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# BILL C-19 *BUDGET IMPLEMENTATION ACT, 2022, NO. 1* PROPOSES MAJOR CHANGES TO LEGISLATIVE FRAMEWORK GOVERNING CHARITIES

***By Terrance S. Carter & Theresa L.M. Man****

## A. INTRODUCTION

THE FEDERAL BUDGET released on April 7, 2022 ("Budget 2022")[1] promised changes to the legislative framework governing charities in the "spirit of Bill S-216," a bill which proposes to replace the "own activities" requirement in the *Income Tax Act* ("ITA") with a legislative regime of resource accountability. This new regime would effectively equip charities to work with organizations that are not Canadian registered charities or other type of qualified donees ("QDs").[2] When Bill C-19, *Budget Implementation Act, 2022, No. 1* ("Bill C-19")[3] was introduced in the House of Commons on April 28, 2022, there was and continues to be considerable interest in the charitable sector concerning how proposed changes to the ITA will impact the ability of registered charities to work with such organizations. As of the date of writing, Bill C-19 is going through second reading in the House of Commons. As mentioned in *Charity & NFP Law Bulletin No. 510*, and the *April 2022 Charity & NFP Law Update*, Bill C-19 sets the stage for significant changes concerning how charities may disburse funds to organizations that are not QDs. Bill C-19 also pre-emptively repeals Bill S-216, *An Act to amend the Income Tax Act (use of resources of a registered charity)* ("Bill S-216")[4] if Bill S-216 was to receive royal assent prior to Bill C-19.

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[1] "Budget 2022" (7 April 2022), online: *Government of Canada*: <https://budget.gc.ca/2022/report-rapport/toc-tdm-en.html>.
[2] For a full definition of "qualified donee", see definition in *Income Tax Act*, RSC 1985, c 1 (5th Supp), s 149.1(1).
[3] 1st Sess, 44th Parl, 2022 (first reading 28 April 2022).
[4] 1st Sess, 44th Parl, 2022 (first reading 24 November 2021).

This *Bulletin* reviews the background of Canada's current legislative framework for charities, with regard to the ITA's own activities test and the corresponding "direction and control" regime administered by the Canada Revenue Agency ("CRA"). It also reviews the development and proposed solutions of Bill S-216 as a response to the current legal framework. Lastly, this *Bulletin* outlines the new provisions introduced by Bill C-19, the response by the charitable sector to date, and the authors' thoughts about possible amendments to Bill C-19.

### B. BACKGROUND: CALLS TO ELIMINATE OWN ACTIVITIES TEST & DIRECTION AND CONTROL REGIME

CANADA'S CURRENT regulatory regime has been heavily criticized by many in the charitable sector in recent years for making it difficult and administratively costly for registered charities to work with organizations that do not themselves have registered charitable status in Canada or are not otherwise QDs. In this regard, it is the ITA's own activities requirement that is the source of difficulty for registered charities. Under the ITA, charities are allowed to use their resources in only two ways: (1) a charity may make gifts to QDs, or (2) a charity may devote its resources to charitable activities carried on by the organization itself (referred to as its "own activities").

The CRA considers the own activities test to require that activities must be those of the charity that are directly under the charity's direction, control, and supervision, and for which it can account for any funds or other resources expended. Therefore, in order to share resources with an organization that is not a QD, a Canadian charity must carry out its own activities by directing and controlling any activities that the third-party organization carries out on its behalf.

However, in some contexts, the own activities test has the unintended impact of stifling cooperation and collaboration between charities and non-charities. For example, an Indigenous organization that is a non-QD and that is offered funding from a charity must consent to a complicated and expensive intermediary contract under which the funder charity must exercise effective operational control over the Indigenous organization's activities. Many charities shy away from funding Indigenous organizations because of the

problematic colonial connotations of the "direction" and "control" of an Indigenous group, concerns about offending these groups, and because of the complexity involved.[5]

Additionally, Canadian charities that operate internationally face challenges working with local partner organizations in foreign countries. The rules in Canada require that they develop intermediary agreements and then prove that they exercise operational direction and control over the implementation of such agreements with organizations thousands of kilometres away.[6] These practices fuel concerns about how requirements under the CRA's direction and control administrative policy are not in line with the contemporary international development values of "localization" which are necessary to foster local empowerment without residual colonialism.[7]

