

Policy Internships and Fellowships Program  
Final Report

**Insurance Liability in the Voluntary Sector: A Threat to Survival?**

**Roberta Bustard**

Home Position: Program Manager  
Social Development Canada

Host Position: Research Fellow, Liability Issues  
Voluntary Sector Forum

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## **Home Organization**

My home department at the beginning the PIAF placement was Human Resources Development Canada (HRDC), one of the largest federal departments with over 30,000 employees, more than 300 points of service across Canada, and a mandate to help Canadians to achieve full participation in the workplace and community.

On December 12, 2003, Paul Martin was sworn in as the new Prime Minister and, in announcing his Cabinet, he also unveiled a departmental reorganization affecting HRDC. The Department was split into two new departments, Human Resources and Skill Development (HRSD) and Social Development (SD). My Directorate, also named Social Development, became part of the latter department. The new department has the following mandate:

The Department of Social Development (SD) is mandated with helping to secure and strengthen Canada's social foundation. We do this by helping families with children, supporting people with disabilities and ensuring that seniors can fully participate in their communities. We provide the policies, services and programs for Canadians who need assistance in overcoming challenges they encounter in their lives and their communities. This includes income security programs, such as the Canada Pension Plan. We are a client-centred organization, committed to continually improving service delivery for Canadians.<sup>1</sup>

The creation of the new department had special significance for the voluntary sector. Until December 12, 2003, the Minister of Canadian Heritage had been the Minister Responsible for the Voluntary Sector. On December 12<sup>th</sup>, this responsibility shifted to the Minister of Social Development, the Honourable Liza Frulla.

The 2004 Speech from the Throne re-affirmed the government's commitment to the voluntary sector.

On an operational level, the Directorate is in flux as new responsibilities and priorities are determined in both the Social Development Directorate and the wider department. Some staff from the Department of Canadian Heritage with responsibilities for the voluntary sector have now joined Social Development. As with any reorganization, it will take months before roles and responsibilities are clearly understood and during this period there is naturally upheaval in adjusting to the new directions and to potential physical changes in office location.

## **Host Organization**

My host organization, the Voluntary Sector Forum (VSF), is a transitional body which evolved from the voluntary sector management structure (Voluntary Sector Steering Group) started under the Voluntary Sector Initiative (VSI). The Voluntary Sector Initiative is a five-year initiative between Canada's voluntary sector and the Government of Canada designed to strengthen the relationship between the two, and to strengthen capacity in the voluntary sector through a number of projects including increased research and information about the sector, stronger human resources capacity, more collaborative policy development and strengthened technology.

The Voluntary Sector Forum is a body comprising 20 members from across the Canadian voluntary sector that reflect the knowledge, diversity, experience and common interests of the

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<sup>1</sup> Website of the Department of Social Development, [www.sdc.gc.ca/en/cs/comm/sd/about\\_us.shtml](http://www.sdc.gc.ca/en/cs/comm/sd/about_us.shtml)

sector. The Forum's mission is to create an environment where voluntary sector organizations across Canada become stronger, work together, engage effectively with citizens, governments and the private sector, and are recognized and valued for their contribution to society.

The Forum was launched in October 2002 in Ottawa, at a national Voluntary Sector Assembly that was attended by 250 people from all parts of the country. Its mission is “to create an environment where voluntary sector organizations across Canada become stronger, work together, engage effectively with citizens, governments and the private sector, and are recognized and valued for their contribution to society.”<sup>2</sup>

The Forum has a three-part mandate:

1. To follow up on outstanding work of the Voluntary Sector initiative. This includes: implementation of *An Accord Between the Government of Canada and the Voluntary Sector* and its related *Code of Good Practice on Policy Dialogue* and *Code of Good Practice on Funding*<sup>3</sup>; the launch of an awareness campaign about the voluntary sector; completion of work on information management and information technology; and development of research and tools to build capacity in the sector.
2. To coordinate a sector response on three national issues identified by the Forum: financing the voluntary sector; restrictions that affect the ability of organizations to conduct advocacy activities; and issues related to insurance liability and risk management in the voluntary sector – the topic of my fellowship.
3. To continue to strengthen connections and engagement within the voluntary sector by building links between different sub-sectors (e.g. arts, environment, social services, sports and recreation) and geographic areas, and to build new processes and structures within the sector.

