individuals to do so, either directly or indirectly, is quite a different matter.

This modification to cabinet organization in governments across the country is justified on the basis of comparison and with the obvious desire to increase government funding for the voluntary sector:

Imagine how absurd it would seem if agriculture, the financial services or natural resources sector were not represented at federal or provincial Cabinet tables. Arguably, the voluntary sector is as important in its economic impact and social significance. It is also essential to how governments carry out their own core business. Yet, with the exception of British Columbia, no Canadian government has a Cabinet minister ensuring that the sector's interests are represented at the strategic policy and resource allocation stage of government decision making. In one sense, every Cabinet minister might claim to speak for the sector...[b]ut, secondary and fragmented voices are seldom as powerful or constructive as that of a designated minister." (*Building on Strength*, p. 17)

This argument seems to have originated during the consultation period from a suggestion made by the CCP:

Despite the complexity of the public sector-voluntary sector relationship and the size of the sector (charities alone account for more than 12 percent of the country's GDP), there is no body at either the federal or provincial level anywhere in Canada that deals with the voluntary sector as a whole...In sum, the voluntary sector lacks a point-of-contact and liaison within government similar to those available to the much-smaller farm and agri-food sector, for instance, or the financial services sector (Finance), or any of the resource and industrial sectors (the federal departments of Natural Resources, Fisheries and Oceans, Industry, Tourism and their provincial counterparts)." (CCP, *Submission to the Panel*, pp. 7-8)

There is much to consider here. First, recommending changes to cabinet structures would seem to be a bit beyond the original aims that were to have guided the deliberations of the Panel. Second, the actual size of the charity sector is closer to 5 percent of GDP. In any case, it is not absurd to question whether having the charitable sector represented at the cabinet table is in the public interest. The track record of governments in "managing" or "coordinating" various sectors of the economy cannot be said to be unblemished. It also should be noted that, although charities perform many functions that otherwise would be performed by Canadian governments, whether or not these functions *should* be the "core functions" of government is open to debate on both economic and philosophical grounds.

The role to be played by the proposed "horizontal policy units" also bears consideration:

The job of the policy unit would be to work horizontally within government with the primary goal being to provide some coordination across line departments relative to their programs and policies for the sector. We do not imagine that such a policy unit would, nor should be one-stop shopping for the sector. Nor should it would (sic) replace the direct relationships that line departments have with voluntary organizations. At the federal level, such a unit might continue the work of coordination begun by the Task Force on the Voluntary Sector and could also play an important liaison role between government departments and the ... [VSC]. (*Building on Strength*, p. 17)

Although it is not stated clearly, it would appear that such units would be created at the federal and provincial levels, and that the staff of these units would be drawn from the civil service. It is not immediately obvious why creating new bodies of this nature would improve coordination between Departments, the staffs of which presumably coordinate their efforts already. By

creating new points of contact between the voluntary sector and government Departments, the move might actually increase confusion rather than coordination. The only thing that can be said for certain is that the creation of such policy units would result in more people talking to each other.

As far as the “liaison role” between the VSC and government departments is concerned, it is not clear how this is related to the stated goals of the VSC. The Panel states that the VSC “should not be seen as *the* advocate for the sector” (*Building on Strength*, p. 60), however, given the likely nature of the VSC’s relationship with the federal minister responsible for the voluntary sector and with the horizontal policy unit, and its “liaison” functions with other government departments, it is difficult to see how this perception would not evolve over time into reality.

