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# Sustaining a Relationship

## Insights from Canada on Linking the Government and Third Sector

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**Abstract.** *The embedding of third sector organisations in the policy world is fraught with tensions. Accountability and autonomy become oppositional forces causing an uneasy relationship. Government agencies are concerned that their equity and efficiency goals and objectives be met when they enter partnerships with the third sector for the delivery of programs and services. Third sector agencies question the impact of accountability mechanisms on their independence and identities. Even if the relationship between government and third sector agencies seems to be based on cooperation, concerns about cooptation (for nonprofits) and capturing (for governments) may linger calling the legitimacy of the partnership into question.*

*Two means of improving the relationship between the governing and third sectors have been proposed recently in Canada by the Panel on Accountability and Governance in the Voluntary Sector (PAGVS) and the Joint Tables sponsored by the Voluntary Sector Task Force (VSTF). The two endeavours represent a historic undertaking in Canada aimed at improving and facilitating the relationship between the federal government and the nonprofit sector. The reports borrow on other country models but offer new insights into mediating the relationship, including new models for a regulatory body and a charity compact for Canada. Do these recommendations adequately address concerns of autonomy, accountability and cooptation or capturing? The Canadian reports do offer new insights into resolving the four tensions inherent in partnerships between the governing and third sector but also raise important questions about the nature of these relationships and the evolution of democracy within the Canadian political system.*

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### I. Introduction

There is a joke in Canadian policy circles that Canada is usually ten to twenty years behind the Britain and the US in awakening to new policy realities and adopting innovative policy reforms. Canadians will adopt solutions for policy dilemmas from those nations after they have been proven not to work or to be fraught with difficulties or are being subject to review, and then blithely try to make them work in the Canadian context. There is an essence of truth in jokes. And so it is that Canada has only recently awoken to the significance

of the Third Sector in the public policy process and is contemplating the redefinition of the relationship between the Third Sector and governments. Casting our eyes abroad, Canadians have become intrigued by the possibility of using a Charity Commission or compact along the British lines as a centerpiece of this exercise, just as that body has come under review and scrutiny. However, the Canadian debate offers insights into the prospects for a Charity Commission and means of mediating the relationship between the Canadian governments and Third Sector.

The Canadian debate comes at a time when the third sector is becoming increasingly embedded in the policy process revealing new tensions and frustrations in that development. The redefinition and streamlining of government, which has occurred in some western liberal democracies in the past twenty years, has caused policy makers to turn to third sector organizations as the receptacle for services, which the government no longer desires or is able to provide to citizens. Disillusioned by the impotence and increasingly unhelpfulness of their governments, citizens have similarly looked to third sector organizations to defend their rights, promote their interests, and provide needed services. Charities and nonprofit and voluntary organizations have attempted to respond by delivering services formerly the purview of governments but many are wary of the effects of this expanded role on their autonomy as governments demand more accountability from them, on their identities as they attempt to adapt and respond to the rising expectations, and on their very viability as they redeploy and stretch their resources to provide more services and meet demands for accountability. Governments engage the third sector organizations in the policy process but remain uneasy about the attenuation of their control over programs and service delivery and whether these organizations can meet their goals of equity and efficiency. Even when the relationships between government and third sector agencies seem based on cooperation and principles of partnership, concern about cooptation (for the nonprofits) and capturing (for the government departments) linger in the background, calling the relationship into question.

Into this context, come two Canadian initiatives intended to resolve, or at least

alleviate, these tensions. The Panel on Accountability and Governance in the Voluntary Sector (PAGVS) was established by national voluntary organizations and released its report in February 1999, recommending measures to improve accountability within the sector and strengthen the relationship with the federal government. In turn, the federal government created a Voluntary Sector Task Force (VSTF) within the prestigious central agency, the Privy Council Office, to create a Joint Tables process with representatives from government and the sector. Although the work of the Joint Tables continues, the August 1999 report of the Joint Tables outlined a series of methods to encourage the development of the sector and promote collaboration with government. Central to the reports was a new linking mechanism between the federal government and the third sector. Various models for the link are offered but a central one borrows on the Charity Commission for England and Wales combined with a version of the British charity compact. These proposals have occasioned and reinvigorated debate in the community.

This paper proposes to examine the current Canadian debate on reforming the links between the state and nonprofit and voluntary sector and in particular on the proposals for a linking mechanism like a Charity Commission or compact. Will these proposals help resolve the tensions inherent in the relationship between the state and third sector? Do the ideas being circulated in response to the reports adequately address concerns of autonomy, accountability, cooptation and capturing? What insights does this debate offer to other countries facing similar questions? While the debate does offer important lessons to other nations, it also raises some troubling realities about the

changing nature of democracy, the third sector and the relationship between these organizations and the state.

The argument proceeds in four steps. Part one sketches the mounting tensions in the relationship between the state and third sector in Canada and then discusses the tensions more generally to set the stage for evaluating the Reports' recommendations later. Section two traces the events leading up to the PAGVS and Joint Tables and outlines the recommendations of the two reports. Section three analyses the recommendations on a Charity commission and the extent to which they either reinforce or alleviate the tensions in the relationship between state and the voluntary sector. The paper concludes by reflecting on the implications of the Canadian debate for other nations and the changing nature of public trust, democracy and the third sector.

## **II. Mounting Tensions**

### **Setting the Stage**

The third sector is a relatively new concept in the world of Canadian public policy despite the long history of voluntary organizations in the country. It was only in 1967 that the Canadian parliament amended the Income Tax Act to register all organizations issuing charitable receipts to donors and to require those organizations to file annual reports on their activities (Monahan 2000: 11; Ontario Law Reform Commission 1996: 261-5). However, these requirements were directed at maintaining the integrity of the tax system rather than at articulating a policy presence for the organizations. In 1974, the Department of the Secretary of State created the National Advisory Council on Voluntary Action to study issues arising out of the relationship between the federal government and the voluntary sector (Joint Tables 1999: 19).

