

ENGLISH COMMENTARY

THE *Laureart* PROJECT PERSPECTIVE

ON

The utility of *Socially Responsible Enterprises* (SREs) in the Canadian context and the extent to which current *Canada Business Corporations Act* (CBCA) incorporation provisions and structures facilitate the creation of SREs

BY

Danielle POISSON, *Laureart* Project Creator

laureart@live.ca

Montreal, Quebec, Canada

March 11th, 2014

-----\--\-----

Laureart project plans to establish a SRE, either a CCC or a CIC, whose community purpose would be to service and promote the Canadian gratification practices in the visual arts, running on membership and derived products and services. At its core, it would operate a neutral vector, an online platform that would empower promoters to administrate promotion, submissions, judging, voting and results of Canadian gratification exercises in the visual arts directly on site. Simultaneously, it would empower participants to apply and follow-up in personal profiles these vital career stepping stones events. The information on visual art promoters and practitioners and their various gratification exercises would thus be rendered accessible to the grand public and clearly show the infrastructures, careers and values endorsed and sustained in the visual arts by Canadians throughout all life stages. These exercises would address all forms of contests, recognition, tenders, etc. involving gratuities for visual arts practitioners (money, grants, awards, titles, recognition, training, materials, etc.) in all fields of the visual arts (architecture, visual arts, crafts, design, media arts and afferent expertise domains). In time, the company could establish the authority to address many more pertinent issues subservient to this vital praxis. Through this platform, the creator's strategy is to lever a strong Internet membership creating thus a community that would not otherwise come to existence in real life; facilitate the clientele's ability to associate and claim ownership of the project itself. This Canadian community would then be able to engage and 'officially' remediate itself, establishing a strong identity and lead the future of its own gratification system. In doing so, every 'players' will have 'connected' above conflicting issues and deeply rooted differences to present a united front within our Canadian culture and to the world.

-----\--\-----

THE UTILITY OF SOCIALLY RESPONSIBLE ENTERPRISES (SREs) IN THE CANADIAN CONTEXT

Of Internet Communities and Management

Internet

Internet and its technologies have specialized from simple database access to real time data distribution with diffusion (Push) and cloud computing, using wider and faster bandwidth, etc., and transforming greatly our usages and their implication in our daily lives. It cannot be circumvented any longer: Internet is integrated in the praxis of our appliances, our cars, our

houses, our work and personal lives. Human communications and interactions hereafter rely on Internet.

Internet and communities

Internet, as a medium, has such a pull that it can be used as a lever to assemble new and pre-existing communities over a wide spectrum of commonalities in a flash or over time, in great subscription number and as stable social forces to be reckoned with. Whether audience or network based, communities are able to re-assemble and become remediated. They come live democratically and settle with unique homeostasis powers. These communities are quite strong independently of the Internet and mesh in real life. Their numbers may rapidly surpass any one business's means especially when their commonality has the power to reach across an entire nation or across borders through the entire world. Whatever their numbers, their followers/members will feed on technology supported real-time interactive information/feedback and service/support to thrive and socially integrate as long as guided by some protocols or norms.

Internet communities, individuals and cost

In daily web life, a person may identify with numerous communities at a time as member, client, core participant, fan, visitor (lurker, linker, competitor, educator, reporter, etc.). Keeping contact with one's community connexions can be very engaging and/or time-consuming. Gadgets and technologies are perfected everyday to ease our connectedness and allow better useful and time-saving integration in our lives. Internet profitability is confronted with blurred and necessary lines along free access. It is not realist to expect individuals to pay fees for everything they consult or identify with online. If it were the case, it would have incredible negative impact on public freedom. There is room though to moderate regular membership fees on top of our internet access costs if it enhances our real life allegiances and activities.