This relates directly to the question of political advocacy. Though the Panel is correct in saying that vibrant voluntary organizations are beneficial to democracy (*Building on Strength*, p. 9), this must not be confused with advocacy by charitable organizations for changes in legislation or increases in funding that would benefit only a portion of society. Lobbying for increased government spending on charitable endeavours essentially is no different than industry lobbying for special privileges from government, and neither should be considered as being charitable in a legal sense.³⁷

Finally, there are serious questions to be asked about the effect of the voluntary sector being “plugged into” government in this way:

A deliberately provocative way of putting the problematic contemporary relationship between the state and charity is that as compared with the welfare state, which at once supplanted charities and co-opted them to government purposes, the contemporary state is becoming a charitable intermediary or foundation and charities are becoming state actors... Where the state no longer views itself as sole or even principal provider of public services, it becomes a part-supplier of funds for public purposes in a market of fund suppliers. Its role becomes indistinguishable from that of the charitable foundation, which attempts to prioritize and do distributive justice among a broad range of good causes soliciting its support. The principal differences, of course, are obligatory contribution to the state “foundation” through taxes and the large number of donors to whom the “foundation” is accountable... When the charity becomes a public service provider that is the locus of collection and disbursement of public monies for that service ... the “intermediation” of the state effects a shift toward charities as the ultimate state actors. The point is that with a fully intermediated state funding function, charities would not (sic) longer be supplementary, discretionary add-ons to what was otherwise state service provision. They would instead become the executive arm of the state.³⁸

To carry the argument a step forward, it should be noted that there is a clear distinction between voluntary organizations acting primarily as agents of a democratically elected government or as a collective expression of the charitable wishes of individuals. There are two key points to note in

37 For an extended discussion of political advocacy, arguing for replacing present quantity control measures with quality control measures, see Brian R. April and Michael A. Walker, “Public Policy Institutes as Charities,” Vancouver, Fraser Institute, 1999.

38 R. Janda, “Flirting with the Devil while Doing God’s Work”, paper prepared for the “Charities: Between State and Market” conference held at the Faculty of Law, University of Toronto, January 1999. The final version of the paper is forthcoming, as part of a collection of work sponsored by the Kahanoff Foundation.

this regard. First, there is the question of compulsory versus voluntary donation. Second, anyone with any familiarity with the political process would have to admit that government decisions on funding priorities are influenced by party political considerations.

Once again, it is beyond the scope of this paper to examine this in detail, but the issue obviously is an important one and both the charitable sector and governments should enter into any such new arrangements with their eyes open. It should be noted, however, that the voluntary sector need not develop into the executive arm of the state. An alternate model is available, in which the role and influence of the state “foundation” is reduced, permitting individual citizens and voluntary organizations to play a greater role in determining the nature and character of services that should be provided. Both alternatives should be kept in mind when discussing “capacity building.”

An Alternative View

As discussed above, it appears that the Panel began with the idea that, in order to maximize the effectiveness of the voluntary sector, a central agency of some sort was required to perform a number of functions. The Panel never makes clear why this necessarily should be the case, nor does it examine other possibilities. It is instructive to abandon the Panel’s premise and look specifically at what needs to be achieved.

From the final report, it would appear that the Panel believes that a VSC is required to achieve improvement in four major areas:

- modernizing the registration process to provide for more openness
- improving accountability in the voluntary sector

Flexibility to evolve over time

If one is concerned with maintaining flexibility, the lesson of the ages is clear: do not set up a monopoly bureaucratic body with assured funding and without full accountability. The only evolution natural to such bodies is towards gigantism, stasis, and complacency.

If a VSC is to be established, its tasks must be kept to a minimum and its mission must be unambiguous. Given the Panel’s stated support for the principle of outcome-based assessment, a VSC should be made subject to the same constraints and expectations it is considered desirable to impose on voluntary organizations. As well, measures should be put in place at its inception with a view towards gradually weaning it from dependence on government funding.

- improving governance in the voluntary sector
- improving public knowledge of the voluntary sector

Determining charitable status

Because of the recent Supreme Court decision *Vancouver Society for Immigrant Women and Visible Minority Women v. M.N.R.* (1999), the issue of charitable status is presently under review by Parliament, and rightfully so. As the Panel notes:

The determination of which organizations get the full benefits of the federal tax system ... and the assignment of privileges and responsibilities associated with it is inherently political, involving tradeoffs in values and expenditures. It therefore

should be decided as public policy by legislatures, not by courts. (*Building on Strength*, p. 53)

The Panel also notes its support for the “charity plus” model for defining charitable status (*Building on Strength*, p. 54, as advocated by Arthur Drache) which indeed would be a dramatic improvement over current arrangements.

