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**THE EVOLUTION OF THE CORPORATION:
THE PUBLIC BENEFIT CORPORATION**

Executive Summary:

In both Canada and the United States, new forms of hybrid, for-profit corporations are being created. They are public benefit corporations (PBCs), known also as Community Interest Corporations, Community Contribution Corporations, Benefit Corporations, and B Corps. For a while now, you have been able to amend the articles of your corporation, or incorporate a new for-profit share capital corporation, so as to set for it a public benefit purpose.

Most recently, Delaware, which has more active public companies registered under its jurisdiction than any other jurisdiction in the world, has amended its corporate legislation effective August 1, 2013 to permit companies to incorporate as PBCs. British Columbia has done the same thing effective July 31, 2013. Nova Scotia has had Community Interest Corporation law in place, though not yet in force, since late last year.

A public benefit corporation is a for-profit corporation that is intended to produce public benefits and to operate in a responsible and sustainable manner. “Public benefit” means a positive effect (or a reduction of negative effects) on one or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders).

There are many for-profit companies that operate in a responsible and sustainable manner. There are many individuals who have made their fortunes in for-profit companies and who have become champions of linking business and doing good. However, it is an ad hoc process and it is hoped that these new corporate forms will be an evolutionary step in enabling for-profit companies to embed corporate social responsibility and sustainability in their corporate DNA.

The corporation has been a fabulously successful invention capable of creating great wealth and advancing standards of living around the world. The new corporate forms now evolving are responses to a number of factors, including social dissatisfaction with some of the darker angels found in the nature of corporations and capitalism and the growing chorus of voices promoting the 3P bottom line - profit, people and the planet.

The legislative response is an attempt to begin the process of freeing up directors, by protecting them if they elect to carry out a proper corporate purpose beyond creating financial profit, and to provide for greater transparency for investors and other stakeholders.

Traditionally, there have been for-profit share capital, and not-for-profit non-share, companies. For-profit companies have evolved to have few limitations placed on their purposes other than it has to be legal. Not-for-profit companies, including charities, are the traditional corporate form utilized to do good.

Not-for-profits and charities are restricted in their ability to make a profit and are thereby hampered in their efforts to become financially sustainable. Without the ability to make a profit, they cannot take advantage of the tools of the for-profit company, they are often at risk of losing their favourable tax status, and they are stuck with the insecurity resulting from non-recurring, government and charitable donations to fund their public benefit programs.

Modern public corporations are perceived to be suffering from short termism with the result that they have trouble matching their current plans and operations to long term solutions, growth and success that benefit both the corporation and the community.

At the same time that legislatures are trying to unleash the for-profit forces for good, they are doubling down on regulation. However, the PBC does represent a greater opportunity for a self-regulating, for-profit entity which is legally responsible to have a 3P approach in the operation of its business and to report on its progress. Until this translates into a kinder and gentler corporation, it will be balanced by continuing regulation.

A corporation has a separate legal status but have you ever met one? A corporation is more than the sum of its people. It develops a personality, it outlives many of its managers, and it learns to operate in a certain way. Employees perpetuate that personality without always understanding the goals and impact of the company beyond making a profit. A successful change in the DNA of a company will mean a change that engages all of the people of that company and, ultimately, a change in aspects of its personality, its values, and its goals. If done correctly, it will have an impact on a corporation's recruitment policies, turnover of staff, the type of people who want to work for the company, and the way the company treats its staff as one of the legitimate stakeholders whose long term interests are to be considered.

The PBC does not represent a change in corporations; it represents an evolution in the way people think about corporations and it provides a modified but familiar structure. The development of the PBC is corporate law intersecting with social, environmental, economic, cultural and global forces. The crucial hurdles for PBCs will have been overcome when a sufficient number of investors, shareholder activists, company owners, employees, officers and directors take responsibility for an explicit public benefit purpose in the operation of their businesses, and find a way to measure it and they make a profit. The development of PBC corporations is not the last step.

The Evolution of the Corporation and The Public Benefit Corporation

Are we naïve in thinking that all corporations contribute to the public good?