The Voluntary Sector Forum is supported by a small secretariat (with seven persons, including me) that operates out of an office in downtown Ottawa. It is supported mainly with funding from the federal government and some small amounts of funding from the private sector. As with the voluntary sector at large, the Forum struggles with the reality of project-based funding and continues to try to diversify its funding sources. One of the challenges it faces in pursuing funding is the fact that the Forum is by definition a transitional body and it is unclear what will happen to it, and to the work it does, when the mandate expires in March 2005.

Staff breakdown is as follows: Executive Director; Manager of National Issues; Manager of Operations; two webmasters – one with responsibility for the joint Government of Canada and voluntary sector website ([www.vsi-isbc.org](http://www.vsi-isbc.org)) and the second developed and maintains the VSF website ([www.voluntary-sector.ca](http://www.voluntary-sector.ca)); a junior program officer; and myself, the research fellow. The VSF is supported by a very small staff, given the scope of responsibility and tasks it has set out for itself.

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<sup>2</sup> Website reference (Voluntary Sector Forum): [www.voluntary-sector.ca](http://www.voluntary-sector.ca)

<sup>3</sup> Website reference: [http://www.voluntary-sector.ca/eng/accord\\_and\\_codes/accord.cfm](http://www.voluntary-sector.ca/eng/accord_and_codes/accord.cfm)

## **Introduction**

The match was initiated by the host organization, the Voluntary Sector Forum. As outlined earlier, the Forum operates with a small staff and a small resource base. The opportunity to have a dedicated resource to work on one of the three national issues was very attractive to the Forum. Work on the other national issues had been underway since the beginning of the VSI; given that all national issues were under the responsibility of one person, it would have been difficult to initiate work on a brand new issue without a dedicated staff resource.

I was familiar with the Forum as I had worked with its staff in the Forum's earlier incarnation, the Voluntary Sector Initiative Secretariat. In my position as Manager of the Capacity Joint Table Secretariat, I had constant contact with the VSI staff. The Forum staff was aware of my ongoing interest in the Voluntary Sector Initiative and in gaining a greater understanding of the operational realities of voluntary sector organizations, and so approached me to see if I would consider undertaking the liability and risk management work through a PIAF fellowship.

At the time I was approached by the Forum, I was finishing my Master's of Public Administration and was looking for a new, policy-focused challenge. Although I was unfamiliar with the issue, I was eager to get some experience and exposure in the voluntary sector and pleased to have the opportunity to tackle a policy issue deemed to be of such immediate concern to the sector.

My placement began at the end of August 2003 and will finish at the end of August 2004. The original placement was for a period of eight months but was extended by four months. Even so, the work on this issue will be far from finished within the period of the fellowship. My title is Research Fellow, Liability Issues and I report to the Executive Director. The VSF's goal for the liability and risk management work is "to work toward an environment in which voluntary sector programs and services are no longer restricted or determined by insurance considerations." Specifically, the project goal is "to develop a broad understanding of how liability is affecting the voluntary sector in Canada and to develop policy recommendations for responding to it."

## **Environmental Context Impinging on the Placement**

The Voluntary Sector Initiative was announced in the spring of 2000. The original process for the work of the Joint Tables covered a period of approximately two years and as most Joint Tables began operations in the fall of 2000, their mandates concluded in the fall of 2002. The completion of the majority of the Joint Table work was widely viewed by both the sector and government as the end of "Phase I" and much of the \$94.6 million allocated to the VSI was intended to be spent by March 31, 2003. Although the VSI will not complete its mandate until March 31, 2005, the momentum has slowed since the fall of 2002 and the staff support to the VSI on both the sector and government sides has decreased considerably.

When the VSI was launched, it committed the federal government and the voluntary sector to work jointly, in order to address a wide range of issues related to improving the relationship between the two and to enhance the ability of the voluntary sector to build its capacity to provide a wide range of programs and services to Canadians. However, there was concern within the sector that government would not agree to jointly address the issues of funding and advocacy, both seen as critical to the long-term health and viability of the sector. This concern has not abated within the sector over the life of the VSI. The sector-only Working Group on Financing commissioned the Canadian Council on Social Development to produce a report documenting the challenges faced by the voluntary sector.