Whatever Parliament decides in this regard will determine, in large part, whether a new body is required to participate in the process of charitable registration. If a statute was promulgated and current arrangements maintained, Revenue Canada would continue to make determinations on charitable status, and the courts would continue to hear appeals. Arrangements might be changed slightly to set up a special appeal body to reduce the cost to applicants of lodging appeals.

If, on the other hand, Revenue Canada were given discretion to interpret the law, with or without statutory guidance, then there would appear to be no need for any other body to become involved. If it were considered that the Charities Division lacked the expertise to make such determinations, a small group of legal advisors could be assembled to assist. This group could be attached to the Department, or set up as an independent quasi-judicial body. Alternatively, the responsibility for determining charitable status could be given over directly to such a body. There would be no need for this body to be involved in any way in charity support, regulation, or oversight.

In the opinion of the Panel, the VSC should play a key role in the registration process:

[W]e propose that the [Voluntary Sector] Commission evaluate and make recommendations to Revenue Canada regarding registration of new applicants. The advantage of evaluation and recommendation for registration by the Commission rather

than by Revenue Canada is twofold. First, greater expertise could be applied to the determination of charitable purposes. Admittedly the discretion involved in these decisions would be reduced if the categories of public benefit organizations permissible for registration were laid out in legislation. Second, applications for registration and the reasons for the Commission’s recommendation for either acceptance or denial could be routinely made public. Should an organization wish to challenge Revenue Canada’s decision, it could appeal the decision to the courts, preferably the Tax Court ... [in order to make the appeal process more accessible and less expensive]. (*Building on Strength*, pp. 59-60)

Two observations should be made on this proposal. First, as stated above, establishment of a VSC is not the only means by which decisions on registration could be made public. Revenue Canada could simply be authorized and required to do so. This would be much less expensive than creating a new body for the purpose.

Second, it is by no means clear that the VSC would have greater expertise than Revenue Canada. In discussing the staffing arrangements for the VSC, the Panel mentions only that key personnel would be hired from the charitable sector, but it is debatable whether recommendations on registration should be made by people who have been involved in the sector for a long time, unless they can demonstrate expertise in the area of determining charitable status. This is particularly important given the possible politicization of the registration process.

If interpretation of the law is to be involved in registration decisions, then legal expertise is required. As mentioned above, the Panel recommends no requirement for legal expertise either for the key staff to be hired from the sector, or for the appointed commissioners. Further, if legal expertise is what is required, there is no argument

presented that the Department lacks legal expertise or that, if it does, why such expertise could not be developed within or attached directly to the Department. On the other hand, if familiarity with dealing with registration cases is what is required, the Department clearly would be better qualified, at least initially, than would a VSC.

The Panel makes another recommendation related to registration:

We recommend that as a condition for registration under the federal tax system, charitable organizations be required to adopt the ethical fundraising and financial accountability code developed by the Canadian Centre for Philanthropy, or an equivalent code. (*Building on Strength*, p. v)

It is not clear whether the Panel intends that applicants adopt one particular “ethical” code, or one of a selection of “acceptable” codes. Nor is it clear who would determine which code(s) would be acceptable. Of course, there is nothing wrong with codes of this sort provided they are adopted voluntarily. Organizations should be free to develop and adhere to codes as they see fit, so long as these do not violate legislation. Donors then could use these codes or seals of approval, as they do now, to assist them in taking philanthropic decisions.

However, risks arise when any particular ethical code is made mandatory. Imposing such a code would place an additional administrative burden on charities and, depending on the stipulations in the code, might unnecessarily restrict the activities of some charities. An example from the CCP code mentioned above will demonstrate this.

