



**Sustainable Prosperity** is a national research and policy network, based at the University of Ottawa. SP focuses on market-based approaches to build a stronger, greener, more competitive economy. It brings together business, policy and academic leaders to help innovative ideas inform policy development.

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# Beneficial Corporations<sup>1</sup>

## The Issue

- As the shock waves of the 2007–08 financial crisis continue to ripple through the economy, it is an ideal time to consider more inclusive models for organizing economic activity and maximizing well-being. The beneficial corporation designation (either through legal incorporation or certification) creates an alternative structure for profit-seeking corporations that addresses many of the perceived shortcomings of the traditional corporation.
- Sustainable Prosperity uses the term ‘Beneficial Corporation’ to refer to both B Corps (created by certification) and Benefit Corporations (created by legal changes). A beneficial corporation is a class of corporation required by law and/ or certification to consider the interests of all stakeholders, including communities, employees, shareholders and the environment.
- This *Issue Summary* will explore the two types of beneficial corporations, and their penetration in Canada and prospects for future expansion.

## Key Messages

- Beneficial corporations (both benefit corporations and B Corps, described below) are an alternative legal structure or a certification of high environmental and social performance for corporations. Beneficial corporations aim to solve both a legal and a reputational or branding problem:
  - **Legal:** Corporations are legally required to pursue the interests of the corporation (often construed as growth or profit) first and foremost. This prioritization can pressure companies to seek returns at the expense of social and environmental objectives, even though sustainability and profitability are often compatible. Becoming a beneficial corporation commits a company to incorporate the interests of a broader set of stakeholders into its decision-making process.
  - **Reputational:** Sustainability standards have proliferated, and customers can have difficulty deciding which firms are really committed to the sustainability objectives they care about, and which are “greenwashing”.<sup>2</sup> Beneficial corporation status can assure customers that a company has made a legal commitment or is subject to independent audits to ensure that it meets high and transparent environmental and social performance standards.
- There are two kinds of beneficial corporations, which have distinctive attributes and different legal status. A company can become a beneficial corporation in one of two ways:
  - **Certification:** This is a voluntary designation to become a B Corporation (or B Corp), granted by B Lab,<sup>3</sup> an American non-profit organization. It is open to any corporation, provided it can meet high environmental and social performance standards. It is available internationally, and certified B Corps now exist in many countries, including Germany, Brazil, the United States, and Canada. This *Issue Summary* refers to these companies as “**B Corps**”. There is also a legal requirement that B Corps change their articles of incorporation (via a special resolution by shareholders) to incorporate a broader set of stakeholders.
  - **Incorporation:** This is a legal status, distinct from incorporating as a not-for-profit or a business corporation. It is available in jurisdictions where the legislation governing corporations has been amended to allow for benefit corporations, and requirements can vary between jurisdictions. This *Issue Summary* refers to these companies using the generic term “**benefit corporations**”.

- There is room for growth in both of these categories of benefit corporations.
  - Law reforms at the provincial and federal levels would allow companies to incorporate as benefit corporations, making them subject to different rules than “regular” charities or business corporations. British Columbia recently passed amendments to its *Business Corporations Act* to allow “community contribution companies”<sup>4</sup>
  - Since the B Corp certification is still new, there is likely a lot of room for it to expand throughout Canada. Law reform can be a lengthy process, and so the certification model is likely to grow more quickly in the next few years.
- As well as appealing to socially-conscious consumers, beneficial corporations (of both kinds) can tap into funding from social investors.

## The Knowledge Base

This section will examine the legal and reputational issues that gave rise to the beneficial corporation, and then will examine both types (B Corporations and benefit companies) in more detail, focusing on the major trends and issues associated with each type.

### Legal and Reputational Issues

Corporations are one of the major ways in which society organizes productive activity. The legislation governing business corporations binds corporate directors to make decisions that are in the interest of the corporation. In the popular interpretation, this means that directors must always act to maximise shareholder returns, sometimes at the expense of other stakeholders’ interests.

