



# Business Law Playbooks

## Part 8 – Social Enterprise in Canada

Prepared by the Queen's Business Law Clinic in collaboration with Queen's Partnerships and Innovation

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**About Queen’s Business Law Clinic**

The Queen’s Business Law Clinic (“QBLC”) is a free legal clinic which was established in 2009 to provide year-round legal services to a wide variety of individuals, businesses and non-for-profit organizations in southeastern Ontario. The QBLC aims to help individuals and businesses who would otherwise have difficulty affording legal counsel, while providing Queen’s Law students with practical legal experience working with clients, while instilling in them the values of community service and the pro bono tradition. The QBLC is proud to have contributed to the economic growth and social well-being of Kingston and its surrounding communities by helping entrepreneurs, small businesses, charities and not-for-profit organizations with their legal needs.

**Why do you need a Playbook?**

For many people with little or no previous business or entrepreneurial experience, understanding the relationship between law and business – and how it may affect the success or failure of their business idea – is a very important step. In this series of Playbooks, we seek to provide general information on the legal concepts that should be considered by the entrepreneur starting out their business venture.

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## **8 Social Enterprise in Canada**

### **8.1. General Overview**

Social enterprises are a “hybrid” business model that falls between charities, not-for-profit corporations, and business corporations. There is no unified definition of a social enterprise in Canada. The Ontario Government defines it as “an organization that uses business strategies to maximize its social or environmental impact,”<sup>1</sup> while the Government of Canada defines them as “a revenue-generating organization whose objective is to have a social impact.”<sup>2</sup>

Social enterprises are created for the dual purposes of a community benefit and generating profit. The specific objectives of social enterprises tend to be employment-related, cultural and/or environmental.<sup>3</sup> Many social enterprises focus on benefitting their local community, defined by neighborhood or city. For example, a significant percentage of social enterprises located in British Columbia, Alberta, and Ontario claim to serve Indigenous populations.<sup>4</sup> Employment-related social enterprises focus on providing employment opportunities to individuals and groups “experiencing barriers to employment” for a variety of reasons, including rural and remote location. The dual purposes of social enterprises – a community benefit and profitability – often run the risk of conflicting and competing with each other.

Given their community objectives, social enterprises are accountable to a broader range of stakeholders than ordinary corporations are. Democratic decision-making is a key feature in many social enterprises, as it intends to engage various stakeholders in shaping the strategic direction of the enterprise. This is typically done by giving one vote to everyone instead of one vote per share. Moreover, those eligible to vote do not necessarily have to own shares.<sup>5</sup>

### **8.2. Legal Structure**

Social enterprises are not necessarily corporations, but they can be. Social enterprises exist on a spectrum between those entities that operate purely for a social purpose (charities) and entities that operate purely for a commercial purpose (commercial corporations and businesses). They can take many legal forms and include non-profit organizations and registered charities who generate revenue through a related business, as well as for-profit businesses that have social goals.

Please consult our other Playbooks for more information on how to structure your business.

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<sup>1</sup> Government of Ontario, “A Social Enterprise Strategy for Ontario” (2013), online: <<https://www.ontario.ca/page/impact-social-enterprise-strategy-ontario>> (“A business with two goals: achieve social, or environmental outcomes and maximize revenue.”) (Hereinafter “Ontario Social Enterprise Strategy”).

<sup>2</sup> [http://www.ic.gc.ca/eic/site/053.nsf/eng/h\\_00006.html#s1](http://www.ic.gc.ca/eic/site/053.nsf/eng/h_00006.html#s1)

<sup>3</sup> Peter R Elson & Peter V Hall, “Strength, Size, Scope: A Survey of Social Enterprises in Alberta and British Columbia” (2010) at 9, online: <<https://www.mtroyal.ca/cs/groups/public/documents/pdf/socialenterprise2.pdf>>.

<sup>4</sup> *Ibid* at 30.

<sup>5</sup> Matthew Thompson & Joy Emmanuel, “Assembling Understandings: Findings from the Canadian Social Economy Research Partnerships, 2005-2011” (Victoria, BC: University of Victoria, 2012) at 16.

### 8.3. Different Types of Social Enterprises

#### 8.3.1. Charities Operating a Related Business

The “Charity” Playbook outlined how charities can be formed, and the advantages and disadvantages of registering as a charity. A consideration when registering as a charity is whether the organization will want to sell products or perform services to earn revenue towards their social goal.

Charities who wish to carry on business activities must determine whether the business they are carrying is considered acceptable or unacceptable for a charity. An acceptable business is one that is related to the charitable purpose for which the charity was registered.

There are two kinds of related businesses. The first is a business that is run substantially by volunteers. Under this type of related business, the business activities do not have to be related to the charity’s objects, but at least 90% of those employed in the business must be unpaid volunteers. In this context, “employed” is meant to refer to the people who operate the business, regardless of whether they are contractors or direct employees.