In response to these concerns, there has been significant advocacy by many in the charitable sector to eliminate the own activities requirement in the ITA, along with the associated direction and control regime administered by the CRA. The June 2019 report of the Special Senate Committee on the Charitable Sector (the "Senate Report") recommended that the federal government direct the CRA to revise its guidances on direction and control in order to implement an expenditure responsibility test.[8] Following the Senate Report, the Advisory Committee on the Charitable Sector ("ACCS") in its Report #1, dated January 29, 2021, recommended that the Minister of National Revenue work with the Minister of Finance to amend the ITA to replace the own activities test with a legislative framework focused on resource accountability.[9]

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[5] See "Bill S-216 – 'Resource Accountability' and the Vulnerable Sector" presented by The Honourable Ratna Omidvar, C.M., O. Ont, Senator for Ontario at the 2022 Ottawa Region Charity & Not-for-Profit Law Webinar (17 February 2022), online (pdf): <https://www.carters.ca/pub/seminar/charity/2022/cnfp/SenOmidvar_ResourceAccountability.pdf>.
[6] See "Bill S-216 – 'Resource Accountability' and the Vulnerable Sector" presented by The Honourable Ratna Omidvar, C.M., O. Ont, Senator for Ontario at the 2022 Ottawa Region Charity & Not-for-Profit Law Webinar (17 February 2022), online (pdf): <https://www.carters.ca/pub/seminar/charity/2022/cnfp/SenOmidvar_ResourceAccountability.pdf>.
[7] See Canada, Special Senate Committee on the Charitable Sector, *Catalyst for Change: A Roadmap to a Stronger Charitable Sector, (Final Report)*, (Ottawa: Senate of Canada, June 2019), online (pdf): <https://sencanada.ca/content/sen/committee/421/CSSB/Reports/CSSB_Report_Final_e.pdf>; Terrance S. Carter & Theresa L.M. Man "Direction and Control: Current Regime and Alternatives" (2020), online: *The Pemsel Case Foundation* <https://www.pemselfoundation.org/wp-content/uploads/2020/04/Direction-and-Control-Current-Regime-and-Alternatives.pdf>.
[8] See Recommendation #30 in Canada, Special Senate Committee on the Charitable Sector, *Catalyst for Change: A Roadmap to a Stronger Charitable Sector, (Final Report)*, (Ottawa: Senate of Canada, June 2019), online: <https://sencanada.ca/content/sen/committee/421/CSSB/Reports/CSSB_Report_Final_e.pdf>.
[9] 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>. See also Theresa L.M. Man and Jacqueline M. Demczur, "Advisory Committee on the Charitable Sector Releases its First Report" (24 March 2021), online (pdf): *Carters Professional Corporation* <https://www.carters.ca/pub/bulletin/charity/2021/chylb489.pdf>.

Further, ACCS's Report #1 proposed to shift the focus of legislation and regulations to whether a charity uses its resources in a responsible manner to further its charitable purposes, rather than focus on how the charity carries on those charitable "activities."[10] The ACCS's call to eliminate the own activities requirement was echoed in an open letter dated February 19, 2021, signed by 37 charity lawyers, identifying this requirement as "the key barrier" to efficient action by charities.[11] This letter endorsed Bill S-222 (described below) as a solution to the problem posed by the own activities test, noting that Bill S-222 had been introduced less than two weeks earlier.

### C. BILLS S-222 AND S-216

BILL S-222, *An Act to amend the Income Tax Act (use of resources)* ("Bill S-222"), the predecessor to Bill S-216, was introduced in the Senate on February 8, 2021, by the Honourable Senator Ratna Omidvar. Bill S-222 proposed to eliminate the own activities requirement, expand the definition of "charitable activities" to allow resources to be made available to non-QDs, and ensure resource accountability.[12] It clarified that charitable foundations (*i.e.,* public and private foundations), in addition to charitable organizations, would be permitted to make their resources available to non-QDs, provided that reasonable steps are taken to ensure resource accountability. Reasonable steps would include requiring funder charities to carry out due diligence prior to providing resources to non-QDs. Reasonable steps would also include establishing measures, imposing restrictions or conditions, and otherwise taking the actions necessary to satisfy a reasonable person that the resources are being used exclusively for a charitable purpose by the recipient non-QD.