The corporation is one of the most significant inventions in human history. Almost all growth in our economy and our standard of living in the last 400 years can be connected in some way to our organization and use of corporations.

“Government bureaucracies struggle to deliver public services in an effective way with results that can be measured.”

“Governments have failed in their attempts to regulate corporations participating in out-of-control global capitalism.”

“For-profit corporations are amoral. The business of doing good is the business of governments and not-for-profit companies who are committed to explicit public benefit purposes.”

Each of the foregoing statements is a simplification of some significant objection or doctrine that we hear daily from our legislators and in our media. Is it possible that the debate has resulted in a convergence of ideas and ideals concerning governance of corporations, and the unleashing of the for-profit entrepreneurial spirit in the pursuit of business with the 3P bottom line of profit, people and the planet?

This convergence is manifest in a new kind of corporation; the hybrid, for-profit corporation with a public benefit purpose.

On August 1, 2013, the State of Delaware started allowing companies to incorporate as Public Benefit Corporations (PBCs) and, on that day, 17 did so (In this article, I will use the term PBC to refer to the entire class of corporations that have these hybrid characteristics, though in other jurisdictions they go by different names.)

Delaware has more active public companies registered under its jurisdiction than any other jurisdiction in the world. The reasons are many but one big reason is that it is simpler in Delaware when it comes to understanding the guiding principles of running the company -- make a profit for its shareholders.

Delaware also has a history of upholding and enforcing legal commitments.¹ The implicit goals of PBCs are to combine a public-benefit purpose in a for-profit entity with accountability from the directors and transparency in terms of having a measurable standard and reporting requirements.

¹ *Rohm & Haas Co v Dow Chem Co*, 2009 Del Ch LEXIS 31; *Revlon, Inc. v MacAndrews & Forbes Holdings, Inc.*, 506A.2d 173 (Del. 1985).

Quoting from the amendment to the General Corporation Law of the State of Delaware:

§ 362. *Public benefit corporation defined; contents of certificate of incorporation.*

(a) *A public benefit corporation is a for-profit corporation organized under and subject to the requirements of this chapter that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner. To that end, a public benefit corporation shall be managed in a manner that balances the stockholders' pecuniary interests, the best interests of those materially affected by the corporation's conduct, and the public benefit or public benefits identified in its certificate of incorporation. In the certificate of incorporation, a public benefit corporation shall (1) identify within its statement of business or purpose pursuant to § 102(a)(3) of this title one or more specific public benefits to be promoted by the corporation, and (2) state within its heading that it is a public benefit corporation.*

(b) *“Public benefit” means a positive effect (or reduction of negative effects) on 1 or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature. “Public benefit provisions” means the provisions of a certificate of incorporation contemplated by this subchapter.*

What is the problem that PBCs solve?

It seems that we need corporations with a mission and a conscience. Put another way:

*“How do we combat short-termism? How do we rebuild public trust in business? How do we accelerate the use of business as a force for good? Benefit corporations give business leaders legal protection to pursue a higher purpose than maximizing profit, they give investors additional rights to hold management accountable to create value for society, and they give the public greater transparency to protect against pretenders”.*²

What are some of the considerations that go into deciding to be a PBC?

- (i) Shareholders and other stakeholders (creditors, customers, employees) understand the PBC's mandate is not just profit at any cost;
- (ii) the PBC is not to be disadvantaged in accessing capital;
- (iii) the directors understand what public benefit purposes can and cannot legitimately be taken into account in the exercise of their business judgment; and,
- (iv) finally, though not mentioned anywhere in the legislation, the employees understand the nature of the corporate person for whom they work for.

² B Corporation, *The Non-Profit Behind B Corps* (21 March 2013), online: B Lab <<http://www.bcorporation.net/what-are-b-corps/the-non-profit-behind-b-corps> > (Last visited 16 August 2013).

The above summary really comes down to permitting for-profit companies to carry on their business with a stated positive public benefit. The question is whether these new forms of hybrid corporations do that. It is ironic that so much effort and legislative detail has to go into permitting a for-profit corporation to include the public benefit in its thinking and action.