The recent federal Budget contained good news for the voluntary sector on the regulatory front, with almost all of the Joint Regulatory Table's recommendations being addressed.<sup>4</sup> The March 2003 report of the Joint Regulatory Table<sup>5</sup> contained 75 recommendations for improvements to the rules governing charities under the *Income Tax Act*. The Budget also promised legislation for a new *Not-For-Profit Corporations Act* that would clarify the roles and responsibilities of directors and officers and enhance and protect the rights of members. However, given that only about 18,000 (10 percent) of the approximately 180,000 voluntary sector organizations are federally incorporated, the suggested improvements will not apply to the vast majority of voluntary organizations in Canada.

Although the voluntary sector references may not be the first that jump out to a reader of the Budget, to those in the sector - particularly those in the VSI - they sent a message that the government sees its work with the sector as an important priority. In addition to the regulatory reforms, the Budget contained an additional \$6 million in funding for the sector over the next two years, although the specifics of how this funding is to be directed are not yet known.

## **State of Research**

### Background

Canada's voluntary sector is vibrant and diverse. Each year Canadians contribute \$4.45 billion to support charitable and non-profit organizations. 27% of Canadians volunteer an average of 162 hours each year and over 900,000 people make their living in the voluntary sector working to improve social and economic conditions for Canadians.<sup>6</sup> The strength of this "third sector" is an essential contributor to building and maintaining healthy communities.

However, in spite of the visibility and acknowledged good works of thousands of organizations, the viability of the voluntary sector is challenged by skyrocketing insurance premiums, an increasing inability to obtain coverage, and a climate of fear of serving in an increasing litigious and risk-averse climate. If organizations are unable to continue to offer their programs and services, and are forced out of operation, we place at risk the social structure and stability we take for granted as Canadians.

What does this new reality mean for voluntary sector organizations in Canada, which run everything from children's sports programs, to meal service for seniors, to provision of aids for people with serious illness? What is the impact for governments, which in recent years of shrinking budgets and outsourcing have increasingly relied on the voluntary sector to provide programming deemed to be in the realm of the public good? How does this issue affect the health of communities in a culture where the involvement of volunteers is increasingly seen as a necessary and desirable part of good citizenship?

The Voluntary Sector Forum's goal with respect to the issue of liability is to work toward (creating) an environment in which voluntary sector programs and services are no longer restricted or determined by insurance considerations. The first challenge in meeting this goal is

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<sup>4</sup> Website reference: [www.fin.gc.ca/budget/04/bp/bpc4de.htm#voluntary](http://www.fin.gc.ca/budget/04/bp/bpc4de.htm#voluntary)

<sup>5</sup> Website reference: [www.vsi-isbc.ca/eng/regulations/reports.cfm](http://www.vsi-isbc.ca/eng/regulations/reports.cfm)

<sup>6</sup> Canadian Policy Research Networks, *Taking the Measure of Canada's Non-Profit Sector* (Ottawa, 2002).

to develop a broad understanding of how liability is affecting the voluntary sector in Canada and to develop policy recommendations for responding to issues identified.

To date there has been virtually no research undertaken on this issue in Canada. One study was commissioned in British Columbia.<sup>7</sup> Its report was released in March 2002 and although it made a number of recommendations directed toward the voluntary sector, governments, the insurance industry and the Voluntary Sector Initiative, there was no mechanism in place to analyze and move ahead on the recommendations.

The Knowledge Development Centre<sup>8</sup> under the Canada Volunteerism Initiative is supporting a limited amount of research in the area of insurance liability, but as funding for these projects was awarded in early 2004, work is still in progress and results will not be available for several months.

### What do we mean by liability?

Liability includes, but is not limited to, the following:

- Organizational liability
- Directors' and Officers' liability
- Staff/Volunteer liability for programs and services delivered

Risk management is what sector organizations do in order to establish that they have exercised due diligence in delivering/managing their programs and services. The above-noted study undertaken in 2002 in British Columbia further characterizes risk management as: "the process of assessing risk, and developing strategies to reduce or eliminate the identified harm, or the likelihood of it occurring. It also includes developing a plan for protection from the risks that remain, such as ensuring that your society and its volunteers are adequately protected from the cost of claims, usually through the purchase of insurance."