Bill S-222 passed through the Senate and completed its first reading in the House of Commons on June 23, 2021. However, Bill S-222 died on the Order Paper when a federal election was called and Parliament was dissolved on August 15, 2021. After Parliament resumed on November 22, 2021, the draft legislation was reintroduced in the Senate as Bill S-216. Bill S-216 passed through the Senate and completed its first reading in the House of Commons as of February 3, 2022 and is now going through second reading. Like

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[10] Theresa L.M. Man and Jacqueline M. Demczur, "Advisory Committee on the Charitable Sector Releases its First Report" (24 March 2021), online (pdf): *Carters Professional Corporation* <https://www.carters.ca/pub/bulletin/charity/2021/chylb489.pdf>.
[11] "Making it Easier to do Good: Doing Away with the 'Own Activities' Requirement" (19 February 2021), online: <https://www.carters.ca/pub/bulletin/charity/2021/Making-It-Easier-to-Do-Good.pdf>.
[12] S-222, *An Act to amend the Income Tax Act (use of resources)*, 2nd Sess, 43rd Parl, 2021. See also Terrance S. Carter and Theresa L.M. Man, "Bill S-222 Proposes to Eliminate the 'Own Activities' Requirement for Charities" (24 February 2021), online (pdf): *Carters Professional Corporation* <https://www.carters.ca/pub/bulletin/charity/2021/chylb486.pdf>.

its predecessor, Bill S-216 has been well received by many in the charitable sector. In this regard, 42 charity lawyers signed an open letter in support of the adoption of Bill S-216 and the removal of the own activities test on March 28, 2022.[13] A separate letter from the Canadian Bar Association addressed to the Department of Finance, dated April 26, 2022, also supported the passage of Bill S-216 without amendment.[14] In light of the many challenges posed by the own activities test, Bill S-216 is seen as a positive step forward for the charitable sector and as a way for charities to work more efficiently with non-QDs, particularly grassroots and Indigenous organizations in Canada, as well as organizations working outside of Canada involved in international development activities.

### D. CHANGES PROPOSED BY BILL C-19

FOLLOWING THE MOMENTUM of Bills S-222 and S-216 and the advocacy from multiple stakeholders within the charitable sector calling for the elimination of the ITA's own activities test and the removal of the CRA's direction and control regime, Budget 2022 was released on April 7, 2022, promising changes in the "spirit of Bill S-216."[15] Budget implementation legislation was tabled soon after as Bill C-19 *Budget Implementation Act 2022, No. 1* on April 28, 2022. Bill C-19 would repeal Bill S-216 and deem it to never have come into force if Bill S-216 was to receive royal assent before Bill C-19 does.[16] However, many in the charitable sector have voiced concerns that Bill C-19 "perpetuates the colonial relationship between charities and groups without charitable status" and increases the administrative burden for most Canadian charities.[17]

The following is a summary of the key aspects of Bill C-19 as it applies to registered charities.

1. The Introduction of "Qualifying Disbursements" and "Grantee Organizations"

Bill C-19 does not eliminate the own activities test. Rather, it proposes to add on an additional regime that would allow charities to disburse funds to a greater variety of organizations. The current system governing

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[13] "Open Letter by Charity Lawyers in Support of Bill S-216" (31 March 2022), online (pdf): <https://www.carters.ca/pub/bulletin/charity/2022/Bill-S-216-Open-Letter.pdf>.
[14] The Canadian Bar Association, "Support for the adoption of Bill S-216 Effective and Accountable Charities Act" (26 April 2022), online (pdf): <https://www.carters.ca/pub/bulletin/charity/2022/CBA-letter-bill-s-216.pdf>.
[15] "Budget 2022" (7 April 2022), online: *Government of Canada* <https://budget.gc.ca/2022/report-rapport/toc-tdm-en.html>.
[16] C-19, *Budget Implementation Act, 2022, No.1*, 1st Sess, 44th Parl, 2022 (first reading 28 April 2022) at s. 51.
[17] Tim Harper, "For the philanthropic sector, a step forward on 'direction and control,' but more work ahead" (12 May 2022), online: *The Philanthropist* <https://thephilanthropist.ca/2022/05/for-the-philanthropic-sector-a-step-forward-on-direction-and-control-but-more-work-ahead/>.