Internet, manpower and cost

The sustainability and stability of Internet presence for these communities, groups and/or associations derived from Internet or relying on Internet is actually built on good part by philanthropy minded staff putting in efforts and extra personal time and dedication, monitored and not, on competitive salary or not. Whether a for-profit or not-for-profit company, the responsibility is extra challenging in this expansive technologically advanced society and often surpasses their capacities to keep it shifting in the moment. Limited resources, such as budget, material and/or knowledgeable volunteer manpower, cut short creative initiatives. In fact, in this context everyone must exercise multi-faceted business expertise and champion knowledge of their own specialty, its current news and incentives; of Internet production and marketing through various technologies and social media; all the while balancing the activities and interactions of their own working cell. Demotivation and exhaustion are in the midst. Obsolescence is a costly enemy.

Internet and financial support

Well-intended support and investment whether governmental, paragonmental or else, seems never sufficient to fight obsolescence and static inactivity, the communities' front line enemies. It seems that it will always require a regular and more demanding injection to stay levelled and/or innovate. Once every facet of every internal/external solution to existing systems has been examined, it naturally brings under scrutiny the nature itself of the founding principles of our corporations. At opposing ends of the corporative models, efforts have been made to stretch adaptive possibilities to an almost denaturation point. And yet, not-for-profit corporations' rules are still too restrictive to insure a regular and competitive access to all that is required and, for-profit corporations' rules too complex, expensive and self-serving to implement anything with the right mindset. What to do?

Of utility of SREs**PHILANTHROPY, PROFIT MAKING IN CANADA****Community philanthropy by Not-for-profit Corporation: As far as enthusiasm goes**

Philanthropy is the desire to promote the welfare of others, expressed especially by the generous donation of money to good causes. This consists of private initiatives, for public good, focusing on the quality of life in communities. Basically, a non-profit organization takes the money it makes and puts it directly back into its causes and missions instead of sharing profits among its employees or stockholders. Essentially it is doing so by keeping administrative and fundraising costs to a minimum. This causes projects to suffer negatively from dependency on people's commendable but lagging means, will, knowledge, cooperation and mercy and on economy's general wellbeing. Its challenge is in timely action decision-making in favour of the community. Actions of Not-for-profit Corporations toward the visual arts result in a variety of private and public initiatives, a portion of them to create encouragement to art practitioners.

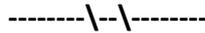
Community philanthropy by For-profit Corporation: As far as piggy-ride goes

Corporate philanthropy is one of several approaches to corporate social responsibility (CSR), in which companies seek to do well by doing good. Why would firms, who have a legal obligation to their shareholders to act in their best interests, give away the firm's money and resources? Smart companies do not exclusively aim at the welfare of others. Their commercial strategy is usually motivated by the perception that their corporate social responsibility will ultimately make the business more profitable and support market growth. In delivering social value, they develop customer loyalty in the communities. In doing so, professional development and employee engagement reduces business risk, open up new markets, engage employees, build the brand, reduce costs, advance technology and deliver competitive returns. The dependency here is accessory upon the conditional approximate alignment of objectives, timing, value, incentive of the commercial strategies with the philanthropical end. Its challenge is in priority decision-making in favour of the community. Actions of For-profit Corporations toward the visual arts result in wide variety of focus centeredness actions in promotion and events. Sometimes, it places art practitioners in focus, sometimes in peripheral view.

Community philanthropy by an Hybrid Corporation: As far as we can take it

A counterbalance to the usual polarized corporative powers can be found in the socially responsible enterprise (SRE) models. They are organisations that use commercial strategies to maximise improvements in human, social and environmental well-being, rather than maximising profits for shareholders. It has the potential to act beyond nesting ideas and motivation, beyond collecting and granting endowment funding to better the community. It mediates information, products and/or services essential to the welfare and vitalization of its community. Self-reliance and determination stands the long run in these hybrid models allowing to compete in the market, to work in the know, the now and bring on economical sustainability by injecting a good part of their distributable assets back into their activities (business), their community (people), their community's purpose (commonality). They are politically neutral, non-lobbying entities where transparency is a must, in their motives and actions. Either one has to respond at any point in time to a Community Test. Their dependency is in social integration of profitability and philanthropy objectives/support. Their challenge is in keeping real and balanced management decision-making in favour of the community despite their numerous commitments. Actions of Hybrid Corporation toward the visual arts result in managing common pivotal matters amidst various needs and motivations.