The corporation is one of the most significant inventions in human history. Almost all growth in our world economy and our standard of living in the last 400 years can be connected in some way to our organization and use of corporations. Over a couple of centuries, governments have passed laws to control and structure the corporation, but its purpose and benefits – financial profit -- have remained the same.

However, international forces, free trade, globalization, environmental degradation, climate change, substandard work environment, child labor and a number of other problems in the world are coming to be associated with corporations, capitalism and the for-profit mandate for which they operate. Many contemporary examples exist, including the 99 per cent campaign by the Occupy Movement and the annual protests at G8 summits. Shareholder activism is rising both from the left and the right. Apple Inc. is being pressured to redistribute to its shareholders the billions of dollars in cash that it has earned. At the same time, it is being severely criticized for effective and legal tax avoidance strategies implemented to create that same profit.³ Governments are revisiting the law that enabled corporations to outsource labor to other countries. Governments are struggling with their inability to achieve results in the programs that people pay for with their taxes. They are setting up social impact bonds to fund private corporations to make a business out of protecting children and helping inmates readjust to life when they are released into society. They do this by applying the entrepreneurial, results-oriented spirit to doing the things that the government normally does and where there is a “high cost to taxpayers and significant social benefit tied to prevention.”⁴ Corporations are criticized for not looking long-term when it comes to hiring and investing in human capital. Some people believe that employees have become cheap commodities that corporations purchase for the lowest price and discard. The pressure to prove short-term results conflicts with, and constrains, the ability of corporations to innovate and achieve long-term financial results. These forces are causing many people to question whether corporations are part of the cause of these problems and whether we can change things.

A corporation is more than the sum of its people. It develops a personality, it outlives many of its managers, and it learns to operate in a certain way. Employees perpetuate that

³ Activist shareholder Greenlight Capital filed suit against the company and demanded that Apple Inc. pay out a larger portion of its \$137 billion of cash to shareholders (Poornima Gupta and Ben Berkowitz, “Apple faces strongest investor activism in years after Einhorn sues” *Thompson Reuters* (8 February 2013), online: Thompson Reuters <<http://sustainability.thomsonreuters.com/2013/02/08/apple-faces-strongest-investor-activism-in-years-after-einhorn-sues/>> (Last visited 16 August 2013)). See also Joanna Slater and Bill Curry, “US grills Apple on offshore tax practices” *The Globe and Mail* (21 May 2013), online: The Globe and Mail <http://www.globeinvestor.com/servlet/WireFeedRedirect?cf=GlobeInvestor/config&vg=BigAdVariableGenerator&date=20130521&archive=rtgam&slug=escenic_12033928> (Last visited 16 August 2013).

⁴ Jagelewski, Adam, “The Social Impact Bond Model and Why it Matters” (27 October 2010), online: MaRS <<http://www.marsdd.com/2010/10/27/the-social-impact-bond-model-and-why-it-matters/>> (Last visited 19 August 2013).

personality without always understanding the goals and impact of the company beyond making a profit. Their role as cogs in the company machinery does not permit them to see the long term impact of what they do. The company sometimes sees employees as expendable and many people are familiar with insecurity of employment and the impact of outsourcing. Senior managers are accused of forgetting their stewardship role when it comes to company assets and the impact of their decisions on the many communities they affect. A successful change in the DNA of a company will mean a change that engages all of the people of that company and ultimately a change in aspects of its personality, some of its values and its goals. Such a result may be an intended or unintended consequence of being a PBC. People who work for existing, for-profit corporations that change to a PBC will now be held to a third party standard. Long held corporate self-images will be held up to a mirror. If done correctly, it will affect a corporation's recruitment policies, turnover of staff, the type of people who want to work for the company and the way the company treats its staff as one of the legitimate stakeholders whose long term interests are to be considered.

Charities do not have the tools to get the job done.