charities only allows charities to disburse funds to QDs. As described above, if a charity wishes to work with a non-QD, the charity must "direct and control" the non-QD and cannot simply make a gift of funds or other resources to the other organization. However, if the changes in Bill C-19 are adopted, then the current legislative framework will be augmented to allow a charity to make "qualifying disbursements" to both QDs (subject to the limitation explained below) and non-QD "grantee organizations." Grantee organization is a new term defined in Bill C-19 to include "a person, club, society, association or organization or prescribed entity but does not include a qualified donee."[18]

Bill C-19 defines "qualifying disbursement" as follows:

> 149.1(1) *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) [qualifying disbursement limit], 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 charitable activities in furtherance of a charitable purpose of the charity, and
> (iii) the disbursement meets prescribed conditions;
>
> 149.1(6.001) In any taxation year, disbursements of income of a charitable organization by way of gifts to a qualified donee (other than disbursements of income to a registered charity that the Minister has designated in writing as a charity associated with the charitable organization) in excess of 50% of the charitable organization's income for that year are not qualifying disbursements.

a) Issues Regarding Making a "Qualifying Disbursement" to a Qualified Donee

The Explanatory Notes to Bill C-19 indicate that the combined effect of the newly defined term of "qualifying disbursement" and new subsection 149.1(6.001) is intended to maintain the existing restriction on gifts from charitable organizations to QDs so that disbursements by way of gift to QDs are not considered qualifying disbursements if in excess of 50% of a charitable organization's income.[19]

Nevertheless, the introduction of the new concept of "qualifying disbursement" and the language used in different provisions of Bill C-19 raise questions and concerns about the limits imposed on charitable

[18] C-19, *Budget Implementation Act, 2022, No.1*, 1st Sess, 44th Parl, 2022 (first reading 28 April 2022) at s. 16.
[19] Department of Finance Canada, "Explanatory Notes Relating to the Income Tax Act and Other Legislation" (April 2022) online: Government of Canada <https://fin.canada.ca/drleg-apl/2022/nwmm-amvm-0422-n-eng.pdf>.

organizations when making qualifying disbursements to QDs. For example, a qualifying disbursement includes disbursements "by way of a gift *or by otherwise making resources available*" [emphasis added]. However, in subsection 149.1(6.001), the qualifying disbursement limit of a charitable organization for a taxation year for "disbursements of income of a charitable organization *by way of gifts* to a qualified donee" [emphasis added] only makes reference to "gifts," and not "other resources available." The language in Bill C-19 is not clear whether this is intended to mean that some aspects of a qualifying disbursement (*i.e.,* gifts) are limited, while other aspects (*i.e.,* other resources) are not.

As well, if a charitable organization happens to make gifts to QDs in excess of 50% of its income in a taxation year, it is questionable what that "gift" would be, since it is deemed not to be a qualifying disbursement. The language in Bill C-19 is again not clear.

Further, the language in Bill C-19 would seem to suggest that a charitable organization that makes gifts to QDs in excess of 50% of its income in a taxation year could face the risk of revocation of its charitable status, although that is not likely the intent of Finance. If a charitable organization gives more than 50% of its income in the year to a QD in the form of gifts, the proposed wording in subsection 149.1(6.001) would deem such gifts to no longer be a qualifying disbursement. This is problematic because other changes that Bill C-19 introduces allow the Minister of National Revenue to revoke a charity's charitable status where it disburses funds that are neither "qualifying disbursements" nor intended for the charity's own activities.[20]

b) Issues Regarding Making a "Qualifying Disbursement" to a Grantee Organization

Bill C-19 provides that "qualifying disbursements" can be made to grantee organizations if three requirements are met: (1) the disbursement must further a charitable purpose of the funder charity; (2) the funder charity must ensure that the disbursement is exclusively applied to charitable activities in furtherance of the funder charity's charitable purpose; and (3) the disbursement meets prescribed conditions.

[20] See *e.g.* Bill C-19 at subsections 16(4)-(6) which would amend the language in paragraphs 149.1(2)(c), (3)(b.1) and (4)(b.1) of the *Income Tax Act*.

Unfortunately, the "prescribed conditions" set out in the newly proposed Regulation 3703 closely resemble the CRA's current requirements for direction and control and in some cases are even more stringent. In essence, these prescribed conditions are direction and control on steroids.