### Why has this become an issue?

The issue can be traced in part to two 1999 Supreme Court of Canada rulings on "vicarious liability" with respect to charities. Vicarious liability applies when a person or organization is held liable for the negligent actions of another, even though they are not directly responsible for the actions. For the voluntary sector, this means that an organization can be held responsible for its employees or volunteers even if the organization did not do anything wrong.

Rulings on the two Canadian cases, *Children's Foundation v. Bazley* (also known as *Bazley v. Curry*) and *Boys' and Girls' Club of Vernon* (also known as *Jacobi v. Griffiths*) were landmark decisions for the sector. They represent the first time that the courts imposed vicarious liability on a non-profit organization (*Children's Foundation*) for the actions of their employees. Additionally, changes in the insurance industry that occurred after September 11 (2001) have exacerbated this situation.

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<sup>7</sup> Michael Goldberg, *Protecting Volunteers and Non-Profit Organizations – A Study of Risk Management and Liability Insurance of Voluntary Organizations in British Columbia* (Vancouver: Social Planning and Research Council of BC, March 2002).

<sup>8</sup> Website reference: [www.kdc-cdc.ca/display.aspx?pid=11&cid=37](http://www.kdc-cdc.ca/display.aspx?pid=11&cid=37)

## Impact on the Voluntary Sector

More and more examples of the impact of an increasingly challenging insurance environment are coming to light. Stories are surfacing of enormous premium increases with no corresponding increase in claims, increasing demands for elaborate risk management programs, and refusal of coverage.

Rising costs and reduced availability lead to cancellation of programs and services, shifts in the type of services offered and reductions in levels of service delivery. Increased financial resources must be diverted from service and program delivery to pay for insurance premiums and often-limited human resources must be redirected to the development of elaborate risk management programs.

This issue isn't limited to Canada. The Home Office in England produced a report in June 2003 that found many troubling similarities, in the voluntary and community sector (VCS), to impacts we're hearing about in Canada, for example:

- Average insurance premium increases of between 30 and 100% per annum, or increases as high as 740%
- Increasing number of exclusions affecting a wide range of organizations and activities, particularly for care work, youth work and outdoor activities
- Particular difficulties in renewing liability insurance of various types
- Scaling down (or cancellation) of activities or complete closure for those organizations unwilling to deliver services without insurance coverage
- Inconsistent approach, by the insurance industry, to assessing risks and pricing premiums, even for similar VCS organizations
- Unwillingness by the insurance industry to raise its own awareness of the sector's needs, claims history and risk management behaviour and to respond accordingly<sup>9</sup>

In Australia, a report prepared for Sport and Recreation Ministers in 2002 attributed rising insurance costs to:

- The financial position of insurers (profitability)
- International insurance trends and extraordinary events
- Increased claims against insurance policies
- Increased litigation
- Inadequate risk management by sport and recreation organizations<sup>10</sup>

## **Research in Progress**

The focus of my work in the first several months of the project has been two-fold: first, to research the nature and scope of the problem; and second, to begin to build a network of organizations with an interest in the issues arising.

Between December 2003 and June 2004, I held seven half-day regional consultation sessions across Canada (in Vancouver, Edmonton, Winnipeg, Toronto, Ottawa, Montreal and St. John's). These sessions provided an opportunity to meet with a cross-section of voluntary sector

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<sup>9</sup> Alison Millward Associates, *Research into the Insurance Cover for the VCS in England* (2003), p. 4.

<sup>10</sup> Standing Committee on Recreation and Sport (SCORS), *Review of Australian Sports Insurance: Summary of a Report Prepared for the Sport and Recreation Ministers' Council* (2002), p. 8.

organizations to find out whether and how they are being impacted by this issue. The findings of these sessions will be produced in a report that will serve as the first documentation of the problem nationally. In addition, all session participants were asked to fill out a short, confidential on-line survey that includes questions about the percentage of premium increases over the past three years, any increase in claims, and reasons given for premium increases. Participants discussed and reported back on the following questions at each session:

1. Discuss the types of insurance your organization carries.
2. Do you have a risk management program in place? Discuss its impact on your insurance coverage, including premiums and exclusions.
3. Has getting or renewing liability insurance been an issue for your organization? If so, how?
4. How will the continuation of changes in the insurance environment affect your organization in the future?
5. Have liability concerns had an impact on your organization's ability to recruit and retain volunteers, including your Board of Directors?
6. Has your organization considered forgoing insurance coverage?
7. How have you handled this issue? Are there solutions that you would recommend either at the level of an individual organization or the voluntary sector in general?