The scope of a Hybrid Corporation can propose services and products more intimately inherent to functional needs of different social milieus. This makes it not more important, but ranks it as important as the other two corporate models. It does not supplant the others' *modus operandi*. Its capacities impact positively core needs of the communities and as such the model is quite relevant and complementary of the others. It is decidedly far more adapted to the costs and servitude to the present moment of any internet business.



THE EXTENT TO WHICH CURRENT CANADA BUSINESS CORPORATION ACR (CBCA) INCORPORATION PROVISIONS AND STRUCTURES FACILITATE THE CREATION OF SREs

Of Canadian context

Among all socially responsible corporations, *Laureart* is particularly interested in UK's inspired CIC model. Two Canadian provinces have already engaged into adaptations of this model: British Columbia in Bill 23 for Community Contribution Companies passed in Finance Statutes Amendment Act, 2012 and Nova Scotia in Bill 153 for Community Interest Companies Act, 2012 passed under the Companies Act, 2012.

The addition within respective corporate laws and provincial authoritative structure between the two provinces do differ. BC has harmonized the Community Contribution Company model amongst its existing corporate models and provincial services, whereas Nova Scotia as set an autonomous Act to Community Interest Companies with distinct established authority to promote and regulate it, avoiding any possible confusion with existing models all the while being subjected to the same law frame. The two Canadian community models are otherwise fairly similar with few noted differences (listed underneath) when compared to UK's. Their chain of authority differ and this difference may or may not play a role when trying to integrate a similar but superseding model at the federal level that will engage other provinces to follow through.

Differences and Particularities amongst Community Company models from our personal notes			
	UK	BC	NS
LAW	The Community Interest Company Regulations, 2005 under the UK Companies Act, 2006	Part 2.2 of B.C. Business Corporations Act, 2012	Community Interest Companies Act, 2012 under the
CHAIN OF AUTHORITY		Lieutenant Governor in Council	Minister of Service of NS and Municipal relations
Responsibilities		<ul style="list-style-type: none"> - Prescribing entities or class of entities: other than community service cooperative; a registered charity - Respecting the manner in which the value of notice shares is to be determined in relation to a dissent by a shareholder of a CCC 	<ul style="list-style-type: none"> - Prescribing entities that are qualified entities: other than a non-profit association; a society incorporated under the Societies Act; a registered charity - Prescribing the duties and functions for the Registrar - Prescribing criteria for the purpose of determining whether a qualified entity is eligible to receive

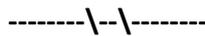
			<p>distributable assets from a CIC that is being dissolved</p> <ul style="list-style-type: none"> - Prescribing criteria for the purpose of designating a qualified entity to receive distributable assets from a CIC that is being dissolved if the CIC has not specified a qualified entity to receive such assets - Prescribing fees for any application made to or service provided by the Registrar or any other person under this Act - Respecting any matter or thing the Minister considers necessary or advisable to effectively carry out the intent and purpose of this Act - The exercise by the Minister contained is a regulation within the meaning of the Regulations Act
	Appeal Officer	Court	Appeal to Supreme Court of NS
TIME LIMIT TO APPEAL	<ul style="list-style-type: none"> - within two months of Regulator's decisions - notice to appeal to the Regulator within three weeks of disputed direction 	- no Appeal procedure	- an order issued may be appealed to the Supreme Court within 30 days of being issued by the Registrar
INVESTIGATION		- Section 248 (3) allows the court to order investigations if a CCC appears not to be acting in accordance with the Act	
	Registrar of Companies	BC Business Registrar	NS Registrar of Joint Stock Companies
ROLE AND DUTIES		<p>Section 432:</p> <ul style="list-style-type: none"> - recognizes the registrar's role in relation to enactments other than the Business Corporations Act and in relation to registers other than the corporate register - allows for regulations to deal with various matters under the CCC 	