Consciousness among policymakers of voluntary and nonprofit organizations as constituting a coherent sector began to grow. As this awareness of the sector grew and as the size of the sector exploded in the 1970s and 1980s, governments became increasingly involved with third sector organizations for policy development and service delivery.

Two trends promoted the closer interaction between citizen organizations and the state in Canada. Citizen activism in the 1960s and disillusionment with government in the 1970s led citizens to become involved in movements and organizations challenging traditional government practices and representing their rights. As governments attempted to respond to the new pressures and rights consciousness, they turned to these groups for their advice, information and expertise. Similarly, the information revolution caused government departments to rely to a growing extent on external sources of expertise and information (Brock 2000; Cairns 1995; Clark 1995). The second trend was driven by fiscal imperatives and involved "the crisis of the welfare state" experienced by the US and Britain as well (Gidron, Kramer and Salamon 1992, 14; Graves 1997; Ekos 1998; Elstain 1997; Mansbridge 1998; Hudson 1999; Caldwell and Reed 1999; Putnam 1996). During the 1980s and 1990s, the federal and provincial governments in Canada underwent significant restructuring as they attempted to bring their fiscal houses in order. In the face of rising public demands for services and declining revenues, governments began to cast about for alternative means of providing services more efficiently. While privatization of departments and agencies was one means, offloading services to the voluntary organizations working in an area of policy, particularly social policy, provided

a second attractive alternative to government delivery of services. This trend was exacerbated by the concerted push of the federal government to balance the books by the end of the century, in no small measure by reducing transfer payments to the provincial governments who bear the responsibility for social services. Faced with reduced transfers and rising social costs owing to the recession, the provincial governments further reduced payments to local governments and societal organizations all the while encouraging them to assume greater responsibilities for services (Hall and Reed 1999; Rekart 1993). The combined burden of reduced subsidies, rising citizen expectations and declining donations from a cash-strapped public, strained the capacity of charities and voluntary organizations.

The 1990s witnessed an outbreak of concern with the accountability and capacity of third sector organizations even as governments were transferring more responsibilities to them. Chisolm documents numerous articles in the US citing examples of real and perceived malfeasance in the third sector and calling for more accountability (Chisholm 1995). These concerns drifted across the border. In Canada, disquiet with the transfer of services to the third sector arose from two opposing sources. In a trenchant criticism of the federal government and spirited defence of the sector revealingly titled, *Straight through the Heart: How the Liberals Abandoned the Just Society*, Maude Barlow and Bruce Campbell traced the effects of the Liberal government's attempts to reduce expenditures by cutting grants, increasing contractual funding, reducing welfare programs and redefining the government's role in the social sector. They concluded that the third sector felt under siege (Miller 1999, 75; Barlow and Campbell 1995). As if in reply, Walter

Stewart published his study of the sector just as revealingly titled, *The Charity Game—Greed, Waste and Fraud in Canada's \$86 Billion-a-Year Compassion Industry*. While the book was removed from circulation after some charities threatened legal action, it had the effect of drawing attention to the use of public funds and delivery of services by third sector agencies (Juneau 1997, 29:1). Articles in Macleans and the popular media in 1996 and 1997 profiled mistakes, funding abuses, and inadequate regulation of the industry. The Ontario Law Reform Commission added force to the criticisms in its 1996 report calling for more monitoring of the sector (Ibid.; OLRC 1996). Perhaps most damaging of all was the publication by an Ontario Member of the federal Parliament, John Bryden, *MP's Report: Canada's Charities—A Need for Reform*, alleging that the organizations were unrepresentative and self-serving special interests lacking accountability and legitimate purpose. The upshot was that the Department of Finance commissioned a review of grants to so-called special interest groups, cutting their funding by \$300 million within a year (Miller 1999, 76), and reformed the Income Tax Act to ensure greater transparency within the sector. However, the longer term effect was to give birth to the Broadbent Commission and Joint Tables discussed below.

These criticisms and pressures of the third sector are not unique to the Canadian nonprofit sector. As in other western liberal democracies, this partly coerced, partly voluntary and entirely complex relationship between the government and third sector organizations has been characterized by cooperation but also by tensions between governments and the third sector organizations (Gidron, Kramer and Salamon 1992). Different expectations, objectives and mandates held by

government and third sector organizations have frustrated collaborative efforts between the two sectors. Two crosscurrents of tensions are particularly notable in the Canadian case. First, there is a conflict between government demands for accountability and organizational concerns over autonomy and responsiveness to members. Second, while third sector organizations may be worried about prospects of cooptation by government, government departments and agencies may be fretful about the possibility of being captured by the sector. While the degree of tension between the state and voluntary sector agencies will vary from one organization and relationship to another, some general points may be made about these lines of tension. These tensions are profiled extensively in the literature so they will only be highlighted briefly here.

### Accountability vs. Autonomy

One of the most striking points of strain in the relationship between the third sector and government concerns the balance between accountability and autonomy. Autonomy and accountability may become oppositional forces obstructing productive relations between the two sectors.

If governments are to justify to the public downloading or transferring control over services and programme delivery to third sector agencies, then they must provide some assurance that the service will be more efficient and that quality will not decline. As government funding to these agencies increases, governments impose greater measures of accountability. Thus, while governments might be attracted by the flexibility enjoyed by third sector agencies in delivery services, they will require certain operational elements to remain standard

such as financial management and accounting practices, key program objectives, forms of programme evaluation, and policy goals such as equity, environmental protections, and respect for human rights (Salamon 1995, 107; Canada West Foundation 1999, 4; Gidron and Salamon 1992; Douglas 1987; Day and Devlin 1997). The pall cast by public scandals involving third sector agencies in various nations has raised government expectations even higher that agencies must be responsive to public opinion (Salamon and Anheier 1996, 126).