Paid fundraisers, whether staff or consultants, will be compensated by a salary, re-

tainer, or fee, and will not be paid finders’ fees, commissions or other payments based on either the number of gifts received or the value of funds raised. Compensation policies for fundraisers, including performance-based compensation practices (such as salary increases or bonuses) will be consistent with the charity’s policies and practices that apply to non-fundraising personnel.³⁹

The problems with this particular clause are two-fold. First, it would restrict the ability of smaller organizations to expand their fundraising efforts, particularly if a short fundraising campaign were desired. Smaller organizations often lack sufficient resources to invest in fundraising, and it is more important to them that investment in fundraising provide a positive return. Tying fees paid to the returns received allows smaller organizations to minimize their exposure to loss, and facilitates their fundraising efforts.

Second, it is not clear why the payment of commissions to fundraisers is so different in ethical terms from performance-related compensation practices such as salary increases and bonuses, as to disqualify an organization paying commissions from being granted charitable status. Commission-based sales are legal in this country, and many Canadians would not consider commission-based fundraising to be objectionable. This being the case, why should the subjective judgement of a particular group be imposed upon all charities? Potential donors objecting to the practice could take individual charities’ practices in this regard into consideration. Charity legislation should not discriminate merely on the basis of subjective morality, however well-meaning, because disastrous consequences could result from a failure to be guided by reason rather than emotion.

³⁹ *Building on Strength*, p. 110. The original *Ethical Fundraising & Financial Accountability Code* is available at the CCP’s web site, www.ccp.ca/documents/cp126.htm.

Together with the restrictions on fundraising, the CCP code includes a section on ethical financial accountability. Here again, there is nothing inherently wrong with such standards, so long as adherence to them is voluntary. Donors may prefer to give to organizations with some such code, voluntary organizations may consider it worthwhile to promulgate their own codes, and intermediary organizations may wish to include a code as part of their accreditation process. In some cases, however, the above may not apply, and making such codes mandatory merely would increase the administrative burden on the sector.

In any case, merely promulgating or adhering to an ethical code will not prevent determined wrongdoing. Indeed, the voluntary accounting codes that currently exist in Canada, most importantly that of the Canadian Institute of Chartered Accountants, are far more effective in checking abuse than any “ethical” code could expect to be.

There is one final point to be mentioned here. The CCP’s ethical fundraising and financial accountability code was posted onto its internet site on June 2, 1998. According to the web site, as of June 23, 1999, 52 charities had indicated to the CCP that they had adopted the code.⁴⁰ This does not indicate a high degree of interest in this particular model.

Voluntary intermediary organizations

The example of the United States, and indeed of Canada itself, demonstrates that voluntary intermediary organizations are very capable of successfully improving governance and accountability in the voluntary sector, and of providing information and improving accessibility. The final report does recognize the important role played by voluntary intermediary organizations:

In the interests of building capacity in the sector, we propose that governments reinstitute and increase a modest core funding of intermediary organizations in order to support their important work in promoting and enhancing improved governance and accountability by their member and grassroots organizations (*Building on Strength*, p. 19).

The report also recognizes that the VSC should not

have the major responsibility for education or capacity building in the sector. These important tasks would remain the fundamental responsibility of voluntary sector organizations. The mandate of the [VSC] would be to enable and work with them. (*Building on Strength*, p. 61)

Voluntary intermediaries, such as the United Way, are a vital component of the charitable sector. They act as a critical link between donors and agencies providing an important source of self-regulation as well as a conduit through which individuals are able to donate.

The self-regulation of non-profit organizations is achieved voluntarily through both the accreditation process as well as through the on-going grant process. Intermediaries accredit independent organizations according to a number of factors including mandated mission, community responsiveness, financial management, accountability, transparency, financial resources, and board governance. Agencies wishing to receive financial support and/or accredited status with a particular intermediary must achieve, on an on-going basis, certain operational and financial standards.

The accreditation process is an important source of self-regulation that should not be underesti-

⁴⁰ *Ethical Fundraising & Financial Accountability Code*, pp. 7-9.

mated. The process frequently involves multiple levels of accreditation. The analysis involved in seeking and attaining accreditation is quite detailed often involving not only quantitative details such as financial statistics but also qualitative details such as the agency's mission, the community served, the value-added, and necessity of services provided.