		provisions, including dividend caps, restrictions on distributions on dissolution and CC reports	
	Regulator		NS Registrar of CIC
	- The Regulator has a range of investigation and enforcement powers - is authorized to determine the amount of a manager's remuneration - manager may have to answer as specified by/to the regulator and give security for the due discharge of his functions - In situation where manager fails, with due notice a Regulator may remove a manager		
	Managers	Directors or Officers	Directors or Officers
Number of directors		Minimum three	Minimum three
Liability		- Section 154 was amended to include liability of Director of CCC	
		Shareholders	Shareholders
Dissenter		- Section 260 Allows a shareholder of a CCC to dissent if the articles of the company are altered to change any of the Company's purposes - Section 237 allows regulations to limit the value of shares of a dissenter in a CCC	
		Qualified Entity	Qualified Entity
Definition		- a community service cooperative - a registered charity - a prescribed entity or class of entities	- a non-profit association; - a society; - a registered charity; - prescribed entity
			- has a community purpose similar to that of the CIC
DEFINITIONS			
Community purpose	no political activities allowed	does not specifically mention exclusion for political activity	'but does not include a political purpose'
ELIGIBILITY			
Statement & Purpose		in Notice of Articles	in Memorandum
Name		- Allowed to have	- Must have 'Community

		'numbered' names; - must have 'Community Contribution Company' or 'CCC' as part of its name.	Interest Company' or 'C.I.C. or 'CIC'/'Société d'intérêt communautaire', 'S.I.C.' or 'SIC'; - this use is exclusive.
Eligibility Continuance			- Upon request or reviewed information, evaluation shall provide satisfaction for eligibility continuance or dissolution within 60 days
CONVERSION			
A single company		- Alteration of notice to include CCC Statement and community purpose and change of name by anonymous resolution of changes by shareholders	- Alteration of notice and name and a certificate attesting of the unanimous resolution of changes passed by every member of the company with certificate signed by an officer of the company
An Amalgamation of companies		- If amalgamation to result in CCC proposed and not effected under section 273 or 274 (Vertical short form or horizontal short form amalgamations); - Amalgamation into foreign jurisdiction and continuation out of British Columbia prohibited.; - for a continued company out of British Columbia shareholders may dissent when continuation prohibited, after continuation	- Two or more companies that are proposing to amalgamate and continue as a CIC may jointly apply
DISTRIBUTION OF ASSETS			
DIVIDENDS	- Aggregate Dividend Cap@ 35% - Maximum dividend per share cap should be removed.	- Dividend cap of 40 per cent of annual profits - In 51.94 a CCC may in its articles further constrain the declaration of dividends	- ? - CIC Memorandum of Association or Articles of Association, may further constrain the declaration of dividends
INTEREST	Augmented from 10% to 20%		
COMMUNITY COMPANY REPORT			
		- Promptly after a CC Report is published, the directors of the CCC must post the report on the Company's publicly accessible website, if any	

		<p>A CCC is to keep copies of its CC Reports</p> <ul style="list-style-type: none"> - at its records office -like other corporate records, at a different location after 7 years, as long as they can be produced on a 2 days' notice - Anybody will be able to obtain, free of charge, copies of a CCC's financial statements and CC Reports 	
		<ul style="list-style-type: none"> - Section 426 makes it an offence to fail to comply with approval and signing requirements for CC Reports, to fail to publish or post a CC Reports or to use a name indicating that the user is a CCC when in Fact that is not correct - Makes it an offence for a foreign entity to carry on business in British Columbia after its registration as an extraprovincial company has been cancelled 	
TAX RELIEF	UK's consultation on Social Investment tax relief - Proposals		
Income tax relief	<ul style="list-style-type: none"> - On qualifying investments in the form of deduction from income tax liability 		
Capital gains tax relief	<ul style="list-style-type: none"> - a deferral of chargeable gains - exemption from tax of gains on the disposal or repayment (redemption) of social investments after a minimum investment period - Will not apply where instruments do not increase in value, such as the withdrawable shares issued by bencoms 		
Minimum investment period	<ul style="list-style-type: none"> - Three years 		