These demands for accountability cause consternation among third sector actors for four principle reasons relating to autonomy of operation. First, as Salamon and Anheier observe, many third sector organizations and foundations have operated with a "private" mentality and resist pressures for transparency (1996, 126). Second, the added degrees of reporting result in agencies becoming more bureaucratized and professionalized and losing a degree of flexibility, informality and internal control over operations as well as distancing the organization from its members or beneficiaries (Salamon 1995, 107-8; Salamon and Anheier 1998, 160; Goldberg 1997, 86; Miller 1997, 17; Graves 1997). Third, dependence on government funding and entering into partnerships with governments to provide certain services may compromise the independence of an agency and its ability to serve as an advocate for the sector or to criticize government policy (Salamon and Anheier 1998, 160). The agencies become stakeholders in the status quo rather than catalysts for change.

Fourth, as governments have moved to market standards and acceptance of the notion of citizen as a consumer or client in the US, Canada and Britain in the 1980s

and 1990s, they have imposed this culture on the nonprofit sector particularly in the area of welfare services (Hudson 1999, 215-6; cf. Savoie 1994). As a result of this process, community-based accountability may be replaced as organizations alter their boards to reflect the priorities of governments and funders, change their missions to suit public or private donors and as they sacrifice democratic or flat decision-making processes in favour of more cost and time efficient procedures (Shields and Evans 1998, 98). Unless partnerships are maintained with community-based organizations to offset partnerships with governments (or private firms), the democratic heritage of the third sector is attenuated (Miller 1997, 26-7).

How valid are these concerns? Lester Salamon suggests that research of the US case demonstrates that concerns over loss of independence or change in mission and purpose of the agency are exaggerated if not false. Indeed, funds may allow organizations to achieve goals and government regulation tends to be looser rather than tighter (1995, 104-6, 108-9; Salamon and Anheier 1998, 160). While he gives more credit to the objection to professionalization and bureaucratization, even there he argues that government agencies are not the exclusive source of pressure on agencies to raise their standards. Professional standards have been incorporated into the different social, welfare, and educational sectors for decades (Salamon 1995, 107-8). As in the case of the concern for privacy, agencies may be their own worst enemies in resisting change.

Salamon might be right in suggesting that some of these concerns might be exaggerated but many are very real and stronger for some agencies than others. In particular, the concerns over loss of

democracy and changes in the operations of organizations have resonance within the volunteer community, as is perhaps indicated by declining memberships and volunteer rates as commercialization, professionalization and bureaucratization alter the organizations. Greater degrees of accountability and even "sector friendly" requirements may be especially inappropriate in some areas. For example, Hudson notes that imposing "client participation" requirements on caregivers for Alzheimer patients who were using agency resources overtaxed those individuals and cut into their scarce leisure time. He also observed that recipients of foodbank services "are not going to worry about if they've written the minutes" (Hudson 1999, 219-20). In a similar vein, Smith directly rebuts the Salamon and Anheier and Kramer accounts downplaying the effects on nonprofits, arguing that government funding and accountability requirements may have profound effects on agencies depending on the type of agency, service and mission, character of the relationship with government and the extent of bureaucratization. For example, the particularism of many agencies will clash with government directives towards equity (Smith 1999, 177-90, esp. 189-91). Tensions between accountability and autonomy persist.

### Cooptation vs. Capturing

A second level of tensions underlies the relationship between government and the third sector organizations and overlaps with the first set of concerns. Third sector organizations may be associated with government in a variety of ways. For example, they may be created by government to serve a specific community need, they may be former government agencies (for example, NavCanada), they may contract with government to assume a function formerly delivered by a govern-

ment department or agency, or they may apply for government funding to deliver a needed service. While agencies which have a long existence and independent funding basis might be the most insulated from government imperatives, each type of organization will want to establish some degree of independence and ability to set its own goals and define its own activities. On the other side, governments will distance themselves from the service by handing off a function or recognizing the expertise of an agency in delivering programs. In an ideal relationship, the appropriate balance between collaboration and independence from each other will obtain, allowing that this balance will shift for each type of organization.

An imbalance in the relationship may confirm fears in the third sector that these relationships will result in cooptation rather than cooperation. In a later article extending the analysis offered above concerning the impact of partnering with government on third sector autonomy, Salamon acknowledges the fears of agencies that they will become the agents of governments and lose effectiveness as public advocates. However, he cites Kramer and Ullman to suggest the government support of third sector agencies may stimulate this function rather than reducing it by politicizing agencies and providing them with the tools, access and knowledge to be even more effective advocates (Salamon 1999, 346-356).

In contrast, Josephine Rekart documents the effects of government funding on nonprofit organizations in BC, noting that governments may influence the priorities and agendas of the organizations. However, she also demonstrates how agencies can develop strategies to resist cooptation (1993, 124-42). In a more critical analysis of third sector and government

relations in the attempts of the Canadian government to democratize foreign policy, Kim Nossal dryly observes that the involvement of third sector organizations may constitute window dressing for policy decisions by governments or may amount to nothing more than "policy-making by elite invitation" (1995, 38-39; cf. Nordlinger 1985, 1988 and Skocpol 1985). Third sector representatives will be seduced into participating in government decisions by free trips and food. This allows governments to give the appearance of consultations without necessarily having to alter their policy direction, particularly if the representatives are selected with an agenda in mind. However, by drawing potential critics into the process and making them stakeholders in the final result, policymakers are protected from future claims and criticisms (Nossal 1995, 38). Similarly organizations partnering with government departments in the development or delivery of policies and services may find themselves jointly with government, or even alone, the recipients of public criticism rather than the agents of the public.