Accrediting agencies, such as the United Way or other voluntary intermediary "alternative funds" in the US, place their reputations in jeopardy when they accredit agencies. The voluntary intermediary, through the accreditation process, validates the productivity and usefulness of accredited agencies. Such accreditation processes inevitably also place pressure on non-accredited agencies to conform to a particular set of standards and operational practices. The voluntary accreditation process must, therefore, be viewed as a valid and productive alternative to mandatory regulatory and governance codes.

A second function of voluntary intermediaries is donation collection. Intermediaries are able to achieve economies of scale by collecting workplace and general donations from individuals, corporations, and foundations and then redistributing them to their member agencies. The key point here is the ability to arrange deductions directly from payrolls. Intermediaries thereby reduce the search costs of donors by providing a standard for charitable donations as well as assuming the responsibility for monitoring and control of recipient agencies. Thus, voluntary intermediaries reduce the transaction costs associated with the non-profit sector, namely donation granting, donation acquisition, and agency monitoring. Intermediaries typically also provide a

plethora of information regarding their funded and accredited agencies.

Unfortunately, Canada has not experienced the rapid growth in voluntary intermediaries the United States has witnessed. Since the 1970s, when alternative funds⁴¹ were introduced in the United States on a national scale, the number of funds has grown by 40 percent to a total of 208 funds.⁴² In Canada, apart from the United Way, there are very few voluntary intermediaries and none with a comparable national presence. This does not, however, imply that such voluntary intermediaries cannot develop, and indeed, flourish in Canada.

The alternative funds in the US vary in both form and focus (see Appendix C). For instance, some alternative funds, like America's Charities (Web site: www.charities.org) and the Independent Charities of America (Web site: www.independentcharities.org) attempt to replicate the general nature of the United Way by supporting a broad range of agencies with differing needs and focuses. Other alternative funds, such as the National Voluntary Health Agencies (Web site: www.nvha.org), Earth Share (Web site: www.earthshare.org), and Animal Funds of America focus on specific segments of the charitable sector, such as health and the environment. Still other alternative funds, like the National Black United Federation of Charities (Web site: www.usbol.com/nbufc), Christian Service Organizations of America, Women's Charities of America and Children's Charities of America focus on a particular demographic group, whether it is women, children, or African-Americans.

An alternative fund that focuses solely on local charities is the Local Independent Charities (Web

41 The generic term used in the non-profit sector for voluntary intermediaries other than the United Way.

42 National Committee for Responsive Philanthropy (1997), *Charity in the Workplace 1997*. Available on the internet at www.ncrp.org.

site: www.lic.org) organization. Local Independent Charities networks local organizations to enable them to participate in national fund raising campaigns while retaining their local character.

The US also maintains a number of locally-based intermediary organizations such as the Black United Funds, the Asian and Hispanic Funds, Social Action Funds, Women's Federation, Environmental Funds, and United Arts Funds. All of these local funds are restricted to specific municipalities or regions. For instance, the Black United Funds operate in 20 separate locales in the US and distribute grants to non-profit organizations assisting African-Americans and other minority groups. However, unlike the national funds, there is no national presence for local intermediary funds. Similarly, the Environmental Funds operate in 19 localities, the United Arts Funds have 34 separate campaigns, and the Social Action Funds maintain 44 city and state agencies.⁴³

The competition between national and local intermediaries facilitates the efficient allocation of donated resources and the maintenance of sound governance systems. That is, competition between voluntary intermediaries for donations and resources ensures that the maximum amount

of monies are re-distributed (that is, administrative costs are constrained) to worthwhile and productive non-profit agencies. It also provides donors with greater information and choice regarding the direction and nature of their donations. In fact, most voluntary intermediaries maintain extensive web site and published materials. Finally, competition provides an additional source of specialization in the management and operation of alternative funds given their particular focus and emphasis.