For-profit corporations are successful but they are considered by some to be amoral in their actions and their intent. The pursuit of profit with the sole or primary financial interest of the shareholders in mind leads to the problems mentioned and benefits some more than others. As a result, not-for-profit corporations [meaning non-share capital corporations with the public benefit purpose which do not earn a profit and which enjoy tax free status]⁵ and charities [meaning not-for-profit corporations that have a tax designation enabling them to issue tax receipts]⁶ exist as a different class of corporation set up to do the good work. However, they are heavily regulated and severely limited in their ability to earn a profit and generate recurring revenue to fund their good work. This regulation is done to maintain trust and transparency for the funders of these organizations and to qualify them for tax free status. Without recurring revenue and profits, however, charities cannot access capital in the same way that for-profit corporations can to leverage and grow. Charities and not-for-profits lose their charitable status and their tax free status (and with it their ability to raise capital) if they stray beyond the stated purpose or fail to stick to their public benefit purpose. As a result, wealth generated in for-profit corporations is distributed by benefactors to charities to enable them do their good work but that wealth is spent over a short period of time and cannot be properly leveraged.

At the federal level in Canada, new not-for-profit legislation and rules governing charities have already been passed and are being implemented. Fundamentally, the federal government is setting the rules for non-share capital, not-for-profits and charities and enshrining those rules in

⁵ Incorporated by letters patent under Ontario's *Business Corporations Act*, RSO 1990, c B.16 and the federal *Canada Business Corporations Act*, RSC 1985, c.C-44.

⁶ Non-share capital companies and Co-operative Corporations can obtain Not-for-Profit or Registered Charity status under Canada's federal *Income Tax Act*, RSC 1985, c1 (5th Supp).

legislation. In Ontario the legislation has been drafted but not yet enacted. It will likely be implemented in 2014.⁷

“The CNCA [Canada Not-for-Profit Corporations Act] was proclaimed in force last October[2011]. Non-share capital corporations currently incorporated under the CCA (Canada Corporations Act) were given three years to transition to the CNCA (by October 17, 2014)...In order to transition to the CNCA, a federally-incorporated non-share capital corporation will be required to replace its letters patent, supplementary letters patent (if any) and by-laws with new charter documents by submitting articles of continuance and creating and filing new by-laws. For federal non-share capital corporations that are also registered charities, care is required during the transition process so as not to affect the corporation’s registered charity status...If a registered charity does not apply for a certificate of continuance by October 17, 2014, and Industry Canada dissolves the charity’s corporate status, its charitable registration may also be revoked, resulting in very serious consequences.”⁸

These efforts will give transparency and comfort to people who make donations for specific charitable purposes. The rules will also give direction to the boards of directors of these corporations and charities so that they have statutory direction for exercising their due diligence and fiduciary duties.

However, the new legislation still maintains the fundamental difference between for-profit and not-for-profit companies. It preserves the two solitudes. With the rules so strict at both ends of the spectrum, it is difficult for for-profit corporations to embrace new ideas about the corporation's place in the community. In the existing for-profit sphere, the 3P bottom-line approach of profit, people and planet is possibly only available to closely held corporations. In such corporations, consensus can be obtained between the management and the shareholders with respect to how the corporation is going to carry on business and the circumstances in which short-term profit will be postponed in favor of other stakeholders and longer-term considerations. Corporations in Canada and the United States have a positive obligation to act in the best interest of the Corporation⁹ and very often that translates into the best interest of the shareholders and the compulsion to earn a profit every quarter.¹⁰

⁷ Mona Taylor, “Historic Changes in Federal, Ontario Laws that Govern Internal Affairs of Non-Share Capital Corporations, Such As Registered Charities, Trade Associations, Taking Effect This Year” *Blaney's on Business* (March 2012), online: Blaney McMurtry LLP < <http://www.blaney.com/articles/historic-changes-federal-ontario-laws-govern-internal-affairs-non-share-capital-corporation>> (Last visited 16 August 2013).

⁸ *Ibid.*

⁹ *Business Corporations Act*, RSO 1990, c B.16 s 134(1); DELCBO §4.19, 2006 WL 2450349.