Too often governments are portrayed as leviathans in relationships with the third sector because they are normally in the position of funder (see Rekart 1993, 148-151). Insufficient attention is given to the fact that there are also risks for governments in these relationships. Salamon captures three risks for the state: first, government choice of services may be limited by the range of agencies in the field able to take on the particular function; second, the costs of monitoring may limit a government's ability to hold nonprofit agencies accountable; third, contracting out with nonprofit or private sector partners may reduce the government's credibility and visibility with the public affecting their public support at

the polls (Salamon 1999, 358-60). Moreover, where a government department lacks expertise or technical knowledge, it may become beholden to the nonprofit agency with the resources and information to drive a policy agenda forward. Similarly, if a nonprofit agency has wide public support, then it may be able to influence the priorities and policy agenda of a weaker or smaller government department. Governments may become dependent upon their partners in the nonprofit sector for legitimacy and knowledge. On a broader scale, as the third sector becomes more identifiable, its actors, particularly intermediary organizations, can contribute to mainstreaming its issues on the policy agenda as happened in Britain under the Labour government when a compact between the two sectors was signed (Kendall 2000).

And so government departments and third sector agencies may be wary partners or collaborators when they join forces to deliver services or develop policy. While there is extensive cooperation among governments and third sector organizations, this tension can affect the ability of the two sectors to work together productively and to define and achieve common goals. Trust must be constructed between the third sector organizations and the government. Further, public trust in the new arrangements must be gained if they are to have political saliency for both sectors.

### **III. Only in Canada** Leading to Action

The current proposals for change in government and third sector relations in Canada are targeted, at least in part, at resolving these tensions and improving the relationship between the third sector and governments. Four events have largely inspired these proposals. First, as

mentioned above, public disillusionment with governments and interest groups caused by the failed constitutional projects in the late 1980s and early 1990s, led to an increased skepticism about the ability of government to deliver services fairly and effectively and about the ability of interest groups to represent the public interest (Brock 2000; Cairns 1995).

Second, the demise of the Tories and election of a Liberal government at the federal level in 1993 changed the playing field for civil society organizations. The Liberals took advantage of the sour mood in the country and engaged in significant spending cuts to the third sector as part of the deficit reduction program mentioned earlier. In the 1997 election campaign, the Liberals made a promise in its second "Red Book" that it would "work in partnership with the voluntary sector to explore new models for overseeing and regulating registered charities and enhancing their accountability to the public" (Liberal Party 1997). Third, widely publicized scandals mentioned above involving third sector organizations and including the Red Cross and one involving a provincial government, drove the question of third sector accountability onto the public agenda, contributing momentum to the Liberal government's course of action.

Fourth, third sector organizations at the national level mobilized in response to the public mood, the Liberal agenda and international examples of government-third sector collaborative exercises. By fall 1997, an unincorporated group of national voluntary organizations known as the Voluntary Sector Roundtable, tasked a panel of six eminent Canadians with the responsibility of consulting widely with the voluntary sector in order to advise the community on methods of improving accountability and governance in a

changing environment. The Panel on Accountability and Governance in the Voluntary Sector (PAGVS), chaired by the Hon. Ed Broadbent former leader of the federal NDP party, issued its report in February 1999 after the release of a very controversial Supreme Court decision concerning the common law definition of charity. This sequence of events led to the creation of a federal government task force on the voluntary sector charged with the duty of organizing joint federal government and third sector organization roundtables to study the government-third sector relationship. The reports of PAGVS and the Joint Tables caused a flurry of responses to their recommendations. Two key recommendations of the reports and some of the more prominent responses to the recommendations are studied next.

### The Broadbent Panel (PAGVS)

The VSR handed the Panel on Accountability and Governance in the Voluntary Sector (PAGVS) the mandate to: 1. research and review governance and accountability practices in the sector; 2. consult widely with voluntary sector organizations in Canada; and, 3. recommend how governance and accountability might be strengthened (PAGVS 1999, 1). The initial discussion paper, which formed the basis of the extensive cross-country consultations, contained 40 recommendations. The final Report of the PAGVS, *Building on Strength: Improving Governance and Accountability in the Voluntary Sector*, based its recommendations on two cautions offered. Sector representatives accepted the need for accountability but warned the PAGVS not to let regulations and reporting requirements stifle the spirit of the sector, and they advised the PAGVS to respect the rich diversity of the sector (PAGVS 1999, 2-3). Five guiding principles animated the report: the needs

to encourage the sector's role in building social trust and capital and in promoting democracy, the need to strengthen the capacity of the sector, and the need to respect the diversity of the sector and its desire for autonomy and self-governance (PAGVS 1999, 10).

The 41 recommendations in the PAGVS final report were sweeping but may be divided into four broad categories. Recommendations to the Voluntary Sector ranged from the need to work collaboratively, to organizational imperatives including fiscal responsibility and evaluation mechanisms, to program outcome assessment, to fundraising codes of ethics. The directives to Donors and Fundraisers included cautioning the former to be savvy about their dollars and the latter to support and develop the capacity of the sector, and good governance tools such as outcome-based assessment and organizational infrastructure. The last category addressed to federal and provincial governments ranged from exhortations to enter into closer discussions with the sector, provide a voice within Cabinet, shore up intermediary organizations, differentiate reporting requirements for organizations according to size, support a code of ethics for fundraising, modernize the tax system and establish a statutory definition of charity, create a Voluntary Sector Commission, regulate financial accountability and political advocacy by charities, and to improve the legal framework regulating the voluntary sector at the federal and provincial levels of Government (PAGVS 1999, 80-93). The PAGVS centered out four recommendations as priorities, two of which will receive attention here: the establishment of a Voluntary Sector Commission and the negotiation of a compact between the voluntary sector and federal and provincial governments.

A centerpiece of the PAGVS Report was the recommendation for a Voluntary Sector Commission (VSC). The Report cited the Liberal Red Book promise to strike a new balance with the third sector and the need for a new mechanism to oversee the sector as the boundaries between public, private and voluntary sectors become blurred (PAGVS 1999, 56-7). It noted that a VSC was necessary since the mandate of the Charities Division of Revenue Canada, the main body established in 1967 to oversee the sector which has privileged taxation status, was to preserve the integrity of the tax system by registering charities, regulating and auditing their financial practices and related activities (ex. advocacy). This mandate was incompatible with the need of the voluntary sector for a body which could provide advice and guidance to the sector and resume the support function for the voluntary sector eliminated with government cutbacks in 1993.