In Canada, corporations are not actually prohibited from taking actions that will improve their environmental and social impact, as the law allows some scope for discretion and the exercise of business judgment. However, such actions are optional, and must be connected to some tangible positive outcome for the company, or directors would not be fulfilling their legal duties to the corporation. B Corp certification or incorporation as a benefit corporation makes it mandatory for the company’s directors to consider

stakeholders’ interests, beyond just narrowly-understood short-term shareholder interests.

The marketplace for corporate responsibility standards is crowded. With hundreds of standards available, it can be challenging for consumers and investors to differentiate a rigorous standard from one with lax auditing or insignificant targets. The B Corp certification provides assurance about the corporation’s commitment to social and environmental action, because it sets legal requirements to ensure that a corporation considers the effects of its activities on stakeholders, and meets certain minimum standards. The proponents of the standard sometimes refer to sustainability as being “baked in” to the corporation’s structure. For B Corps, a failure to meet or report on sustainability targets results in decertification, and would also violate the corporation’s foundational documents.

An additional, related issue is that non-profits risk losing their tax exemption if they engage in for-profit activities.<sup>5</sup> Thus, incorporation as a benefit corporation could be a useful alternative for non-profits that rely on profits from their other activities to fulfil their community purpose, because it allows them to seek profits to fund charitable work, although they would be subject to taxes like any other corporation.

Table 1 below compares the attributes of non-profit, traditional corporations and beneficial corporations.

The attributes of the two types of beneficial corporations – B Corps and Benefit Corporations – are summarized in Table 2 on the next page.

## B Corps

### Uptake of Certification in Canada

Canadian certification of B Corps is on the rise. As of August 2012, 47 B Corps had been certified in Canada, an increase from 34 in March 2012.<sup>8</sup> There are certified B Corps in only three provinces, but every province hosts sustainable businesses that would likely be eligible for the standard. Canada’s certified B Corps include Bullfrog Power, several social investment firms, technological and social innovators like Skymeter and Talk2one, and a number of consumer product and food and beverage producers. There are over 550 certified

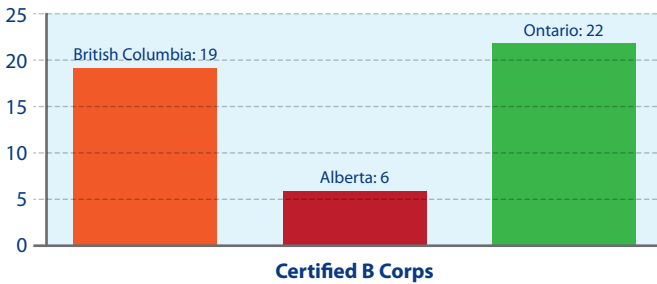
Table 1: Comparison of Non-Profits, Traditional Corporations and Beneficial Corporations

ASPECT	NON-PROFIT	TRADITIONAL CORPORATION	BENEFICIAL CORPORATION
Purpose	Not to make money for members, but rather to carry on some activity of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character.	To make money.	To create public benefits.
Fiduciary Duty (Directors)	Act in the best interest of the organization.	Create benefit for shareholders.	Create benefit for all stakeholders, including communities, employees, shareholders and the environment.
Taxation	Only non-profits registered as charities are tax exempt.	Subject to corporate tax.	Subject to corporate tax.
Shareholders	No shareholders. Members prohibited from financial gains.	Entitled to share of company profits.	Entitled to share of company profits.

Source: Canada Business Corporations Act (R.S.C., 1985, c. C-44), B Lab and Burke-Robertson, Jane. 20 Questions Directors of Not-for-profit Organizations Should Ask about Fiduciary Duty. Imagine Canada.

B Corps in the United States. There are also B Corps in Germany, Brazil, Kenya, and Ecuador. As of yet, there are no B Corps that are public companies. Certified B Corps are not evenly distributed through Canada, as shown in Figure 1.

