

MEMBER ADVISORY

June 1, 2022

Amendments to the Budget Implementation Act (C-19): Positive developments

Summary

In Budget 2022, the Government of Canada committed to implement the spirit of Bill S-216, which passed through the Senate and is on its way through the House of Commons. Supported by many charities and lawyers across Canada, Bill S-216 would have created an accountable but more realistic framework for Canadian charities to partner with non-qualified donees (NQDs) in a less colonial and administratively burdensome way. However, the initial language of the Budget Implementation Act 1 (Bill C-19) would have resulted in a less flexible and more difficult regulatory framework for charities to support NQDs. Thanks to the mobilization from across the sector – including many PFC members – the bill has now been amended and has removed the prescriptive clauses. One amendment concerning pooled funding did not pass. However, officials have indicated that this aspect of the law would be applied with a light touch.

Background

Over the last several weeks, PFC, along with colleagues at Imagine Canada, Co-operation Canada and other sector leaders, engaged in a concerted advocacy effort for three important amendments to Bill C-19, the Budget Implementation Act 1, which enacts commitments in Budget 2022 into legislation.

We are pleased to report a major victory. Two of the three of our proposed amendments were passed, while a third on directed giving did not.

Late on Monday, May 30, the House of Commons Standing Committee on Finance voted unanimously to eliminate wording in Bill C-19 that would have made the regulatory regime governing partnerships between charities and NQDs even more paternalistic and colonial than it already is.

The committee passed an amendment we were seeking to remove the reference to disbursements to NQDs meeting ‘prescribed conditions’, and replace it with a requirement that the charity instead take reasonable steps to ensure that the resources disbursed are used exclusively in furtherance of a charitable purpose. Because it passed, this means that the narrow and prescriptive requirements laid out

in the original language proposed have been removed. Charities operating under the new “qualified disbursement” regime in their partnerships with NQDs must now only have to maintain documentation demonstrating the purpose of the disbursement, and require that disbursements are exclusively to be used for charitable activities.

The committee also passed an amendment we were seeking to delete the prescribed conditions for qualifying disbursements. Because it passed, this means that the CRA regulations will provide guidance, which is more flexible and can evolve over time, rather than enshrined plainly in law.

PFC is disappointed that the third amendment we were seeking on directed giving was defeated. We were hopeful that the government would remove language that effectively prevents charities from contributing to pooled funds supporting NQDs or allocating more than 50% of its resources to NQDs under the new “qualifying disbursement” regime.

Our key concern with this provision is that it creates serious risk of the charitable status of charities engaging in partnerships with NQDs, and as a result will discourage pooled partnerships – a good practise to achieve meaningful impact both in Canada and globally. NQDs, more likely to be led by and serve Black, Indigenous and other marginalized communities in Canada than charities, are already far less likely to access available charitable dollars.

Despite this setback, PFC is eager to move forward to collaborate with Government. Senator Ratna Omidvar’s office, a key leader and collaborator on this issue, has publicly underscored that Government officials have assured them that the CRA will take a light approach to ensure pooled funding.

Bill C-19 is expected to pass in the House of Commons before the summer recess. Due to specific provisions in Bill C-19, after it passes, Bill S-216 will be null and void.

PFC will constructively engage the CRA on the developments of any new guidance to ensure it is helpful and practical for the sector, and we will continue to keep our membership up to date on these important issues. Meanwhile, our collective outreach efforts with elected officials from across the political spectrum has borne fruit through the approval of two amendments and an increased awareness of pooled funding. We will continue to engage elected officials and public servants in modernizing the regulatory framework for charities and non-profits.