In Canada, voluntary intermediaries predominantly take the form of local United Ways. Canada lacks any serious alternative national or local intermediary to the United Way. Based on a population comparison with the United States, Canada should have approximately 20 intermediaries. Nonetheless, voluntary intermediary organizations represent a plausible and efficient alternative to government regulation and accreditation. The evidence from the United States suggests that competition between intermediaries and specialization can encourage sound management and promote increased provision of information of the type desired by donors. This being the case, there would seem to be little justification for the involvement of a VSC in these roles.

Conclusion

Having examined the Panel's consultation paper and the final report, one could be forgiven for remarking that the proposed Volunteer Sector Commission appears to be an organization looking for a mission. The Panel's preference for a VSC was clear in the consultation paper, and this model emerged as the final re-

port's recommendation despite the fact that apparently more support was expressed during the consultation process for a non-governmental agency. Neither in the consultation paper nor in the final report is any convincing argument made for the establishment of a VSC with such wide powers. Indeed, centralizing as many func-

⁴³ National Committee for Responsive Philanthropy (1997), *Charity in the Workplace 1997*. Available on the internet at www.ncrp.org.

tions in one agency as possible seems to have been an *idée fixe* of the Panel, for no consideration was given to options involving decentralization and specialization.

As well, the Panel argued that the VSC be established rapidly, despite the lack of any urgent need to abandon deliberation, and in contradiction with its own recommendation that federal-provincial agreement on a range of issues be reached before the establishment of the VSC. What is more, the Panel's published work takes no account whatsoever of the serious deficiencies in the practical application of the model it proposes, as exemplified by the Charity Commission of England and Wales.⁴⁴ It is difficult to view such an omission in a positive light.

This being the case, it is essential that Parliament scrutinize extremely closely the Panel's recommendation that a new VSC be formed. A change of this nature would have substantial impact on the sector and on its relations with governments. There is no crisis demanding rapid action, and no need to rush into something that quite clearly has not been justified by the evidence and argument presented by the Panel.

In its deliberations, Parliament should give consideration to encouraging the development of voluntary intermediary organizations, rather than to creating the VSC recommended in the final report. The tasks allotted to this VSC are too wide-ranging for one body to perform effectively. Most particularly, the combination of regulatory responsibilities with "coaching," "facilitating," and "enabling" is unlikely to prove a happy one. Regulatory and oversight functions should remain with Revenue Canada.

What is more, the VSC could not possibly perform much of any value at the level of staffing suggested in the report. A role might exist for a derivative of a VSC, in conducting or advising on determinations of charitable status. This would depend on Parliament's decision on future arrangements in this regard, but if these tasks were to be given to a VSC, it would seem wiser that this function be insulated as much as possible from possible political interference from both the sector and governments. An independent panel comprised of legal experts, armed with updated directions from Parliament, would be an attractive option.

As far as the other functions envisaged for the VSC, there does not appear to be any reason why such a government-funded national body needs to be established. Voluntary intermediary organizations already exist that can perform many of these functions, and it can be expected that others will be established as demand for services of this type grows. If government funding is to be extended to such organizations, it must be tied to their success in achieving performance targets and acquiring funding from other non-government sources. This should not be considered as necessary, however.

The great strengths of the voluntary sector are that it is voluntary and diverse. Are Canadians to be trusted to make the right choices about which types of charitable activity, or which particular charitable organizations, should be supported? If so, governments should gradually reduce their involvement in the charitable sector, and concentrate on increasing incentives to give and on pursuing policies that will generate wealth and increase personal disposable incomes.

44 It is not clear from the published work of the Panel whether they contacted the Charity Commission, though the Commission's web site is mentioned (*Ibid.*, p. 97 note 56). The Panel apparently did contact the National Council of Voluntary Organizations in England (*Helping Canadians*, xiii), which undoubtedly should have been aware of the CPA's hearings on the Commission, and its past history.

Appendix A

Extracts from the Minutes of Evidence of the Committee of Public Accounts (UK) Enquiring into the Performance of the Charity Commission, December 3, 1997⁴⁵

The following extracts highlight the major concerns expressed by the Committee members. Though not all members are quoted below, the Committee was unanimous in its dissatisfaction with the Commission's performance.