The new VSC would have four functions (PAGVS 1999, 58-61). First, it would complement the role of intermediary organizations by providing support, information and advice on improving accountability and governance. This would include providing support and help in disseminating informational literature within the sector and encouraging a dialogue across jurisdictions. Second, it would help educate the public about the importance and role of the third sector in Canada. This would involve promoting the sector, establishing an informational website and requiring the sector organizations to provide certain information to Revenue Canada which would then be publicly accessible. The PAGVS also suggests that the VSC should work with Statistics Canada to compile a database on the voluntary sector, a serious lacunae at present. Third, while Revenue Canada

would retain its auditing function, the new VSC would assume the responsibility for evaluating and recommending to Revenue Canada whether or not charities should be registered. The rationale for this division in function is that greater expertise could be brought to bear on the decisions than at present and the reasons for the decisions could be made public whereas Revenue Canada is bound by rules of confidentiality. One of the other recommendations identified as a high priority by the committee was for a new statutory definition of charities and would guide the VSC in this task. Finally, the VSC would be "a friendly advisor" in assisting voluntary organizations to comply with Revenue Canada reporting requirements and regulations. While the VSC would investigate public complaints against organizations and track reporting violations, its mandate would be limited to solving problems in a constructive manner and if this fails to reporting offending agencies to Revenue Canada or the police for stronger remedies.

The PAGVS Report suggested four possible models for a VSC in the community consultations. These four were: 1. a revised and enhanced Revenue Canada; 2. a federal commission similar to the Charity Commission of England and Wales; 3. a federal-provincial agency with authority delegated from the two levels of government; and a non-governmental body housed within the sector (PAGVS 1999, 61-2). While no consensus emerged in the consultations around one model, there was a general distaste for the Revenue Canada model and "considerable support" for a nongovernmental agency (Ibid.). However, PAGVS maintained that a nongovernmental agency would conflict with other organizations in the sector, be less effective in promoting the sector and lack a stable financial basis. In addition, it

noted that the lack of intermediary organizations volunteering for the role spoke to its limitations. PAGVS favoured a federal commission over a federal-provincial body because the new VSC would have taxation related responsibilities which the federal government would be unlikely to delegate to a third party and because a national agency for promotion of the sector, distribution of information and registration of charities was essential. Therefore, PAGVS proposed a VSC composite of the federal commission and the nongovernmental agency.

The new composite VSC would be similar to the Charity Commission for England and Wales but distinct in key ways to suit the Canadian context:

It would share with the Charity Commission several strengths: independence but connectedness to both government 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 website. But there are some important differences. 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 (PAGVS 1999, 64).

The VSC would be small and independent from the voluntary sector and government but report to Parliament annually and through a designated minister and be funded by the federal government. The PAGVS borrowed heavily from the pioneering work by Arthur Drache on a charity commission for Canada (Drache 1995).

The work of the VSC would be complemented by another priority recommendation of the PAGVS:

Both federal and provincial governments should begin to renew their relationships with the sector by entering into discussions with the sector that may lead to negotiation of a compact of good practice or creation of other means for enhancing ongoing dialogue, understanding and genuine partnership (PAGVS 1999, 93).

This recommendation again borrowed upon the British model of a compact between charities and the government.

### The Joint Tables

The federal government established a Voluntary Sector Task Force (VSTF) in the prestigious Privy Council Office to pick up where the PAGVS left off. The VSTF joined forces with the organizations in the voluntary sector to establish three Joint Tables with representatives from the two sectors to consider means of building a new relationship, strengthening the sector's capacity and improving the regulatory framework governing the sector. The Joint Tables issued their Report, *Working Together: A Government of Canada/Voluntary Sector Joint Initiative* in August 1999. The Report recommended three further steps to implement their recommendations. They are now in the second phase.

The Joint Tables recommendations for reconstructing the state-third sector relationship were extensive (Joint Tables 1999, 9-14). They ranged from instruments to ensure an evolving relationship, to options for enhancing the financial capacity and resources of the sector, to means of revising the legislative, institutional, administrative and funding regulatory framework. Like the PAGVS report, central to the Joint Tables Report was a

recommendation for “an accord between the government and sector to guide the evolving relationship,” and a stronger relationship with Cabinet and Parliament. And although the Joint Tables considered three models for oversight bodies along the lines of the PAGVS, they suggested “that the models be further discussed or developed through broader consultations” (Joint Tables 1999, 12). The three models they considered included an enhanced Revenue Canada Charities Division, an advisory agency, and a quasi-judicial committee. Both recommendations require more explanation.

The Joint Tables articulated a draft of an accord between the federal government and third sector. The Accord would set out the guiding principles for a renewed relationship. These principles included:

- recognizing the interdependence of the government and voluntary sector and the need for cooperation to advance societal well-being;
- acknowledging the sector’s vital role in building a thriving democratic society, advocating policy change on behalf of Canadians, engaging citizens, and delivery services in a flexible and innovative way while respecting its autonomy and accountability to its constituencies;
- recognizing the need for a sustained and open dialogue between the sectors, varied consultation processes within the sector as a part of decision-making, and sharing information and collaboration while respecting rules of confidentiality;
- recognizing the need to collaborate in the definition and implementation of priorities and the benefit of strategic alliances and innovation and criticism, and that effective

relationships are founded upon respect, trust and dialogue; and,

- acknowledging the need for flexible accountability practices and the fact that both sectors are ultimately accountable to Canadians (Joint Tables 1999, 22).

The proposed accord would strike a positive and constructive tone for future relations between the sectors and discourage unilateral action by one partner as happened with the federal government cuts to the sector in the 1990s. Once they were publicly committed to the guiding principles, then the two sectors would feel bound to abide by them.

