
As Budgets Shrink and Social Needs Increase, the Charitable Sector Looks to Solve the Longstanding “Canadian Problem” of Direction and Control

Title: As Budgets Shrink and Social Needs Increase, the Charitable Sector Looks to Solve the Longstanding “Canadian Problem” of Direction and Control

Author: Tim Harper

Published in: *The Philanthropist*

ISSN: 2562-1491

Date: November 24, 2020

Original Link: <https://thephilanthropist.ca/2020/11/as-budgets-shrink-and-social-needs-increase-the-charitable-sector-looks-to-solve-the-longstanding-canadian-problem-of-direction-and-control/>

Date of PDF Download: January 20, 2021

Dave Blundell was trying to fund a maternity clinic in rural Ezianya, in southeast Nigeria, to prevent mothers dying in childbirth and children being sent to orphanages.

A casual project meeting with local officials was abruptly halted with instructions for Blundell and his team to return the next day. When he did, he found a much different atmosphere. The rural leaders, all dressed in ceremonial robes, had decided to take a stand.

“The British colonized us many years ago and that generated conflict, war, and mistrust,” Blundell recalls the leader saying. “And what you are doing is just an extension of colonial dictatorial partnership models.

“We reject that, and we will not work within that model.”

The partnership never recovered. Blundell tried to eke out an understanding for another year, but the Nigerian leader would not hand direction and control of the project to the Canadians. He had walked away in spirit and commitment.

As executive director of Hungry for Life, an aid agency based in Chilliwack, BC, Blundell has been dealing with this for 17 years, with hundreds of partners in 25 different countries.

It's known in global aid circles as "the Canadian thing," or more disparagingly as "the Canadian problem."

Others have been dealing with it much longer, but the Canadian charitable and non-profit sector has clearly had enough of a provision linked to the Income Tax Act known as "direction and control," which compels charities to "direct and control the use of its resources" as if it was its "own activities," according to the Act.

"The charity must be the body that makes decisions and sets parameters on significant issues related to the activity on an ongoing basis."

It is a Canadian anomaly, one which many in the sector say saps time and funds, buries them in legal and accounting fees, and forces them to adopt a hierarchical, colonial approach to dealing with organizations, both here and abroad, which should be partners.

Direction and control rules today stem from how the courts and the Canadian Revenue Agency (CRA) have interpreted the language in the Income Tax Act. On other regulatory matters, CRA has a fair amount of discretion, but here it feels hemmed in on what it can do because of several Federal Court of Appeal decisions.

This can trap donees in a power play between Canadian regulations and local control. It mandates a top-down colonial relationship with Indigenous communities in this country at a time when the government is advocating for reconciliation. It prevents Canadian charities from pooling resources with other international donors to respond to emergencies such as the recent Beirut explosion, or earthquake or hurricane relief, because a separate Canadian accounting regimen, with separate Canadian rules and banking and reporting requirements, must always be carved out.

Beyond the cost of lost opportunity, there is also a financial cost.

Andy Harrington, executive director of Canadian Foodgrains Bank, a partnership of 15 Canadian churches and church-based organizations which works globally to alleviate poverty, estimates he and his partners spend many hundreds of thousands of dollars annually in direction and control compliance.

Mastercard Foundation, the country's largest private foundation, provided \$951 million to partners between 2007 and 2017, of which \$19 million was used to collect and submit receipts. It spent another \$1 million on staff costs to comply with the process – money that doesn't go to projects.

For half a century, the provision has been used to threaten and place charities in a box, according to some sector leaders. Stories abound: the Canadian charity ruled non-compliant because it did not have proper receipts from a rural Indian market which was supplying rice and vegetables to hungry children. Cab receipts from Bolivia that had to be translated into French or English. Projects lost because a foundation from another country has less stringent requirements.

Worst of all, sector leaders say, "direction and control" perpetuates an outdated colonial mindset, whether that charity is dealing with a local leader in Nigeria or an Indigenous

organization in northern Manitoba.

“The charitable sector is drowning in red tape,” says Hilary Pearson, an independent philanthropic consultant and founding president of Philanthropic Foundations Canada.

The provision dates back half a century, but similar restrictions do not exist in Australia, New Zealand, Germany, the United Kingdom, the United States, or other allies, leaving Canada alone in hamstringing people trying to feed children, build schools, or empower girls.

Recipients often prefer dealing with charities from other countries.

“If we were playing an international ball hockey game, Canada would be the last team chosen,” says John Clayton, director of programs and projects for the Calgary-based Samaritan’s Purse. “And we would be looking down at our shoes in embarrassment the whole time.”

Over the years, the CRA has declared that Canadian charities must spend all the dollars on their “own activities.”

CRA has interpreted the Income Tax Act to mean if a charity decides to extend its work with a non-charity (which can include co-ops, social enterprises, civil society movements, or Indigenous recipients who are not registered charities) it can only do so if the recipient essentially becomes the donating charity.

This “direction and control” requires the Canadian charity to issue initial and all ongoing instructions on the project. It requires ongoing Canadian oversight, including narrative and financial reporting from a foreign agency that must confirm for the CRA the proper use of the Canadian charity’s funds. It requires that periodic transfer of funds to the project be approved by the Canadian charity only after it has approved the proper spending of any previous funds.

Our allies do have their own restrictive policies but none require their charities to essentially take over the operations of donees who should be partners, says Ratna Omidvar, a Canadian senator who will table legislation on November 30 to replace direction and control with “resource accountability.”

In her amendment, accountability would remain central, but Canadian charities would be able to choose partners, negotiate terms, and provide regular reports while ensuring both accountability and empowerment for the donee.

Imagine, says Blundell, approaching a leader in a rural setting, potentially without Wi-Fi, telling him or her about the need for bank reconciliations, income and expense records, the need for receipts for everything, and the need to ensure these receipts are periodically shipped back to Canada.