Issues emerging from the research in progress appear to be similar: premium increases of up to 300% with no corresponding increase in claims; a sense that there is a lack of understanding, by the insurance industry, of what the voluntary sector is, and the services it provides; and a lack of recognition, by funders, of the increased administrative load involved in tackling ever greater risk-management expectations and of the expertise required to understand and negotiate coverage.

An unexpected benefit of the sessions has been the mobilization of participants to raise the profile of this issue locally and provincially. Big Brothers Big Sisters Edmonton, which hosted the first regional session, has received support from a number of funders to continue researching the issue with organizations in the Edmonton area. In St. John's, a steering committee to mobilize organizations in Newfoundland was formed by the conclusion of the regional session and a subsequent meeting with the Minister of Government Services resulted in the inclusion of voluntary sector concerns in subsequent public hearings on insurance costs in the province.

I have also worked to establish collaborative relationships with others who have a similar interest, and have been able to play a role in linking several organizations looking at the issue from the point of view of their particular sub-sector.

The report from the regional sessions combined with available literature and results from the on-line survey will provide the basic research for the next phase of the work. Next steps are expected to include:

- Creation of a group of experts - with membership from the voluntary sector, insurance industry, legal profession, and governments - to provide direction and advice
- Establishment of links with other sectors with similar insurance concerns, e.g. small business; the Canadian Federation of Independent Business has identified insurance as a major issue for small business owners<sup>11</sup>
- Development of policy options for approaching governments and the insurance industry with the goal of increasing awareness that this is an issue that affects us all
- Research potential solutions – including self-insurance and indemnification programs – bearing in mind that both solutions and a shift in the policy environment will be necessary in order to achieve real progress

Achieving the goals set out by the Voluntary Sector Forum will entail a multi-year process potentially involving legislation by governments, a shift in how the insurance industry views the voluntary sector, and greater awareness and sophistication on the part of the voluntary sector with respect to how it understands and negotiates its insurance packages. This body of work will not be complete by the end of the fellowship.

### **Summary of Reflections on My Work Experience**

The work experience has been valuable in a number of ways. The original project description was very ambitious in terms of expectations for what was originally envisioned to be an eight-month project. Early on in the project I came to the conclusion that the only way I could really understand the impact of the current insurance environment on voluntary sector organizations was to get out and talk to people. There had been so little written on the subject that I really was starting from “square one”. I also realized that the necessary research could not be conducted from a desk. This led to the decision to hold regional sessions. Aside from my salary - which under the terms of the PIAF program continued to be paid by my home department - there were very limited resources for the work. This necessitated some resourcefulness in organizing and running the sessions. Voluntary Sector Forum members in each city secured donated space and in some cases also facilitated the sessions. Their involvement and knowledge of the local community ensured the participation of a range of organizations. I appreciated receiving support from my home department to cover travel costs.

I enjoy working collaboratively with others toward a goal; I equally appreciate opportunities to learn and to make improvements with input from, and discussion with, others familiar with the work, so at times, being the only staff person working on the project has been challenging. Although my colleagues in the Forum secretariat are supportive and there is a good team atmosphere within the office, each staff member is quite specialized in their own work. This is necessitated by the very broad range of issues the Forum is tackling.

One of the most enjoyable parts of the project for me has been meeting and talking with people - from across Canada and from a wide range of voluntary sector organizations - who share a common concern. I enjoy connecting people and building relationships and networks. To date, I think I have made a strong start toward building a network of people concerned with the insurance environment faced by the voluntary sector.

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<sup>11</sup> Website reference: [www.cfib.ca/legis/national/ins\\_rep.htm](http://www.cfib.ca/legis/national/ins_rep.htm)

Not surprisingly, the issue is far more complex than I realized when I began the work. There will not be one solution to the insurance issue. Solutions will likely include greater awareness – on the part of the voluntary sector, insurers and governments - of the impact of a crippling environment on the services and viability of organizations as well as potential legislative changes; and perhaps there will be a growth in solutions by the voluntary sector, such as self-insurance. However, at this point in the research it is too early to draw concrete conclusions.

