

## SENATOR OMI DVAR SPEAKS IN THE SENATE TO BILL S-222

*By Terrance S. Carter and Theresa L.M. Man\**

THE HONOURABLE Ratna Omidvar, Senator for Ontario, and former co-chair of the Special Senate Committee on the Charitable Sector, moved second reading of Bill S-222, the *Effective and Accountable Charities Act* (the “Bill”),<sup>1</sup> in the Senate on March 16, 2021. In her [speech](#),<sup>2</sup> the Senator described the challenges with regard to the “own activities” requirement under the *Income Tax Act* (Canada) (“ITA”),<sup>3</sup> which restricts the manner in which registered charities can work with organizations that are not “qualified donees.”<sup>4</sup> In this regard, the Senator said that “this process is outmoded, impractical, inefficient, inordinately expensive and unpopular, [...] fails to meet the objectives of the legislation [and]

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<sup>1</sup> *An Act to amend the Income Tax Act (use of resources)*, 2nd Sess, 43rd Parl, 2021, (first reading 8 February 2021), online: <<https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=11099585>> [“Bill S-222”]. For further information on Bill S-222, see Terrance S Carter and Theresa LM Man, “BILL S-222 Proposes to Eliminate The ‘Own Activities’ Requirement for Charities” *Charity & NFP Law Bulletin No. 486* (24 February 2021), online: Carters Professional Corporation <<https://www.carters.ca/pub/bulletin/charity/2021/chylb486.pdf>>. See also Terrance S Carter and Theresa LM Man, “Bill S-222: Eliminating the ‘own activities’ requirement for charities” *The Lawyer’s Daily* (16 March 2021), online: <<https://www.thelawyersdaily.ca/articles/25375/bill-s-222-eliminating-the-own-activities-requirement-for-charities-?category=analysis>>.

<sup>2</sup> Canada, Parliament, *Debates of the Senate*, 2nd Sess, 43rd Parl, Vol 152, No. 31, (16 March 2021), online: <[https://sencanada.ca/en/content/sen/chamber/432/debates/031db\\_2021-03-16-e?language=e#77](https://sencanada.ca/en/content/sen/chamber/432/debates/031db_2021-03-16-e?language=e#77)>; and on recorded video (starting at time 20:02:39): <<https://senvucloud.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20210316/-1/9998>>. See also Press Release: The Effective and Accountable Charities Act Would Empower the Charitable Sector and Weed out Systemic Racism (17 March 2021), online: Ratna Omidvar <<http://www.ratnaomidvar.ca/effective-and-accountable-charities-act-would-empower-the-charitable-sector-and-weed-out-systemic-racism>>.

<sup>3</sup> RSC, 1985, c 1 (5th Supp) [ITA].

<sup>4</sup> For a full definition of “qualified donee”, see ITA, s. 149.1(1). In general terms, s. 149.1(1) of the ITA provides that qualified donees are organizations that can issue official donation receipts for gifts that individuals and corporations make to them under paragraphs 110.1(1)(a) and (b) and subsection 118.1(1).

is built upon the fiction that everything that a charity does through a third party intermediary must be structured as the activity of the charity itself when all parties involved know that this activity is that of a third party.” The Senator further spoke to how, for charities, “the risk, the administrative burden and the liability is too much for them” and that “Canadian charities cannot realistically participate in pooled efforts with non-Canadian charities when [...] charities from the U.K., the U.S. and Australia are pooling their efforts to address significant international development issues [...] because they cannot realistically exercise direction and control over a pooled fund”.<sup>5</sup>

The elimination of the “own activities” requirement from the ITA is also one of the recommendations in the January 2021 report of the Advisory Committee on the Charitable Sector that was published on March 12, 2021.<sup>6</sup> As well, support for the elimination of the of the “own activities” requirement from the ITA was also expressed in the open letter signed by thirty-seven lawyers in the charitable sector, published on February 19, 2021, who came together to recommend “legislative and regulatory reform to better facilitate the work of the charitable sector in Canada.”<sup>7</sup>

If passed, and there is still a long way to go, the Bill would provide registered charities in Canada with much needed and long awaited reform concerning the “own activities” requirement. As such, the charitable sector will want to carefully monitor the status of the Bill as it makes its way through Parliament.

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<sup>5</sup> *Ibid.*

<sup>6</sup> Canada Revenue Agency, Advisory Committee on the Charitable Sector, Report #1 of the Advisory Committee on the Charitable Sector — January 2021 (March 12, 2021), online: <<https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/corporate-reports-information/advisory-committee-charitable-sector/report-advisory-committee-charitable-sector-february-2021.html>>.

<sup>7</sup> Making It Easier to Do Good: Doing Away with the ‘Own Activities’ Requirement” (19 February 2021) online: Carters Professional Corporation <<https://www.carters.ca/pub/bulletin/charity/2021/Making-It-Easier-to-Do-Good.pdf>>.