“It starts off on a bad foot and it smells of colonialism. They look at us and say, ‘you don’t trust me.’ It is almost always beyond their human resources capability.”

Omidvar concedes that, given the tenor of the times, she may be pushing a rock up a hill. Legislation introduced in the Senate is a long shot to become law at the best of times, never mind at a time when WE has coloured Canadian perceptions of the charitable sector.

Private member's bills can be easily thrown off course by Parliamentary procedures. There is also the continued uncertainty of a global pandemic, an initiative that could be perceived by the layperson as arguing against increased accountability, and a constant threat of an election that would kill pending legislation.

Omidvar, who has been involved in the sector since her arrival from Iran four decades ago, is clear-eyed about the challenge. "It is important to recognize that systemic racism is alive and well in Canada but also to recognize that systemic racism is hard to ferret out because it hides in systems and protocols and laws," she says. "With this law it is hiding in plain sight.

"By virtue of directing and controlling another group, you are subjugating and subordinating them in a way that the outcomes are racist."

The senator points to Black Lives Matter as a group that no charity can fund. It can't be done without exercising full direction and control on the movement, something that BLM would quite rightly refuse to surrender.

"It is as if you are taking over their activity and doing it yourself," she said. It is essentially telling *them* they have to be *you*, she adds.

Omidvar is "fully cognizant" of the steep size of the mountain in front of her as she pushes this legislative rock uphill. "WE is one charity out of 80,000," she says. "This scandal is not about charity. It's about politics. I am extremely disturbed that this unfortunate scandal has had a negative impact on the perception of Canadians about charities."

An amendment may be far down the road, but MPs – at least at this point – are providing no push back.

"We are aware of the problem and we know there are some issues with the way the current system operates," said Alberta Conservative MP Garnett Genuis, the party's international development critic. He says his party will study any legislative initiative that might emerge from the Senate but, notably, he will not tie this to the WE scandal.

"There are issues with the government's relationships to WE but that is a very separate from recognizing the important work the charitable sector does in general and the need to respond to challenges that it faces."

Heather McPherson, the former executive director of the Alberta Council on Global Cooperation and now the NDP international development critic, is more bullish. She contemplated her own private member's bill to eliminate direction and control and convened a meeting of Conservative, Green, and Bloc Quebecois MPs to educate them on the issue.

"This should have been eliminated many years ago to be honest," says McPherson, who also agrees the issue is separate and apart from the WE controversy.

Not everyone sees the need for change.

Mark Blumberg, a Toronto lawyer who deals with charities and non-profits, says the "direction and control" provisions work just fine, and he believes the debate is coloured by misinformation

and misunderstanding.

“Canadian international development and humanitarian assistance organizations could be facing a difficult few years with potential government austerity and some Canadians cutting back support for international causes when they see so much need amongst their friends, family, and neighbours in Canada,” Blumberg says.

“After six months of a scandal involving one particular foreign activity charity, it could be devastating for the public to find out that some Canadian charities want lower levels of accountability and transparency for foreign activities.”

Caroline Riseboro, who has spent 20 years as an executive in the non-profit and international development sector, echoes Blumberg’s concerns and says direction and control can safeguard trust in the charitable sector.

“Is direction and control sometimes a pain? You bet,” she said. “But is it often necessary to maintain the good trust in the Canadian system? Yes.

“All we have in this sector is trust and anything that might undermine that is far more challenging than direction and control provisions.”

The sector as a whole is distancing itself from WE. Cooperation Canada issued a statement on behalf of its 90 organizations, which have signed on to its code of ethics, reacting to alleged improprieties by the WE organizations in Kenya.

“Stories swirling around these (WE) organizations are having a real impact on public trust for others who work globally for a better, fairer and more equitable world,” Cooperation Canada CEO Nicolas Moyer said in a statement.

In an interview, Moyer said the challenge for the sector may be dealing with those who feel it is time to tighten the screws on charity. But the sector is not seeking less accountability, he says, it wants resource accountability so that public funds can be properly monitored in the context of program delivery.

“WE is truly an outlier,” he says. “Everybody agrees with the accountability piece in direction and control. But the direction piece comes out as a unique Canadian global exception that is incredibly onerous.”

While much of the focus on the limits of this provision is on overseas projects, it also hits home, particularly for Indigenous communities.

Darcy Wood of Winnipeg-based Aki Foods knows firsthand, from both sides, the tenor of the relationship with Indigenous communities under direction and control.

He was instrumental in the establishment of a 5.6-hectare farm in Garden Hill First Nation, 600 kilometres northeast of the Manitoba capital, a massive undertaking that promotes healthy diet and teaches basic skills on the Oji-Cree reserve of 4,400.

Band councils can now receive direct charitable funding, but had to go through a torturous

process to apply for that status while white municipalities were automatically eligible. Wood understands why many Indigenous organizations in a nation-to-nation relationship will not apply for charitable status because of the hurdles placed in front of them. He is aware of many organizations in remote communities that walk away from aid because they cannot retain the accountants needed in this hierarchical system.

As an Indigenous man and a former Garden Hill chief, he knows how offensive it can be.

“It is very colonial and paternalistic, not to mention overly bureaucratic,” he says. “It signals that Indigenous organizations cannot be trusted to properly spend money.”

“Direction and control” stands in stark contrast to the Liberal government’s stated goal of reconciliation and partnership with Indigenous Canadians, sector leaders say.

So, is this the time for change? And why now?

“Times are changing,” Harrington says. “This legislation is more than 50 years old. There was a very different understanding of culture and how the world worked 50 years ago.

“It doesn’t work that way anymore. We are in a moment now when we can change it and we really should.”