Figure 1: Certified B Corps in Canada

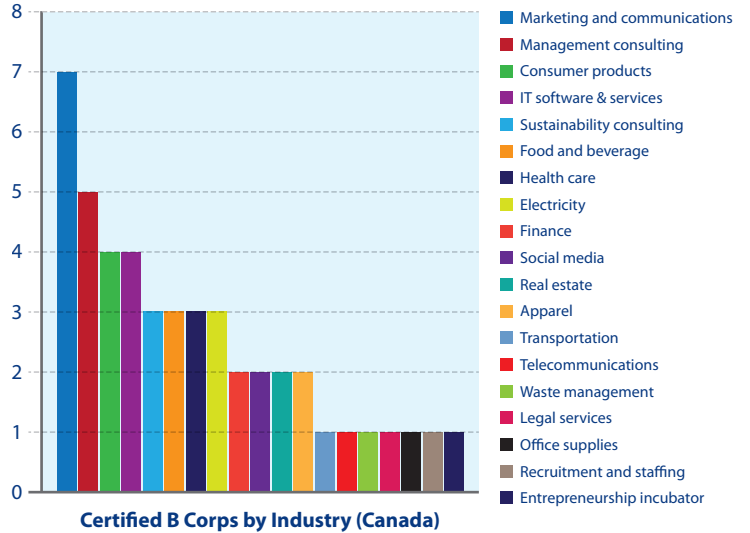


Source: B Lab

Examples of B Corps	
Bullfrog Power (Canada)	Numi Organic Tea (USA)
Etsy (USA)	Patagonia (USA)
Green Living Enterprises (Canada)	Seventh Generation (USA)
King Arthur Flour (USA)	

B Corps in Canada mostly work in areas like consumer goods, electricity, waste management, food and beverage, and supplying business-to-business goods, as shown in Figure 2, although, it has also been taken up by companies in sectors that, traditionally, have a higher environmental impact. These sectors include real estate, such as Living Forests Communities, based in Victoria.

Figure 2: Certified B Corps by Industry (Canada)



Source: B Lab

### Scaling Up

The B Corp standard is only five years old and is only beginning to penetrate the market. Globally, according to B Lab, as of late 2012 there are 610 B Corps in 15 countries operating in 60 industries, representing USD \$4.2 Billion in revenues. Many B Corps in Canada are smaller companies, in sectors that tend to have a lighter environmental footprint, such as service or light manufacturing industries, and sectors where a positive image is important, such as marketing and management consulting. However, the standard is relevant across a variety of industries.

Table 2: Differences between B Corps and Benefit Corporations

TYPE	JURISDICTION	REQUIREMENTS
By certification: B Corp certification administered by B Lab	Any jurisdiction – no special legislation required	<p>Before certification, a company must:</p> <ol style="list-style-type: none"> <li>1. Assess its impact on stakeholders and achieve a certain minimum score (80 out of 200) on a GIIRS (Global Impact Investing Rating System) assessment, and submit supporting documents as requested.</li> <li>2. Complete an assessment review with B Lab. This assessment examines corporations on a suite of environmental and social criteria relevant to their industry, geography, size, and sustainability priorities.<sup>6</sup></li> <li>3. Submit supporting documents requested by B Lab.</li> <li>4. Begin adopting the B Corp amendments to its corporate governing documents.</li> <li>5. Submit its certification paperwork and fees.</li> <li>6. Undergo full on-site reviews by B Lab during each 2-year certification term (paid by the company at a cost of \$2500–\$5000, depending on size and location of company activities), with certification revoked if performance is not satisfactory.</li> </ol>
By incorporation: Benefit corporation	Only jurisdictions with legislation enabling benefit corporations (in Canada, only British Columbia) <sup>7</sup>	A company may incorporate as a benefit corporation. Requirements after this point depend on jurisdiction, but can include compliance with reporting requirements and limits on dividends and the transfer of capital to “regular” business corporations.

Source: B Lab

### Directors' Responsibilities in a B Corp

The directors shall, acting fairly and responsibly, consider the short-term and the long-term interests of the corporation, including, but not limited to, the corporation's shareholders, employees, suppliers, creditors and consumers, as well as the government and the environment (the "Stakeholders"), and the community and society in which the corporation operates, to inform their decisions.

In discharging his or her duties, and in determining what is in the best interests of the corporation, each director may consider all of the Stakeholders (defined below) and shall not be required to regard the interests of any particular Stakeholder as determinative.

