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# CHARITY RESOURCE
## JUNE 1, 2021

# SUBMISSION TO THE SENATE STANDING COMMITTEE ON NATIONAL FINANCE RE: BILL S-222

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**NOTE:** The following document is the submission prepared by Terrance S. Carter and given before the Senate Standing Committee on National Finance on June 1, 2021, and is not intended to constitute a transcript of the oral testimony. Official transcripts will be posted on the Senate of Canada's website.

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## A. INTRODUCTION

Honourable Senators,

Thank you for inviting me to appear today. I am doing so in support of Bill S-222, *The Effective and Accountable Charities Act* (Bill), introduced by the Honourable Senator Omidvar.

As you have heard, the *Income Tax Act* (ITA) currently contains archaic provisions that have been in place since the 1950s requiring charities to devote all of their resources on charitable activities carried on by the organization itself. This is known as the "own activities" test. This has led the Canada Revenue Agency (CRA) to implement an administrative policy that charities must direct and control the use of their resources when working through an intermediary... Such requirement, however, severely limits how charities can work with third parties that are not qualified donees under the ITA.

Many in the charitable sector have expressed concern with the CRA's interpretation of the "own activities" test and the direction and control regime, including a recent open letter signed by 37 charity lawyers. Although the CRA updated its guidance's in November 2020 by relaxing some of its more onerous requirements, there were no substantive changes to the CRA's direction and control policy. Bill S-222 proposes to replace the "own activities" test and direction and control requirements with a practical test of resource accountability, which I support

The Bill happens to also coincide with Report No. 1 of the CRA's Advisory Committee on the Charitable Sector that itself proposes removal of the "own activities" requirement from the ITA and the introduction of a resource accountability test.

## B. PROBLEMS WITH THE STATUS QUO

I would like to briefly outline some of the key problems with the current "own activities" test and the CRA's related direction and control regime:

1. Requiring programs to be the "own activities" of the funding charity creates a legal fiction. This methodology is outmoded, impractical, inefficient, inordinately expensive, unpopular and fails to meet the objectives of the ITA. It is built upon the fiction that everything that a charity does through an intermediary must be structured as the activity of the charity itself even though the parties know that the activity is that of the intermediary. As a result, the

direction and control regime has created a fictitious counter-reality that charities have significant difficulties complying with.

2. Requiring a top-down approach to dictate how charitable activities are carried out is at odds with current international development philosophy that emphasizes the importance of empowering partnerships with local communities through "localization."

3. The micromanagement required of charities, including monitoring and reporting rules, distracts charities from focusing on their programs and pursuing their charitable purposes.

4. Complying with CRA's onerous requirements draws scarce resources away from charitable work, for example having to incur legal expenses to ensure compliance, even where the charity has no concern with a trusted foreign or domestic partner.

5. The CRA's direction and control requirements impose a paternalistic and patronizing relationship between charities and Indigenous communities that are not registered charities or other types of qualified donees.

6. The direction and control regime requiring is an outlier in the international development community. It is at odds with all other credible jurisdictions, including the US, England and Wales.

## C. PROPOSED CHANGES

Bill S-222's most important change is the removal of the "own activities" test by amending the ITA to require charities to carry on "charitable activities" in pursuing its purposes instead of "charitable activities carried on by the charity." The focus is no longer on whose activity it is but rather on the purpose of the activity.

The Bill proposes to allow charities to make their resources available to non-qualified donees, provided that charities take "reasonable steps' to ensure that those resources are used exclusively for charitable purposes. A new section of the ITA would be added to prescribe what constitutes "reasonable steps" in order to ensure the exclusive use of resources for a charitable purpose. This would include obtaining appropriate due diligence information of the third party and imposing restrictions and conditions on the transfer of resources to the third party for charitable purposes.

## D. CONCLUSION

In conclusion, the amendments proposed in Bill S-222 would 1) lift an unnecessary burden from Canadian charities that have been hampered for too long by antiquated ITA provisions that are out of touch with reality and international standards, and 2) would replace it with a regime of resource accountability that would allow charities to work with non-qualified donees, both internationally and domestically, in order to more effectively achieve their charitable purposes.