Dividend	- No tax relief		
Share loss relief	- only available where an investment is in shares		
Inheritance tax	- no explicit Business Property Relief (BPR) of other specific relief for SITR qualifying investments as BPR		



Discussion

Orientation

We are looking for an effective, affordable, simple and straightforward to administer, sustainable and not open to abuse, compliant business model that is sustained by incentive relief measures and supportive actions. We need a model that will create returns to the corporations for the purpose(s) of social good. The federal community corporations must supersede all provincial models and set the tone for national and possibly for inter-provincial interactions. It has to be seductive for investors and bring superior revenues toward a social purpose. Above all, not only the business model, but its management by government must be in highly flexible form to support and adapt to, for example, online enterprises that require a humming quickness and readily made sensitive turnabouts from their management.

Framework

A question formulates itself: Should the law and chain of authority of any SRE business exist within the actual frame of the Corporation law or should a new path be created for them?

We believe incorporation provisions, structure and chain of authority should be autonomous from, but compliant to the Corporation Act. A **Canada Community Corporations Act** that stipulates statuses and obligations addressing individually, but under a single umbrella, all new forms of social enterprises exploiting commercial strategies to accomplish social good, whether for-profit or not-for-profit. This would serve to distinguish them from the polarized operating models of the well-established entities under the **Canada Business Corporations Act** and the **Canada Not-for-profit Corporations Act**.

The need for a particular, fair and clear set of rules and regulations to encompass their status registration and activities is obvious. Clearly, the combined aspects of for-profit and not-for-profit principles in these new models of social enterprises would easily become a challenging matter to balance out if to be ruled under either one existing legal backdrop, possibly subjecting them to double jeopardy and judicial disqualification all around – thus counteracting a healthy legal implementation of hybrid models as social enterprise in society. If founding principles are set apart, the possibility of resistance to change and difference by unfair or opposing long-standing existing biases, perspectives and positions would therefore be diminished, redirected or prevented. This calls out for transparency and simplicity for spontaneous adhesion. This calls out for its own Act, one that would clearly define a chain of authority, responsibilities and liabilities of its constituency, regulations for asset-lock, financial caps and tax relief strategy, and above all, transparency.

Consequently, many enterprises, on either end of profit and non-profit, that have spread extraordinarily close to hybridism until now should convert to SREs, causing a movement toward a new market order and balance.

Chain of authority

A **Canadian Community Corporation** authority should exercise its power to follow law's intent, regulate and promote in transparency the role and contribution of Canadian social enterprises under an organism possibly named **COMMUNITY CANADA**. Community Contribution/Interest Companies, community service cooperatives, registered charities, non-profit associations, incorporated societies and any prescribed entity or class of entities, etc. would have one single home. Its authority figure would interact with the existing Registrar for legal administrative services continuity.

Discussing differences, not founding principles

Should all the noted differences between B.C.'CCCs and N.S.'CICs be evaluated and be included in a new federal model? Our expertise unfortunately could not extend to analysing existing corporation law to figure out necessary adaptations and layouts. But a few commentaries come to mind.