Like PAGVS, the Joint Tables cast their eyes to England for a model for balancing the need for public confidence in the sector with a supportive and enabling environment (Joint Tables 1999, 45). The Joint Tables Report outlined changes required in the regulatory framework such as an updated definition of charities, public access to information about the voluntary sector, a transparent registration process, change in rules governing political advocacy and related business activities by charities, limits to directors’ liability (Joint Tables 1999, 45-53). Then the Report described three models for revamping the institutional structures. Like PAGVS, the tables considered an enhanced Revenue Canada Charities Division with an advisory committee and responsibilities for the dissemination of information to the public and providing support and guidance to charities (Model A). Model B was for a semi-autonomous agency which would work in cooperation with Revenue Canada, making recommendations on difficult registration cases, offering the sector policy advice and helping organizations to comply with

regulations. This agency would support the organizations and complements the recommendation of the Table on Building a New Relationship for an agency to foster the relationship between the sector and government (Joint Tables 1999, 26, 54). Finally, Model C was for a quasi-judicial committee which would assume most of the functions presently executed by Revenue Canada, provide authoritative advice to the voluntary sector and adjudicate appeals on registration. Like PAGVS, the Joint Tables criticized the restriction of appeals of Revenue Canada decisions to the Federal Court and recommended the creation of more accessible administrative, quasi-judicial and judicial appeal processes. Further, both reports recommended allowing greater discretion in sanctions applied against organizations violating accounting or regulatory norms than the current penalty of deregistration.

Which Model did the Joint Tables prefer? After a careful assessment, the Joint Tables Report offered the following comments:

- ...all models would see improved transparency around registration, more effort to ensure compliance (including institution of intermediate sanctions) and a more accessible appeal process....
- ...all of the models would foster, to some extent, both the enabling and accountability objectives of the regulatory framework.
- On several other criteria (improved public information and knowledge, enhanced confidence and trust by the sector), the differences between the models are incremental, with model C perhaps best situated to ensure public confidence....
- The ability to accommodate provincial interests would be different under each

model, but it is not immediately clear which model would work best.

- The potential for serving the non-charitable voluntary sector is likely larger in models B and C. The agency in model B would perhaps have the greatest freedom to build partnerships and nurture the sector. The model C commission would likely have the greatest independence from both the government and the sector, and may therefore be able to integrate the compliance and nurturing functions... (Joint Tables 1999, 56)

Although noting that there was no ready consensus, the Joint Tables concurred with the PAGVS that an enhanced Revenue Canada model lacked support. While representatives from the sector on the Regulatory Table favoured Model C, government representatives thought all three would work (Ibid.). The Table recommended that further thought be given to these arrangements in the subsequent phases of the joint efforts.

The two Reports have inspired further reflection and work. A small unit within the federal government's PCO now oversees the implementation plan laid out in the Joint Tables Report. Work continues apace.

#### **IV. Resolving the Tensions**

How do the proposals measure up? One basis for assessing the recommendations for a compact or accord between the federal government and voluntary sector and for the establishment of a VSC or variation thereof (an enhanced Revenue Canada model is not paid much heed here given the negative reaction of the sector to the proposal), is how well they would resolve or attenuate the tensions in the relationship outlined above. Do they

increase accountability while respecting the independence and autonomy of the sector? Do they preserve lines of accountability to the constituencies while ensuring that government concerns are met? Do these proposals bind the sectors in unhealthy relationships where dissent and difference are not possible or where interdependence becomes dependence? Will they only exacerbate problems already embedded in an uneasy relationship? How well will the proposals correspond to the vast range of organizations in the sector? The proposals have received serious criticism thus far so it is only right to delve into these questions now.

The tension between government concerns for accountability and sector concerns over independence and autonomy were evident in the very decision-making processes of both the PAGVS and Joint Tables. In both cases, representatives from the voluntary sector were least favourable towards the enhanced Revenue Canada model and most well disposed towards an independent charity commission model or a model located within the sector. Government representatives were agnostic on the three models. The result was that the committee formally designed with representatives from both sectors encouraged further thought and reflection rather than settling definitively on one model. However, the PAGVS, a body created by the voluntary sector in order to build public confidence in the system and headed by a Chair who was independent of but knowledgeable about both sectors, recommended a compromise solution. The PAGVS charity commission would be accountable to government through a Minister and annual reports to Parliament but would draw on expertise from the sector and would take advice and guidance from a reference group drawn from the sector. In contrast, the

Joint Tables could only reach a state of settled unsettlement and required further thought on the matter. The two exercises are symbolic of the need for the revised institutional arrangements to be independent from government and the sector but with clear lines of accountability to both if deadlock or paralysis on important issues handled by the new body. An enhanced Revenue Canada model would lack credibility with the third sector just as a model situated within the third sector would lack credibility with the government.

The form of the proposed VSC, and by extension the Joint Tables' agency model which is based upon the VSC, may validate fears of cooptation in the sector. Certainly Blake Bromley, argues this point in his analysis of PAGVS (the Broadbent Report):

Maggie Thatcher could only have wished for a voluntary sector as compliant as the Canadian sector which gave rise to the Broadbent Report. In Canada the intermediary organizations provide the impetus for change and create the political will to attain it—and then propose a Voluntary Sector Commission which is controlled by government. Government cutbacks and downloading on to the voluntary sector should provide little political challenge when the Canadian sector does not retain its independence from government. The Broadbent Report's recommendations for "Capacity Building" include compacts with governments, a voice at the Cabinet table and core funding for intermediary organizations. Once everyone gets in bed together and intermediary organizations get core funding from government, it is difficult to imagine our sector leaders taking a hard-line with government such as the Charity Commissioners for England and Wales... (Bromley 2000)

Bromley further suggests that the political will underlying support for the Charity Commission model may be owing to a government desire to further offload

services to the sector. In a separate article, he pursues this theme to demonstrate that elected officials seeking political and economic gains have posed the greatest threats to the third sector while the record of the courts is superior in protecting the autonomy of the sector albeit through incremental change. He concludes that the sector would be better off with the common law definition of charities rather than the proposed statutory definition of charity which would be subject to change at the whim of elected officials (Bromley 1997).