– B Lab, *Becoming a B Corp (Canada)*, Legal Roadmap

## Benefit Corporations

### Canadian Legal Context

*Corporate statutes and court decisions provide some range for directors to consider sustainability – but not at the expense of the corporation*

"Fiduciary duty" refers to a relationship that arises in specific circumstances, where someone has scope to unilaterally exercise some discretion or power, so as to affect another legal person's legal or practical interests; this other person is also peculiarly vulnerable to or at the mercy of the person holding the discretion or power.<sup>9</sup> In Canada, the directors of a corporation have a fiduciary duty to the corporation, as required by the *Canada Business Corporations Act*<sup>10</sup> and provincial corporations statutes. These Acts require directors to carry out their duties in good faith and honestly, with a view to the interests of the corporation. Often, directors who were elected by a particular group of shareholders are entitled to give special consideration to that group's interests, but can't make decisions on that basis exclusively: they still have to consider the corporation's wellbeing.

### The Obligations of the Corporation

"In considering what is in the best interests of the corporation, directors may look to the interests of... shareholders, employees, creditors, consumers, governments and the environment to inform their decisions."

– Supreme Court of Canada in *BCE v 1976 Debentureholders*, at 40.

However, the Supreme Court has put a pluralist spin on this obligation: stakeholders' interests should be taken into account and treated with a minimum standard of fairness consistent with the corporation as a "responsible corporate citizen"<sup>11</sup> even as they act for the corporation's benefit. According to some legal scholars, management retains "significant flexibility" to make reasonable decisions that maximize shareholder value but are consistent with stakeholder interests, such that it is unclear which interests should prevail in any given situation.<sup>12</sup> This deferential "business judgment" doctrine is likely to be directed

toward decisions that benefit the corporation: this may protect sustainability actions that are reasonably likely to increase profitability or enhance the brand.

However, if there is no conceivable way for the business to benefit from a course of action, then that course of action may be legally questionable under the current regime. This could tie the hands of directors of mission-driven companies planning to devote substantial corporate resources to maintain the company's ethics. It also means that there are threats to the sustainability mission of any company that is taken over by a corporation that does not share its values.

### *Law reforms will allow benefit corporations to incorporate in British Columbia*

Nine US states have adopted benefit corporation legislation.<sup>13</sup> Eight of these states adopted it unanimously, for a cumulative total of 892 "aye" votes to 62 "nay" votes.<sup>14</sup> In 2012, British Columbia followed suit by introducing changes to its *Business Corporations Act*. The amendments allow "community contribution companies" (CCCs) combining socially beneficial purposes with an ability to distribute profits to shareholders.<sup>15</sup> The legislative changes received Royal Assent on May 14, 2012<sup>16</sup> and will come into force once the Department of Finance has created the supporting regulations and registries.<sup>17</sup>

The new *Act* has a number of requirements. A CCC must include in its articles of incorporation a statement of its commitment to some community objective. The CCC must publish an annual "community contribution report" with information on the company's finances and how its activities benefited society.<sup>18</sup> The law restricts corporations amalgamating with a CCC from removing its CCC status.<sup>19</sup> If a CCC dissolves, its remaining assets are to be distributed to the organizations named in the company's articles.<sup>20</sup> The *Act* limits how dividends can be paid (although these limits will be fleshed out in the regulations).<sup>21</sup> It also contains investigation powers: if 1/5 of a CCC's shareholders complain, and if the court believes that the company has acted contrary to its social commitments, the court can appoint an inspector with powers to collect information about the company that may be used in court.<sup>22</sup>

### *Changes in charities law in Ontario mirror the benefit corporation concept, but with unclear effects*

On the non-profit side of the spectrum, Ontario introduced a new *Not-for-Profit Corporations Act* in 2010. As of August 2012, this new *Act* had not yet come into force.<sup>23</sup> When it is in force, it will explicitly permit commercial activities by not-for-profit corporations, so long as the profits are rolled back into the corporation's charitable purpose. However, the act does not apply to corporations with share capital, and some commentators point out that this *Act* would not override the Canada Revenue Agency's interpretation of the *Income Tax Act's* requirements about the activities of for "not-for-profit" corporations. Thus, non-profit corporations' ability to engage in commercial activity unrelated to their purpose may remain limited.<sup>24</sup>