For example, if a registered charity currently wants to conduct its own activities by entering into an agreement with an intermediary, the CRA's guidances (CG-002 and CG-004) *recommend* that the charity enter into a written agreement with the intermediary. The need to enter into agreements with intermediaries is merely a *recommendation*, it is not required by CRA. The guidances also point out that "there is no legal requirement to have a written agreement, and the same result might be achieved by other means."[21] Bill C-19, on the other hand, and the proposed Regulation 3703, would *require* a written agreement between a funder charity and a recipient grantee organization, and would require that the written agreement include *all* of the following:

> (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 charitable activities that the grantee organization will undertake,
>
> (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 details on the use of the disbursed resources, compliance with the terms of the agreement and progress made toward the purposes of the disbursement,
>
> (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,
>
> (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

[21] CG-002 "Canadian registered charities carrying on activities outside Canada" (27 November 2020), online: *Government of Canada* <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html>; CG-004 "Using an intermediary to carry on a charity's activities within Canada" (27 November 2020), online: *Government of Canada* <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/using-intermediary-carry-a-charitys-activities-within-canada.html>.

> 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
>
> (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;

In addition, a charity wishing to make a qualifying disbursement to a grantee organization must comply with four additional requirements set out in Regulation 3703. These include conducting pre-disbursement due diligence to obtain "reasonable assurance" that the grantee organization will comply with all of the provisions in the written agreement; conducting ongoing monitoring of the grantee organization (which includes obtaining periodic reports and verifying disbursements); receiving, reviewing, and approving a final report from the grantee organization; and fulfilling their obligation to take "adequate remedial action" if the written agreement is not complied with.

Some of the contents of Regulation 3703 are strikingly similar to the *recommendations* set out in the CRA's direction and control guidances CG-002 and CG-004 (explained above). However, the main difference is that the current direction and control guidances generally lists factors to consider but are not law, while the proposed Regulation in Bill C-19 would become mandatory legal requirements that a charity must comply with regardless of the circumstances. It is concerning that there is no minimum threshold for small gifts. Given the administrative cost that will accompany efforts to comply with Regulation 3703, there could be situations in which the cost of compliance is greater than the actual qualifying disbursement itself.

2. <u>Privacy and Safety Concerns Posed by Bill C-19</u>

Bill C-19 proposes to add an additional regulation to the ITA requiring charities to report certain prescribed information about grantee organizations in their public information return (also referred to as Form T3010). The proposed Regulation 3704 requires charities to report the following information about grantee organizations which have received a qualifying disbursement in excess of $5,000 from the charity in a taxation year:

- the organization's name
- the amount of the qualifying disbursement
- the purpose of the qualifying disbursement

This information would be available to the public and, as a result, could pose significant privacy and safety concerns in certain contexts. For example, if a Canadian charity provided a qualifying disbursement to a foreign grantee organization for the advancement of women's education in a region of the world where women's education is discouraged, then the grantee organization and its workers could face threats, violence, or intimidation as a result of such information being available to the public. This would discourage Canadian charities from giving qualifying disbursements to these organizations because of the potential for safety risks to the recipient organizations.

While the current legislative regime does require charities to include information about the amounts they give to QDs on their public information returns, the difference between the current regime and proposed Regulation 3704 is that QDs are already regulated entities within the statutory definition of QDs. As such, the names and purposes of these entities are already available to the public. The new information that a public information return generally shows is merely the amount of the gift that was made to QDs.[22]

3. Anti-Directed Gift Rule

Bill C-19 also proposes to amend paragraph 168(1)(f) of the ITA to provide that a registered charity may have its charitable status revoked if it accepts a gift the granting of which was expressly or implicitly conditional on the *charity* making a gift to "another person, club, society, association or organization." Budget 2022 and the Explanatory Notes to Bill C-19 state that this amendment is necessary in order to prevent charities from acting as a conduit for donations to other organizations.

The problem with the proposed amendment is that it will preclude charities from fundraising for programs being run by grantee organizations, for fear of losing their charitable status. The solution to this predicament is a relatively simple one, which is to exempt gifts to grantee organizations that otherwise meet the definition of qualifying disbursements.