Bromley's arguments have some force. However, three counterpoints offer some caution against reaching his conclusions so quickly. First, both the Broadbent and Joint Tables Report anticipate that a charity commission or agency would develop and maintain good relations with the sector while a quasi-judicial tribunal would need to maintain the confidence of both government and the sector. For an agency or commission to bow to government pressures would undermine the agency in its entirety. Would the government or the appointees wish to do this? Only if they were willing to sacrifice longer term gains for shorter term considerations and withstand public scrutiny. Second, the composition of commissioners (one third from the sector, all with expertise and merit) as well as the proposed reference group of advisors from the sector (PAGVS 1999, 63-4), would strengthen the resistance of a commission against merely accepting government positions on critical issues like offloading. Third, rather than encouraging a conciliatory attitude towards government, a compact between the two sectors could be seen as providing a bulwark against cooptation. A compact would set independent standards and establish a process against which future government

actions could be measured. With an independent standard in place, criticisms of government action would become more persuasive since they would appear more objective and less tied to the self-interest of particular organizations. Fourth, the agency or VSC would maintain relations between the state and sector thus providing the sector with the access to discuss changes before they were implemented. In many cases, unintended negative effects of proposed policies could be anticipated and eliminated or controlled before the policy is implemented resulting in a better policy. Finally, the model does not assign the proposed Canadian charity agency or commission an advocacy role for the sector. Instead, this function remains within the sector as a protection for the sector itself and as a fortification against cooptation of the sector's many voices. Seattle, Washington and Windsor will still occur.

Personnel for the proposed models would be drawn from the government and voluntary sector. The VSC commissioners would be experts appointed by the federal government with only one third would necessarily be drawn from the sector. Key staff would be drawn from the sector but subject to the decision-making authority of the Commissioners. Such a mix might relegate the sector representatives to a secondary role as a paper put out by the Fraser Institute suggests (April, Clemens and Francis 2000, 2-3). The Institute also suggests that the lack of recommended experts in charity law might diminish the quality of the VSC's recommendations on charity status for organizations (Ibid.). Similarly, if staff for the quasi-judicial model were drawn from the pool of talent in Revenue Canada's Charities Division, then the status quo might be the fallback option where the proposed legislation is quiet. While the

complications of staffing arrangements should be given serious consideration, it is difficult to conclude whether the Commission would reflect the government position more than the sector's position on issues. The mix of circumstances, personalities and professional standards would affect the balance of judgment. Further, the tendency of the Reports to favour bodies with a mix of knowledge of charity law but not captured by the legal might offer a broader and more progressive view on the definition of charity than has been given by the Canadian courts (contrast Monahan 2000). This view, if fashioned by common sense and informed by the realities facing Canadians, might have greater resonance with a broader public and third sector.

One powerful criticism of the VSC concept, and to a lesser extent the idea of a compact, is that by attempting to meet the concerns over accountability and autonomy, the PAGVS and Joint Table proposals marry two incompatible functions in an agency. How can a Commission which is expected to promote the sector and advise it in a friendly manner also help ensure compliance with regulatory standards without compromising its ability to do the former? Certainly this is a criticism that is levelled at the British Charity Commission and might be imported into Canada (Monahan 2000, 67). The PAGVS and Joint Tables anticipated this by suggesting that the proposed bodies should offer advice and assistance with compliance but limiting their responsibility for abuses to reporting them to Revenue Canada or the police. However, this balance of responsibilities will be difficult to maintain and might discourage organizations from soliciting the help of the agency if they feared that opening their books might endanger their charitable status. The best protection for the

proposed VSC, agency or tribunal is in the transparency of the decision-making process and the application of clear standards to hard cases. If such a body is exercising and is perceived to be exercising professional and impartial judgment, then public confidence and voluntary sector trust will follow. As the Broadbent panel noted, abuse or disregard of regulations is more often caused by lack of knowledge or understanding of regulations than wilful disregard, and there is a widely shared aversion to cases of repeated or flagrant abuse of regulations and ethical standards within the voluntary community as well as the wider public.

The Reports do pose a challenge to the voluntary sector and to the federal government alike. An enhanced Revenue Canada model would preserve the integrity of that agency but would not satisfy sector requirements for change and improvement. The other proposed models are predicated on the need for cooperation between Revenue Canada and a commission or agency or at least, a common definition of charity. However, all of the models would require organizational and cultural changes within Revenue Canada, either as it assumed a support function for the sector or as it learned to work in collaboration with an independent body. As Arthur Drache observes, an agency might be ineffectual in the face of resistance from Revenue Canada, and an enhanced Revenue Canada model might result in no real changes in policy since organizational change is difficult to achieve (Drache 2000, 7-8). Like Drache, Monahan concludes that an agency with advisory powers alone might be impotent since Revenue Canada would be bound to follow the common law rather than a commission's advice in cases where there was a discrepancy. He also observes that a

quasi-judicial tribunal would encounter provincial objections since responsibility for the regulation of charities and social institutions resides with the provinces under the constitutional division of powers (2000, 85-88; cf. Wyatt 1998, 10-11). Further, the principle of parliamentary government militate against transferring decisions over charitable registration which have spending implications to an independent body not accountable to the elected officials responsible for revenue raising (Monahan 2000, 85-88). Further, he argues that an independent agency would bring political considerations to bear on what has been an impartial process to date (Monahan 2000, 89-91).