## Future Prospects

Companies that choose to become B Corps or incorporate as benefit corporations (where this is available) are likely a self-selected population in that they may already place a high priority on environmental and social values. If this is so, the benefit corporation sector might only grow as fast as the underlying values of the business community change. For the moment, the B Corp designation mainly takes in businesses that have built sustainability into their operations from the beginning of their existence. However, there are increasing numbers of such businesses, as greener consumer goods<sup>25</sup> and fair-trade goods<sup>26</sup> have become increasingly popular. Currently all B Corps are privately-held companies, meaning that they have far fewer shareholders and are not subject to public reporting requirements, which probably makes it simpler to pursue the B Corps designation. However there is no legal impediment to a B Corp becoming a public company. More companies may seek B Corp certification or benefit corporation structure in order to demonstrate their sustainability commitments to consumers.

“B Corp certification has smartened up our written and formal policies in relation to what I previously thought were the lesser issues within social responsibility. It has caused us to take a broader look at the various impacts our company is having on our employees, environment, and our community.”

– Doug Makaroff Owner, Living Forest Communities

The consumer aspect is not the only factor that may spur growth in the sector. The availability of finance is another factor to consider. Beneficial corporation status (either through the certification or through incorporation as a benefit corporation) can demonstrate to potential investors that a company takes its sustainability impact seriously. This is of special relevance for the social investment sector, where opportunities geared to B Corps are opening up. For instance, the SVX (Social Venture Exchange, thesvx.org) will soon begin to make capital available to Ontario-based socially responsible ventures. Beneficial corporations could be relevant to the broader investment community’s decision-making as well: the 2005 Freshfields report concluded that integrating sustainability or ESG (environmental, social and governance) analysis into institutional investment decisions is “clearly permissible and is arguably required” in all the jurisdictions it analysed, including Canada.<sup>27</sup>

## Implications for Policy-Makers

This *Issue Summary* is meant as an overview of the current status and future for benefit corporations in Canada. Based on the overview, Sustainable Prosperity believes that the following conclusions are of direct relevance to policy-makers engaged in the development of corporate governance policy in Canada:

- B Corp certification and benefit corporation legal status present an alternative to the traditional “profit-maximising corporation” model, by making environmental and social benefit part of a company’s mission.
- Legal reforms to allow benefit corporations are taking root. Nine US states have passed legislation to create a benefit corporation option. In Canada, British Columbia has passed legislation allowing “community contribution corporations”. Review of the *Canada Business Corporations Act* is a further opportunity to encourage benefit corporations, and would be a low-cost method for government to promote environmentally- and socially-responsible business.
- Legal reform can be considered from the viewpoint of both charities law (allowing charities to collect profits) and corporate law (allowing businesses to attend to social and environmental needs outside of their profit-maximization mandate). This may invite questions about the extent to which charities can ethically engage in profit-seeking activities.
- Given the long timelines for law reforms, B Corp certification is a practical option and likely to grow quickly. While B Corps have been established in several provinces, there are likely many companies across Canada that could meet the certification criteria.