(Mr. Richard Page) "Well, I am glad you refer to the central Monitoring Unit and I am going to look you straight in the eye and say that accounting officers have come in front of this Committee for more years than I have been on it, which is quite a long time, and they have said, 'Do you know, you are absolutely right. It has been terrible, but *mañana* the sun is always going to shine' and I am now back in 1997 after a *mañana* of 1990 and the sun is not shining... [W]ith all of this happening, why should charities even bother to communicate or talk to the Commission because, firstly, the responses get lost, the files get put away if they do not get answered ... I mean, why should any charity take the Commission seriously? All they have got to do is sit there, not reply to you and you will go away ... I am able to tell you, Mr. Fries [Chief Commissioner of the Charity Commission], you have been rescued by the Chairman... (Chairman) That being so, Mr. Fries, there were a number of questions from Mr. Page you could not answer." (*Twenty-Eighth Report*, pp. 7-8)

(Mr. Williams) "May I say that there is a series of other examples of what I regard as neglect or incompetence here and now all testified to by the NAO [National Audit Office] and I must say that this is one of the gloomiest and most dismal reports I think we have ever had to hear about." (*Twenty-Eighth Report*, p. 10)

(Mr. Leslie) "As already mentioned by Mr. Williams, the 1991 report was not glowing, but this report by the National Audit Office is not glowing, either ... I am just struggling to find many success stories actually... I wonder whether you are focusing the aims and objectives of the whole organization sufficiently properly, because a lot of worries which have been expressed so far are about whether you are following up on these charities on their propriety... I am concerned that there is a Charity Commission going along with £23 million-worth of taxpayers money, doing various amounts of work, and there is a whole load of charities out there which have very poor interaction with you... The problems I see in this report are that you are too slow, you have a very poor record, you have insufficient response from the charities and insufficient support for the charities, there are a lot of delays and there is a lack of coordination. This is all from the report. What is it actually going to take for your organization to clear up this mess? Does it need a complete, radical overhaul? Does it need a whole fresh look at the organization of the Charity Commission itself?"⁴⁶

(Maria Eagle) "Mr. Fries, I have been struck listening to my colleagues and your responses by your complacency, I have to

⁴⁵ *Twenty-Eighth Report*, pp. 1-18

say. I took the view when I first read this report that it was still pretty damning, but that perhaps it might represent some progress over the even more damning reports of the past. However, I must say that listening to you, you have rather put me in a tougher frame of mind... I still think that the picture I built up from these examples is of an organization that has not got to grips with managing its staff and making sure you are carrying out your core functions efficiently... You said to one of my colleagues that you saw the Charity Commission primarily as a legal service to charities in replacement of the old Chancery Court, and although clearly a function I find that a remarkable way of defining your role as a Commission. I think what the public see you as is a guarantee that the charities they give money to are properly run and effective... Some of my colleagues have already raised the question of investigations not being carried out frequently enough where potential abuse is discovered..." (*Twenty-Eighth Report*, pp. 14-16)

(Mr. Campbell) "[Y]ou spoke of your assumptions about the motives of some of those people involved in maladministration and you seem to imply ... that they often did not, in your view, intentionally set out to maladminister and it is a question of supporting them and educating them and giving them guidance, whatever. We have heard that before from other organizations and it leads us often where there is a lot of public money involved, and we have heard the phrase already this evening, to suggest a certain complacency in that. There are assumptions that you begin with and it then sets the ethos for your organization and it then can often, and this concerns me greatly, means that you do not pursue effectively what is happening to public money, not just the public money that is given to you to spend to discharge your duty properly, but other money which is given by the public to charities." (*Twenty-Eighth Report*, pp. 17-18)

⁴⁶ *Twenty-Eighth Report*, pp. 10-12. Mr. Fries replied that the Commission was undergoing a complete overhaul in order to conform to new expectations. These expectations were set out in the Charities Act of 1993, over four years before his testimony to the CPA. It would not appear from the testimony that any substantive action had been taken by the Commission until 1997.