In sum, the proposals may produce organizational resistance within the federal government. Supporters of the Westminster model of government and an independent judiciary might frown on the changes. Revenue Canada might fear capture by the sector as it attempts to reconcile advice from independent agencies with its own mandate to protect the integrity of the tax system. The provinces might object to a perceived usurpation of powers. On the other side, an independent commission might be tempted to compromise its judgements in favour of the common law definition of charity and might become a conservative force rather than a progressive influence rather than see its advice ignored or decisions appealed to the courts. The tensions caused by concerns over capturing and cooptation remain to be worked out depending on the model implemented.

Both reports do fail to reconcile the tensions in the relationship between the state and the sector in a final way. Chris Miller's criticism of the PAGVS calls for more training of volunteers and the

professionalization of organization staff holds for the Joint Tables as well. He reminds his readers of the "dangers of state-professional relationships constructed around a particular interpretation of equity policies. Similarly, the introduction of vetting and training, whilst necessary for certain roles, creates an important distinction between formal or professional volunteers and ordinary citizens, who, motivated solely by interest rather than career advancement may often be more passionate in their volunteerism" (Miller 1999, 78). He regrets that "the Panel never seems to worry about whether it is in fact possible to successfully negotiate the obvious tension between growing professionalism and the sector's capacity to fulfill what is essentially a political function. In reality, professional employee judgement will often contradict citizen voice" (Miller 1999, 79). A charity agency or commission would only exacerbate this tension. This criticism also points to a lacunae in the Reports regarding the growing gap between smaller or community-based organizations and the larger, more bureaucratized organizations. Neither Report resolves this tension between professionalism and citizen voice.

## **V. Mediating the Relationship between the Governments and Third Sector**

The PAGVS and the Joint Tables recognized that the status quo in relations between the voluntary sector and the government cannot hold. The two Reports should be commended for their contributions to rethinking the relationship between government and the third sector. While the recommendations do advance thinking on the appropriate balances between accountability and autonomy and reducing fears of cooptation and capturing, more work remains to be done.

Neither the PAGVS or the Joint Table representatives would suggest otherwise. Then what may we learn from these experiences?

First, the third sector culture is in a period of profound cultural change. Most agencies concede the need for greater measures of accountability and share a distaste for tolerance of bad governing practices. Despite the concerns over the diversity within the sector, this acceptance of regulatory standards and independent evaluations will lead to a greater homogeneity of governing practices and organizational norms. Organizations not conforming to these models may find themselves out of the mainstream voluntary culture and subject to public criticism. On a more positive note, the sector is maturing and its capacity to handle more responsibilities is likely to grow commensurate with its professionalism. The shift is reminiscent of the shift in business culture from the 1950s to today.

Second, there is a troubling undercurrent in the process of redefining the relationship between the third sector and governments. It is perhaps too obvious to point out that the intermediary and larger organizations tend to drive the process while smaller organizations must depend on their good will. As the intermediary and larger organizations become stakeholders in the process and final product, a gulf will be driven between those agencies and smaller or weaker ones lacking the resources or size to be heard. The dangers of “ins” and “outs” become all too apparent with the needs of the latter disregarded in favour of the former. Smaller organizations may then protest against the arrangements and resort to sensational tactics to be heard. Polarization within the community might damage citizen perceptions and confi-

dence in the third sector, particularly in a polite political culture like the Canadian one where protest and dissent are tolerated if not too loud or extreme.

Third, the two Reports were persuasive in arguing that a VSC, whatever final form, should not be an advocate for the third sector. This function must reside with organizations if the previous problem is to be alleviated. It is important to preserve the unique and varied voices of the multitude of citizen organizations if the democratic character of the sector is to be preserved and fostered. And in a related vein, governments and organizations alike must be vigilant to ensure that professionalization and bureaucratization of the third sector does not drown out citizen voices and needs. The voluntary sector should remain a sector for civic-minded volunteers.

Fourth, the relationship should not be viewed as unidirectional or as one-sided. In many sectors, agencies can drive their agendas forward overriding government departments or setting government agendas. Certainly the recent success of the Golden commission in placing the plight of the homeless on the federal, provincial and municipal government agendas in Canada proves this. More to the point, the PAGVS certainly influenced the federal government agenda on third sector issues. Large organizations with human, financial and informational resources and public visibility may affect government priorities. A VSC, with a stable funding base and a charity compact to guide relations between government and the third sector would help strengthen the ability of the third sector as a whole to make its concerns and needs known particularly in periods when governments look to the sector to assume more functions and citizens turn to sector organiza-

tions to protect their interests and promote their rights.

Fifth, the two experiences of the Broadbent panel and the Joint Tables proves the importance of ensuring that a VSC is independent but reflective of government and the voluntary sector. The PAGVS was willing to endorse a compromise between the two sector preferences. Ensuring that a VSC commissioners are drawn from a variety of sources not limited to the two sectors will facilitate cooperation and compromise among the two solitudes and ensure that the VSC remains responsive to the broader social and economic context. Academics and business representatives may offer important perspectives and expertise to a commission.

Sixth, governments, organizations and citizens alike have reasons to be wary of the changes that are occurring in the relationship. For governments, if they are not vigilant then there might arise a disconnect from their citizens as organizations assume more functions and citizens turn to third sector organizations as protectors against government policies. Even a VSC could exacerbate this tendency by imposing another layer of decision-makers between the government and citizens. With a VSC promoting the sector, governments may be seen as distant from citizen organizations, the lifeblood of a healthy democracy. Organizations must be watchful that government expectations of accountability do not detract from their accountability to their constituencies. Certainly the Canadian organizations represented this concern to the Broadbent Panel. However, as the relationship is redefined and strengthened, the lines may become blurred. Fears of cooptation might be exaggerated but they are still very real.

Finally, citizens have a responsibility to ensure that they are not forgotten in the process of redefinition. As governments and organizations negotiate an organizational imperative may arise which serves the two sectors well but does not result in an improvement of services or quality of life. Citizen voices and community-based organizations need to be heard.

The relationship between the third sector and government must be carefully mediated. The public good requires a certain tension in this relationship. Criticism, challenges and competition as well as cooperation can be a healthy mix in a democracy.

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