

Policy Brief - Bill C19 - Budget Implementation Act

We are strongly recommending a set of changes to three (3) sections in the Budget Implementation Act that pertain to changes to the Income Tax Act and that were made to allow for the intent of Bill S-216 to be realised through budget 2022.

Context

Over the past 18 months we were received with overwhelming support across parliament on the recommendation that provisions from Bill S-216, The Effective and Accountable Charities Act, be passed into law. All agreed that it is far time to do away with colonial mindsets when dealing with charitable work, here at home and internationally. At the same time, stewarding public funds with great care is important and we heard some reservations and an interest to clarify mechanisms to keep charities accountable and to protect public funding to charities. We believe these are possible to incorporate into the act.

The recommendations were so welcomed, that in her 2022 budget paper, Minister Freeland committed that changes to the Income Tax Act would be made to reflect the spirit of Bill S216 on the reform of Direction and Control requirements when charities work with non-qualified donees.

Indeed the BIA was presented as an alternate route to pass the spirit of Senate Bill S-216, The Effective and Accountable Charities Act. Prior to the BIA, Bill S-216 had passed through the Senate, and through First Reading in the House of Commons.

Regrettably, **as written, the Budget Implementation Act literally goes against the spirit of Bill S216** by creating greater restrictions and reporting duties for Charities when working with non-qualified donees. Transparently, it was shocking to us that such a departure between what was said and what was written could even occur.

It is an incomprehensible reversal.

It is absolutely essential that the Budget Implementation Act, 2022 (the “BIA”) act be amended before being passed into law to address new rules that will govern partnerships between registered charities and non-qualified donees.

We have reviewed the BIA copy in detail and we are proposing changes to three (3) sections of the Budget Implementation Act. They are outlined in the next pages.

In each section - **additions are presented in blue** ; and deletions are ~~suggested with a strike through presentation.~~

Subsection 149.1(1) of the Act is amended by adding the following in alphabetical order:

grantee organization includes a person, club, society, association or organization or prescribed entity, but does not include a qualified donee; (*organisation donataire*)

qualifying disbursement means a disbursement by a charity, by way of a gift or by otherwise making resources available,

(a) subject to subsection (6.001), to a qualified donee, or

(b) to a grantee organization, if

(i) the disbursement is in furtherance of a charitable purpose (determined without reference to the definition *charitable purposes* in this subsection) of the charity,

(ii) the charity ensures that the disbursement is exclusively applied to the

~~charitable activities~~ in furtherance of a charitable purpose of the charity, and

(iii) the disbursement meets prescribed conditions; (*versement admissible*)

EXPLANATION OF SUGGESTED CHANGES TO BIA

- We recommend removing the mention “charitable activities” to allow the emphasis to be on the furtherance of a charitable purpose rather than on the type of activities carried out.
- Insisting that the disbursement be restricted to *charitable activities* misses the point and the spirit of Bill S216 which aims to enable charities to do work with non-qualified donees such as social enterprises. Social Enterprises by definition do not carry out charitable activities but rather achieve scalable and long lasting social impact through innovation and entrepreneurship.
- Therefore, qualifying disbursements to non-qualified donees should stand the test of furtherance of a charitable purpose of the charity and be applied toward charitable impact and results - not necessarily charitable activities.
- That is - unless the definition of “charitable activities” includes carrying out innovation and entrepreneurship focused on making a lasting and scalable impact - but the popular understanding of charitable activities doesn’t usually encompass those.

Qualifying Disbursement — Grantee Organization

3703 For the purpose of subparagraph (b)(iii) of the definition *qualifying disbursement* in subsection 149.1(1) of the Act, a disbursement by a charity meets prescribed conditions if all of the following conditions are met:

(a) the disbursement is subject to an agreement in writing between the charity and the grantee organization that includes

(i) the terms and conditions of the disbursement, including a requirement that all resources be used exclusively for charitable activities in furtherance of a charitable purpose of the charity (determined without reference to the definition *charitable purposes* in subsection 149.1(1)),

(ii) a description of the activities that the grantee organization will undertake **and the charitable impact goals they will pursue,**

EXPLANATION FOR THE CHANGE: limiting the agreement between charity and donee to a description of activities goes against the spirit of Bill S216 which seeks to move the culture of the partnership toward an accountability on results.

(iii) a requirement that any resources not used exclusively for the purposes for which they were disbursed be returned to the charity,

(iv) a requirement that periodic reports be made by the grantee organization, at least annually, which are to include **a summary of** ~~details on~~ the use of the disbursed resources, compliance with the terms of the agreement and progress made toward the purposes of the disbursement,

EXPLANATION FOR THE CHANGE: using language that insists on the details is reflective of the current culture of mistrust and micro-management that permeates the Direction and Control regime that Bill S216 is seeking to change. Requiring a summary instead would go along the spirit of Bill S216 which seeks to move the culture of mutual respect and understanding.