The second type of related businesses are those that are linked to a charity’s purpose and subordinate to that purpose. Under this type of related business, it is not sufficient for the profits of the business to be applied to the charitable purpose. The business activities must fit within one of these four categories to be considered “linked” to a charity’s purpose:

<p><b>1) A usual and necessary concomitant of charitable programs</b></p> <p>These are business activities that are either necessary for the effective operation of the programs or improve the quality of the service delivered in these programs. An example would be a hospital’s parking lot and cafeteria, or the gift shop of a museum.</p>	<p><b>2) An off-shoot of a charitable program</b></p> <p>In some cases, charitable programs happen to create by-products that can be exploited in a business. Examples include a church which has a famous choir and records its special Christmas services to sell to those who could not attend the service. This is a business activity, but the business is related to the charity’s purpose because the recording is merely a by-product of the church’s charitable program.</p>
<p><b>3) A use of Excess Capacity</b></p> <p>Charities may use assets and staff that are not currently needed to conduct a charitable program to gain income during those periods when the assets and staff cannot be used to their full capacity. Some examples include</p>	<p><b>4) The Sale of Items that Promote the Charity or Its Objects</b></p> <p>These are sales that are intended to advertise, promote, or symbolize the charity or its objects. This promotional purpose can be present by virtue of its design, packaging, or</p>



universities renting out unused classrooms during the summer months.

included materials. Examples include pens, t-shirts and cookies with the logo of the charity.

The business activities must always remain subordinate to the charitable purpose. This means that when looking at the charity's operations as a whole, the business activity can only receive a minor portion of the charity's attention and resources. Any business activity must be integrated into the charity's operations, and not act as a self-contained unit. Charities must ensure that their charitable goal remains the main focus of the organization and that it continues to dominate decision-making. This exclusively charitable purpose means that no elements of private benefit can enter its operations.

### **8.3.2. Not-For-Profit Corporations with Social Purpose**

Despite their name, not-for profit corporations can engage in activities that result in income or profit. They can, for example, own businesses, such as Habitat for Humanity's ReStore retail outlets, which sells building materials. This revenue, however, can only be used in carrying out the corporation's social goals and objectives. On the continuum of social enterprises, not-for-profit corporations is one of the structures that falls closer to the social goal than the commercial goal.

### **8.3.3. Co-operative Corporations with Social Purpose**

Co-operatives fall approximately in the middle of the spectrum, placing somewhat equal weight on achieving its social aims and its commercial goals. Traditionally, the co-operative form of business organization has been a popular one for social enterprises due to its democratic membership structure, usually one member-one vote.

In Canada, co-operatives must incorporate either federally or provincially. The most common types are consumer co-ops, which provide products or services to their members, producer co-ops, which process and market good or services produced by their members, worker co-ops, which provide employment for their members, and multi-stakeholder co-ops, which serve the needs of different stakeholder groups, typically in health and home care enterprises.

The three characteristics shared by all co-operatives are that firstly, a co-operative is owned jointly by the members who use its service. Secondly, it is democratically controlled. In contrast with the typical corporation control structure, in which each share gives a vote, in a co-operative each member gets one vote. Thirdly, any profits belong to the members. These members can decide whether these should be distributed to the members or reinvested into the company.

### **8.3.4. Business Corporations with Social Purpose**

Some businesses may wish to operate to serve a social purpose but decide to incorporate as a for-profit corporation instead of a not-for-profit organization. These corporations do not receive the tax exemption granted to not-for-profit organizations, but they are not obligated to reinvest

their profits in the company. For-profit corporations can raise capital more easily which can help the entity grow and continue to achieve its social purpose.

### **8.3.5. Socially Responsible Business Corporations**

In recent years, the concept of Corporate Social Responsibility (“CSR”) has gained momentum. CSR is defined as the voluntary activities undertaken by a company, over and above legal requirements, to operate in an economically, socially and environmentally sustainable manner.

These are for-profit businesses whose primary goal remains to further their commercial operations, but who go out of their way to consider and accommodate the interests of broader stakeholders. Some examples include ensuring all products and ingredients are ethically sourced, and optimizing operations to protect and sustain the environment.

### **8.3.6. Business Corporations Donating to Charity**

Many corporations donate significant sums to charitable organizations, or fund charitable projects. This business structure’s primary aim is to make profit, but by donating money they are able to give back to the community and keep social stakeholders’ interests in mind.

## **8.4. Choosing a Type of Social Enterprise**

There are advantages and disadvantages to each structure. Entities like charities and not-for-profit corporations enjoy considerable tax benefits, but also face significant restrictions on how they can operate their business and handle the money they earn. More commercially-minded enterprises face fewer restrictions and can raise capital much more easily, but their operations are subject to the influence of their various stakeholders, which can push the business further and further from its social aim.

### **8.4.1. Ownership Structure**

When choosing a business type, consider what type of ownership structure best reflects your project. Social enterprises can be sole proprietorships, partnerships or corporations. Incorporation offers many benefits such as limited liability and continued existence, while unincorporated entities offer fewer formalities and increased flexibility at a lower cost. The other Playbooks in this series provide information on how these structures differ from one another and the advantages and disadvantages they offer.

### **8.4.2. Goals of the Enterprise**

Is the business’s primary goal to earn profit, or to further a social goal? This Playbook has outlined several business structures. Determine how central the social aim is to the business and choose a business structure that reflects this. In this determination, consider the financial needs of the business. Not-for-profit organizations have more difficulty earning capital investments from outside investors, but they receive a tax-exempt status that exempts them from paying taxes under the *Income Tax Act*. Consider how the costs and benefits weight in your situation.



### **8.5. Conclusion**

Social enterprises can be a great way to further a social cause or aim while still making profit. It is a versatile concept that can take a variety of forms to adapt to your business. When choosing your organization's structure, consider carefully its aims and its needs to ensure you choose the structure that will suit it best.

Please contact the QBLC should you require any assistance in starting a social enterprise.