## Endnotes

- 1 Sustainable Prosperity would like to thank Dr. P.M. Vasudev, Assistant Professor at the University of Ottawa and Joyce Sou, Manager, Benefit Corporations (B Corps) and Social Impact Metrics at MaRS for their thoughtful comments and contributions to the piece. Responsibility for the final product and its conclusions is Sustainable Prosperity's alone, and should not be assigned to any reviewer or other external party. Please note that this document is provided for information only. This document is not legal or financial advice and should not be relied on as such.
- 2 "Greenwashing" refers to company communication (e.g. marketing) which is deceptively used to promote the perception that an organization's aims and policies are sustainable.
- 3 See B Lab: <http://bcorporation.net/>.
- 4 See Bill 23 (*Business Corporations Act*) for details about community contribution companies: [http://www.leg.bc.ca/39th4th/1st\\_read/gov23-1.htm](http://www.leg.bc.ca/39th4th/1st_read/gov23-1.htm).
- 5 Canadian Task Force on Social Finance, 2011, *Mobilizing Private Capital for Public Good: Measuring Progress During Year One*, [http://socialfinance.ca/uploads/documents/TFSF\\_ProgressReport\\_YearOne.pdf](http://socialfinance.ca/uploads/documents/TFSF_ProgressReport_YearOne.pdf), p. 10.
- 6 Global Impact Investing Rating System, "Company Ratings" <http://www.giirs.org/companies/companies>. Accessed August 7, 2012.
- 7 See: <http://www.benefitcorp.net/> for the latest on passed and pending benefit corporation legislation in the United States.
- 8 See: <http://www.bcorporation.net/community/> for an up-to-date listing of B Corps.
- 9 Paraphrased from *Frame v Smith* (1987) 2 SCR 99, at 60.
- 10 *Canada Business Corporations Act*, R.S.C., 1985, c. C-44
- 11 *BCE v 1976 Debentureholders* [2008] 3 SCR 560 at 82.
- 12 VanDuzer, A. *The Law of Partnerships and Corporations, Third Edition* (Toronto: Irwin Law, 2009) p. 586.
- 13 B Lab, "State By State Legislative Status" <http://www.benefitcorp.net/state-by-state-legislative-status> (retrieved July 31, 2012).
- 14 B Lab, "B Corporation 2012 Annual Report". (Berwyn, PA: B Lab, 2012) p. 24.
- 15 British Columbia Ministry of Finance, "B.C. Introduces Act Allowing Social Enterprise Companies" (March 5, 2012) online: [http://www2.news.gov.bc.ca/news\\_releases\\_2009-2013/2012FIN0011-000240.htm](http://www2.news.gov.bc.ca/news_releases_2009-2013/2012FIN0011-000240.htm).
- 16 Bill 23, 3rd Sess 49th Parl – *Finance Statutes Amendment Act, 2012* SBC c 29 <http://www.leg.bc.ca/39th4th/votes/progress-of-bills.htm>.
- 17 Tona Heatherington, British Columbia Ministry of Finance. Personal communication, August 7, 2012.
- 18 *Finance Statutes Amendment Act, 2012* SBC c 29 s 8, part 51.96.
- 19 *Finance Statutes Amendment Act, 2012* SBC c 29 s 8, part 51.98.
- 20 *Finance Statutes Amendment Act, 2012* SBC c 29 s 8, part 51.95.
- 21 *Finance Statutes Amendment Act, 2012* SBC c 29 s 8, part 51.94.
- 22 *Finance Statutes Amendment Act, 2012* SBC c 29 s 12; *Business Corporations Act* SBC 2002 c 57 s 248–255.
- 23 *Not-For-Profit Corporations Act*, SO 2010 c 15. (retrieved August 1, 2012 from eLaws).
- 24 M. Elena Hoffstein, Roxanne E. McCormick and Lynne Golding, "Ontario's New Not-for-Profit Corporations Act" (Fasken Martineau LLP: November 24, 2010), online at: <http://www.fasken.com/files/Publication/641ffc3e-498f-4bea-8ac8-8748de69a827/Presentation/PublicationAttachment/8ba26878-19b4-4a5b-ab0e-a00fef131836/Charities%20Bulletin%20-%20The%20New%20Ontario%20Act%20-%20Eng%20Only%20-%20November%2024%202010.pdf>; David Tang, "An Analysis of Ontario's New Not-for-Profit Corporations Act Bill 65", (Gowling Lafleur Henderson LLP: not dated) online at: <http://www.gowlings.com/KnowledgeCentre/PublicationPDFs/Bill%2065.pdf>.
- 25 Such as the thousands of EcoLogo certified goods available in Canada: <http://www.ecologo.org/en/>.
- 26 The range of fair trade products available has increased as well: Fairtrade Canada, "Canadian Sales of (Labelled) Fairtrade Certified Products" online: <http://fairtrade.ca/sites/default/files/FC%20Volumes%201997-2011.pdf>.
- 27 Freshfields Bruckhaus Deringer LLP, 2005. *A Legal Framework for the Integration of Environmental, Social and Governance Issues into Institutional Investment* (Geneva: UNEP Finance Initiative).