~~(v) a requirement for the provision to the charity, in a timely manner, of a written final report from the grantee organization, which includes a summary of the results achieved with the charity's resources, details on how the resources were used and documentary evidence to demonstrate that resources were used exclusively for the purposes for which they were disbursed,~~

EXPLANATION FOR THE CHANGE: Requiring a "final report" on the funds used is reflective of a fundamental lack of understanding of the types of partnerships that charities can enter when working with social enterprises and other grantee organizations. Support from a charity to a social enterprise can carry results for years forward. It is an investment on impact and a long lasting partnership. Instead of increasing the paperwork required, in the spirit of Bill S216 we suggest removing this requirement in its entirety.

~~(vi) a requirement that the books and records relating to the use of the disbursement (containing information in such form as will enable the Minister to determine whether the disbursement is a qualifying disbursement) be transferred to the charity or be kept by the grantee organization for a minimum of six years following the end of the last~~

~~taxation year of the charity to which the books and records of account relate, and~~

EXPLANATION FOR THE CHANGE: Requiring that books and records be shared with a third party will render it much less likely that any grantee organization would agree to work with a charity. It is already a lot to ask that the charity itself be offered access to the books and records relating to the use of the disbursement for consultation. We suggest removing this requirement altogether.

(vii) a requirement that, upon request by the charity, books and records relating to the use of the disbursement be made available in a timely manner to the charity to inspect, audit, examine or copy;

(b) prior to making the disbursement, the charity undertakes an inquiry sufficient to obtain reasonable assurances that **either**

(i) the entirety of activities pursued by the grantee organization are aligned with and in furtherance of a charitable purpose of the charity and there is a reasonable assurance that they will remain so in view of the prior history, practices and strategic intent or constitutional documents of the grantee organisation and its directors. The assessment shall be documented and enable the Minister to determine whether an impartial assessment was made on the grantee's qualification and alignment with a charitable purpose of the charity. At minimum five Directors, staff or trustees of the charity shall have participated in an exercise of independent assessment of the grantee and shall have been given an opportunity to scrutinise the decision openly.

OR

(ii) the provisions in the agreement referred to in paragraph (a) will be complied with, including a review of the identity, prior history, practices, activities and areas of expertise of the grantee organization and its directors, officers and like officials;

EXPLANATION FOR THE CHANGE: It is essential that the Income Tax Act holds charities accountable on the quality and transparency of the process they use to vet and select grantee organisations. The conditions originally presented in point (b) are too weak and miss the essential elements of partner selection processes that charities ought to be accountable on. As presented, the Income Tax Act only requires that charities vet grantee organisations on their likeliness to comply with reporting requirements - i.e. are they likely to comply and write a final report we are forcing them to write however useless that may be - instead of asking: are they likely to stay true to the mission, impact and charitable purposes of the partnership regardless of what challenges come their way.

(c) the charity provides ongoing monitoring of the grantee organization, including receiving periodic reports and verifying that the disbursement is being applied for the purposes for which it was disbursed;

~~(d) the charity receives, reviews and approves the final report of the grantee organization referred to in subparagraph (a)(v) in a timely manner; and~~

EXPLANATION FOR THE CHANGE: We suggest that no final report be required and therefore this (d) is also irrelevant.

(e) if the charity becomes aware that any part of the agreement referred to in paragraph (a) is not being complied with, the charity undertakes adequate remedial action including, where appropriate, withholding further disbursements, **officially and publicly dissociating from the grantee organization** and attempting to recover disbursements.

EXPLANATION FOR THE CHANGE: We suggest that requiring a public disclosure on dissociation touches directly the Charities concern for reputation management and maintaining the public trust and will therefore be a significant incentive and lever to prevent risks of mission drift.

OVERALL EXPLANATION OF SUGGESTED CHANGES

The spirit of Bill S216 is to allow charities to move away from a micro-management of their partners when these are non-qualified donees. (grantee organisations) - The proposed language in section 3703 is overly focused on reporting on activities and misses the point that effectiveness and accountability should be on RESULTS - not on activities. Because activities should change when circumstances change - but results, mission and impact should not.

The language initially proposed in the BIA has significant gaps in assuring that the vetting process for non-qualified donees is actually done in a way that checks for alignment of charitable intent. Rather than eliminating that language altogether, we have suggested changes and audits that represent what we believe can be a safer and more effective and transparent grantee vetting process.

21 Paragraph 168(1)(f) of the Act is replaced by the following:

(f) in the case of a registered charity, registered Canadian amateur athletic association or registered journalism organization, accepts a gift the granting of which was expressly or implicitly conditional on the charity, association or organization making a gift to another person, club, society, association or organization other than a qualified donee.

REPLACE WITH

(f) in the case of a registered charity, registered Canadian amateur athletic association or registered journalism organization, accepts a gift the granting of which was expressly or implicitly conditional on the charity, association or

organization making ~~a gift to another person, club, society, association or organization other than a qualified donee~~ a gift that is not a qualifying disbursement to another person, club, society, association or organization other than a qualified donee.

EXPLANATION OF SUGGESTED CHANGES

Remaining coherent with the spirit of Bill S216 by putting the emphasis on the qualification of the disbursement rather than the donee. This would allow charities to inspire and solicit restricted and directed giving toward social entrepreneurship initiatives.