About chain of authority. Jurisdiction, role and duties of each authority in chain should be clearly delimited. The 'no political purpose' rule should apply at all levels or authority with a pristine rule of decision alignment with community purpose(s). Appeal procedure should be outlined and the ability to order investigation should be naturally inferred within the reach of *Community Canada's* or equivalent body authority, and any reports made accessible to appeal authority to investigate furthermore. Director's liability and offences seemed to be more severe in B.C.'CCC. If this model is to be 'lighter', understanding that law must be abide, should we not show more flexibility? Shareholder right to dissent if social purpose(s) are changed, or if operating outside the province as another measure to keep on track with social purpose(s) -- is it not overkill? This should be an ultimate trump card to maintain alignment, not so easy to play, and if we let it play out, should ensure it is a move made with some seriousness and not just a mere obstacle, thus requiring an official declaration of motivation. To just to cut back on the dissenter dividend payment is not a qualitative response for socially-minded organizations. In the UK model, the Regulator has the power to take down non-compliant Directors, and find replacement. Maybe such powers should be given to the *Community Canada's* or equivalent body authority in extreme cases where every possible measures and tactics within the organizations were to no avail?

About community purpose. No political activity should be the object of a Community Company purpose(s) nor of its governing body and that should be stated into law. Furthermore, no political activity resulting in power plays should happen inside the company about its own purpose as it has the obligation to stimulate a constructive response from the community. The Community Company should reflect every facet of its community needs and reflections in alignment with its purpose(s) with openness.

About eligibility. Transparency being the operative value of these models with community purpose(s), it seems quite strange to admit anonymous and obscure numbered names. Rarely have we seen in the news Company number such and such being called upon for any issue. Names should be declined in both official languages. Eligibility continuance criteria and provisions should be clearly spelled out. At the federal level, eligibility should imply a pan-Canadian community purpose whereas administrative activities might be happening in one province while its activity scope penetrating every territory. Would a federal legal incorporation trump in-existent

provincial SREs or community corporation law? If one's own province is not partisan of this new business form, when company registry is mandatory, we should register as what, a regular company?

About Conversion. Amalgamation of companies under B.C.'CCC is far more detailed than in N.S.'CIC where two or more companies have the liberty to become a SREs. We wonder if this high regulation is due to a biased habit of the for-profit model, and if it would be possible to show more flexibility.

About distribution of assets. The UK aggregate cap is at 35%, the maximum dividend per share cap is to be eliminated, and the interest rate is augmented from 10% to 20%. The current BC dividend cap is at 40% of annual profits, with possibility to constrain it further in articles of association or memorandum. The Nova Scotia government website is in reorganization. The provincial caps, if there are more than one and of different nature, are not readily identified in the law or easy to find whereas they are frontline information in UK. They are readily available at the Regulator's website. Transparency should stand for every SREs authorities in Canada whether corporations or Government.

About tax relief. In the case of administrative activities set in a province that have not (yet) adopted the Community corporation form, what should happen? Will there be incentive like Reimbursement on provincial income tax, one that could be lifted from the moment a province adheres to the new model? Tax relief efforts to sustain social enterprises if they exist, are not reported along with information on SREs. It would be of high interest to see how such incentives can work with these models in Canadian economy. UK's past eight years of experience with the CIC model has seen the Regulator take pulse for change with some of their approach. We should pay attention to their efforts and learn.

Extra considerations

Adding another Form

The Community Contribution/Interest Company, as a for-profit business form, is so new that no one has yet question the possible need of a matching company foundation that would require hybrid rules. A Community Company that has the potential to become a national fixture should be able to have its own hybrid private/public foundation. It might feed it up to 50% of its revenue with its own distributable profit and fetch another 50% from various donations. This model could extend the principle of *qualified donee* to members and other partners of its community that might not be represented in the official accepted list:

- a registered charity (including a registered national arts service organization);
- a registered Canadian amateur athletic association;
- a listed housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged;
- a listed Canadian municipality;
- a listed municipal or public body performing a function of government in Canada;
- a listed university outside Canada that is prescribed to be a university, the student body of which ordinarily includes students from Canada;
- a listed charitable organization outside Canada to which Her Majesty in right of Canada has made a gift;
- Her Majesty in right of Canada or a province; and
- the United Nations and its agencies.

Proactive supportive action

Could a lawful obligation for Canadian share portfolios worth a certain value to contain a gradated % of shares in social enterprises be a plausible concept to be created by Government as supportive civil action?