Appendix B

Committee of Public Accounts (UK) Fifty-Fifth Report—Inland Revenue: The Monitoring and Control of Tax Exemptions for Charities (July 1, 1998)

Summary of major findings

In this report, the CPA examined the performance of Inland Revenue's Financial Intermediaries and Claims Office (FICO). The Committee concluded that FICO:⁴⁷

- had recently improved the targeting of its compliance work by improving its ability to identify likely tax risks and directing its work accordingly;
- had yielded “only £1.35 on charity audits for every £1 they cost, compared with £3.50 for accounts investigations”;
- had experienced difficulty carrying out cooperative work with the Charity Commission, due partly to statutory limitations regarding the sharing of information;
- had to rely on the Commission's register of charities, which, due to the Commission's difficulties, posed a risk to the Exchequer;
- should continue “to encourage and assist the Commission to maintain an accurate register to help minimize the risks of tax exemptions being wrongly awarded”;
- should seek further improvements in the interchange of information with the Commission;
- “should explore the scope for improving [its] knowledge of the risks associated with self-certification of entitlement to charitable tax exemptions through analysis of the results of their checks on organizations claiming exemptions”;
- should underpin its approach of sample checking of tax repayments, with “a systematic risk assessment to minimize the risk to tax revenues”;
- should audit “the 20 percent of the largest 6,400 charities that never had an audit visit from the Department ... by April 2000”;
- should continue its “new approach of selecting charities' accounts for examination by first identifying higher risk organizations and then calling for their accounts”;
- should continue its pursuit of special projects and analysis of compliance results in order to increase its knowledge of tax avoidance by charities, “and use the information gained to reduce the risk to tax revenues from such [behaviour]”;
- should evaluate the success of its efforts to improve the quality and consistency of its investigation work;
- should reduce the number of old cases under review;
- should examine whether it has “enough staff with the experience and expertise needed to tackle [the] more complex work”, such as dealing with tax avoidance, that may flow from its use of a risk-based approach to monitoring;

⁴⁷ CPA, *Fifty-Fifth Report*, paras 1-5. The reference is to the online version of the document, available at www.parliament.the-stationery-office.co.uk. The committee heard evidence on May 6, 1998.

- should continue its positive work in promoting and improving voluntary compliance; and
- should continue its effective educational work with charities.

Appendix C

List of US Voluntary Intermediary Organizations (complete listings and addresses available at www.ncrp.org/afap/greendirectory.htm)

National Federations

- America's Charities
- Combined Health Appeal of America
- Earth Share
- Independent Charities of America
- International Service Agencies
- Local Independent Charities
- National Black Federation of Charities
- National Black United Fund
- National Voluntary Health Agencies

Black United Funds

Thirteen state and local organizations in existence, eight others in the process of being formed.

Environmental Federations

Twenty state and local organizations in existence.

Social Action Funds

Forty state, local, and particular interest organizations in existence, six others in the process of being formed.

Womens' Federations

Seven state and local organizations in existence, two others in the process of being formed.

Alternative Workplace Funds and Federations

Seventeen state, local, and particular interest organizations in existence.

Alternative Fund Adjuncts and Resource Providers

Twelve national, state, local, and particular interest organizations in existence.

Combined Health Appeals

Thirty state and local organizations in existence.

National Voluntary Health Agencies

Forty-three state organizations in existence.

About the Authors

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Johanna L. Francis has worked as an Economic Researcher at The Fraser Institute. She received her B.A. Honours and M.A. in Economics from McGill University. She is the co-author of the *20% Foreign Property Rule: Increasing Risk and Decreasing Returns on RRSPs and RPPs* (1999) as well as a number of articles appearing in *Fraser Forum* about the contribution of charitable activities to society. Her articles have appeared in such newspapers as *The Financial Post*, *The Montreal Gazette* and *The Calgary Herald*. She is currently working on her Ph.D. in Economics at Johns Hopkins University.