## E. REACTION OF THE CHARITABLE SECTOR

THE CHARITABLE SECTOR has expressed concern that the changes introduced by Bill C-19 do not implement the spirit of Bill S-216 and could be very challenging for the sector to comply with. In recent

[22] See Form T1236 E for the CRA's Qualified donees worksheet. "Qualified donees worksheet" online (pdf): <https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t1236/t1236-19e.pdf>.

days and weeks, leaders representing a broad cross-section of the Canadian charitable sector have met with several Members of Parliament and Senators requesting support for amendments to Bill C-19.[23] Advocates have said that if Bill C-19 is passed in its current form, it could make it harder for charities to fund non-profits, grassroots groups, and international charities.[24] In addition, representatives from organizations, such as Imagine Canada and Samaritan's Purse, have voiced the sector's concerns before the Standing Committee on Finance.[25] Further, more than 60 Canadian global development and humanitarian organizations sent an open letter to The Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance, describing the budget implementation legislation as "colonial" and as "mak[ing] the system more confusing, risky and challenging for registered charities and non-qualified donees to work together." The letter goes on to strongly urge that certain minimum changes be made to Bill C-19, such as amending the proposed definition of "qualifying disbursement," amending the language related to "directed giving" and deleting Regulation 3703 in its entirety.[26]

At the same time, Bill S-216 continues to make progress in the House of Commons, receiving second reading on May 16, 2022. In its second reading, MP Ms. Niki Ashton (Churchill-Keewatinook Aski, NDP) said that the federal government "failed to meet charitable organizations' needs with what has been proposed in Bill C-19" and advocated for Bill S-216 as a step in the right direction.[27] MP Mr. Philip Lawrence (Northumberland-Peterborough South, CPC) said that the "overall theme" of what he has heard from stakeholders from charitable organizations was that Bill C-19 "is far too prescriptive."[28]

In light of the advocacy accomplished by the sector since the introduction of Bill C-19, and the continued progress of Bill S-216 in the House of Commons, it is hopeful that changes can be made to Bill C-19 before it is passed into law. Some changes that the federal government may want to consider before Bill C-19 becomes law include removing Regulation 3703 and its prescriptive requirements in their entirety,

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[23] "Nonprofits brief MPs on impact of key legislation" (13 May 2022), online: *Imagine Canada* <https://imaginecanada.ca/en/Hill-Day-2022>.
[24] Gabe Oatley, "Inside the Rapidly Organized 'Hill Day' for a Legislative Amendment on Non-Qualified Donees" (19 May 2022), online: *Future of Good* <https://futureofgood.co/inside-hill-day/>.
[25] See Standing Committee on Finance, 44th Parl, 1st Sess, Meeting 44 on Monday May 16, 2022 and Meeting 48 on Thursday May 19, 2022. Additional comments were offered by a representative of the Native Women's Association of Canada at Meeting 48.
[26] Open Letter to The Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance (17 May 2022), online (pdf): <https://cooperation.ca/wp-content/uploads/2022/05/DC-Open-Letter-v202205_Final_EN.pdf>.
[27] "Bill S-216, An act to amend the Income Tax Act" 2nd reading, *House of Commons Debates*, 44-1, vol 151, No 72 (16 May 2022) at 1145.
[28] "Bill S-216, An act to amend the Income Tax Act" 2nd reading, *House of Commons Debates*, 44-1, vol 151, No 72 (16 May 2022) at 1120.

and replacing the Regulation with the principled approach to accountability contained in Bill S-216. In addition, the restriction on a charitable organization not being able to give gifts to QDs in excess of 50% of its income needs to be amended so it does not result in the unintended consequence of those organizations becoming susceptible to loss of their charitable status. Additionally, it would be important that changes be made to Regulation 3704 so that a grantee organization's identifying information is not available to the public. Regulation 3704 also sets a $5,000 minimum reporting limit which is relatively low, and raising the minimum reporting limit could ease the administrative burden of charities.

### F. CONCLUSION

BILL C-19 PROPOSES to make several important changes to the ITA concerning the regulation of charities in Canada. The current own activities framework in the ITA and the CRA's direction and control regime need to be changed in order to better meet the reality that charities in Canada face when they wish to work with non-QDs. Bill S-216 and its predecessor, Bill S-222, introduced legislation which would replace the own activities requirement with a resource accountability legal framework, thus making it easier for charities to work with non-QDs. However, the changes proposed by Bill C-19, ostensibly in the spirit of Bill S-216, do not achieve this goal. Instead of eliminating the own activities test, Bill C-19 adds further requirements which, in some instances, are more stringent than the current legal framework for charities. Given that the federal government has chosen to address the concerns raised by the charitable sector by means of Bill C-19, it will be important for the Department of Finance to carefully listen to the legitimate concerns that have been raised and to consider making amendments to Bill C-19 as necessary in order to effectively address those concerns.

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