I have also enjoyed greater ease of accomplishing certain tasks made possible by working in a less bureaucratic environment. Some things take less time to get done because there are fewer people involved in the decision making process.

Although I am not as advanced in my research as I had anticipated, I believe I am developing a rich network of people and information on this issue that will lead to a well-informed action plan. I am grateful for the additional time to move further ahead on the project and hope that when my role is complete there will be a solid body of work and next steps upon which to move ahead.

When I do return to the federal government I will bring with me a greater understanding of the challenges, particularly the financial challenges, faced by voluntary organizations. Funding to the voluntary sector does not match the expectations for output. There are many very experienced people in the voluntary sector, but only so much can be achieved with often-limited staff resources. There are organizational differences between the voluntary sector and government; however, I think that aside from the financial constraints, many of the differences are more about size of organization than the particular sector. Large organizations in public, private and voluntary sectors cannot easily avoid the development of bureaucratic environments.

I would have to conclude, based on my small window of time in the voluntary sector, that it is very difficult to make generalizations about any sector in the world of work. Perspective and experience will be shaped by the people one encounters in any organization at a particular point in time. The experience, commitment and passion of individuals will vary within every organization and every office, and will shape one's view of an organization at that particular point in time.

### **Voluntary Sector-Public Sector Comparisons**

I think it is important to point out that my comparisons certainly cannot be generalized to the federal government and the voluntary sector as a whole. The federal government employs (many) thousands of people in thousands of different positions. I know from my own experience as well as from what I have learned from other public servants that there are many different cultures and operating environments in the federal government. The same I am sure can be said of the voluntary sector, whose make-up covers a wide range of organizations from very small, largely volunteer-run groups to very large, complex organizations with large budgets.

Although I have been working in an organization with national scope and responsibilities and a name that would suggest a large staff and substantial budget, my experience is really that of working in a small organization with limited staff and resources. The VSF secretariat faces the same type of resource challenges faced by so many organizations; funding is primarily project-based and there is little capacity to take on extra responsibilities.

The environment also differs from what I am used to, in that the secretariat is guided by the Forum, which acts as a board. The decision making is closer to the staff than it is in the federal

public service, where direction originates with the Minister and the Government and filters through to the front line through the bureaucracy.

It is generally easier to move ahead on the work in a voluntary organization, where there are fewer people involved in the process. However, the working reality of the bureaucracy means there are always many considerations in making decisions or in determining process, including consistency with the Government's priorities, communication with other areas of the department or other departments that many have an interest in the work, and public and media perception. In government, there are few decisions that can be made in isolation. This reality means that the work does move more slowly and the very risk-averse nature of government can make public servants hesitant to move in new directions.

I think that the Voluntary Sector Initiative has increased voluntary sector understanding of how government works, at least among those who have developed close, ongoing working relationships with public servants. However I think that there are still many misconceptions about how government operates, partly due to people outside government wanting to be able to define "government" in very specific or concrete terms. As mentioned above, the very scope and breadth of government ensure that it will always be somewhat amorphous and indefinable. People talk about building trust; one cannot build trust with a structure or a framework. Rather, trust is built between people and must happen both ways.

Within government it is hard to generalize about assumptions that apply to the voluntary sector. There are widely varying degrees of understanding, and there is a broad range of partnerships and relationships with those outside government. In a speech given a few years ago, the former Clerk of the Privy Council, Mel Cappe, talked about the day when consulting with the voluntary sector during the development of public policy would be a given. There is still much work to be done to make this a reality.

### **The Voluntary Sector and Public Sector as Partners in Public Policy**

The voluntary sector can have meaningful input into public policy if there is willingness on the part of government to make this happen. Different departments have different relationships with the parts of the voluntary sector with whom they deal in terms of involvement in policy development. There are differing views within the public sector about how and when to engage outside organizations in the development of public policy. The only way there will be a real commitment across government to working openly and collaboratively with the voluntary sector will be through clear, ongoing direction from Ministers and Deputy Ministers and accountability requirements from departments to demonstrate how this is being implemented.