¹⁰ *Revlon Inc v MacAndrews & Forbes Holdings Inc*, 506 A.2d 173 (Del. Supr. 1985); *Peoples Department Stores (Trustee Of) v Wise*, [2004] 3 SCR 461; Earlier this year, Mark Wiseman, President and Chief Executive Officer of the Canada Pension Plan Investment Board, addressed Canada’s Venture Capital & Private Equity Association about the recent steps taken by the CPPIB to position the Fund to benefit over the long-term. He included examples of how the CPPIB builds long-term, private-minded thinking into the investment process. See Mark Wiseman, “Championing a Long-Term Strategy in a Short Term World: Address to the CVCA- Canada’s Venture Capital & Private Equity Association” *CPP Investment Board* (23 May 2013), online: CPP Investment Board

Corporations must be regulated?

At the same time that they are trying to unleash the for-profit forces for good, governments are doubling down on regulation. The legislation in different jurisdictions enabling the PBC restricts the corporation much like the not-for-profit legislation that focuses on adherence to the public benefit purpose. The legislation is designed, in my view, not so much to permit the PBC to act with a public benefit purpose as to make it accountable for the public benefit purpose it chooses. It seems odd that the more a corporation wants to act with the public benefit the more it is regulated.

The PBC, though, does represent a greater opportunity for a self-regulating, for-profit entity which is legally responsible to have a 3P approach and to report on its progress. However, until this translates into changes in corporate behavior and its resulting consequences, it will be balanced by other continuing regulation.

One of the requirements under the PBC legislation and the maintenance of a B Corp certificate (conferred by B Labs, a third-party, not-for profit organization “dedicated to using the power of business to solve social and environmental problems”) is the requirement to report the corporation’s progress on its stated public benefit purpose. In the case of the B Corp, there is a mandatory third party standard. In the case of the PBC in Delaware, a corporation can adopt a third party standard, or not. The only mandatory requirement is the reporting to stockholders every two years.

It is accepted that we place limits on individual and collective freedoms. Governments are feeling pressure to place limits on persons that are corporations. There are many recent examples. In June 2013, Bill S-14, a Federal Act in Canada to amend the *Corruption of Foreign Public Officials Act* received Royal assent.¹¹ The proposed amendments will expand the scope of Canadian prosecutorial jurisdiction significantly to cover activities of Canadian and Canadian corporations, remove certain defenses and exceptions and increase prison terms for Canadian nationals, including officers and directors of Canadian corporations. The legislation, in place in Canada since 1999, has been criticized in the past as being ineffective and has been burdened by the problem of how you punish a corporation with something other than a fine. Enforcement efforts have recently resulted in fines of millions of dollars in the Niko Resources case and the Griffiths Energy case.¹²

<http://www.cvca.ca/files/Events/May_23_2013_Mark_Wiseman_address_to_CVCA.pdf> at pages 5-6 (Last visited 16 August 2013).

¹¹ Henry Chang, “Canada Begins Accepting Applications Under the New Federal Skilled Worker Program” *Blaney’s on Immigration* (May 2013), online: Blaney McMurtry LLP <http://www.blaney.com/sites/default/files/CanadaBeginsAcceptingApplicationsUnderNewFederalSkilledWorkerProgram_HChang_2013.pdf> (Last visited 19 August 2013).

¹² *R v Niko Resources Ltd*, 101 WCB (2d) 118; *R v Griffiths Energy International* [2013] AJ No 412.

In April 2013, the Government of Canada announced that it was introducing changes to the temporary foreign workers program to address highly publicized abuses whereby employees of corporations were losing their jobs to outsourcing. The government is trying to ensure that the employment of the foreign national will result in direct job creation or job retention for Canadian citizens or permanent residents.¹³

It will be a long time before there will be broad adoption of the PBC form and, even then, it will be difficult to measure the impact of this new hybrid on the actions of corporations and the need for the regulation of malfeasance such as corruption, illegal outsourcing and securities fraud.

Public Benefit Corporations: Status in Canada and the United States.

In Canada, British Columbia has passed legislation permitting the formation of a hybrid Corporation referred to as Community Contribution Companies or “C-3” companies.¹⁴ The legislation imposes limits on distributions to shareholders and the requirement for annual reports. Nova Scotia has passed legislation creating Community Interest Companies (CICs).¹⁵ The CIC must produce an annual Community Interest Report, approved by the Directors, filed with the Registrar, and presented at the annual meeting of shareholders.

In the USA, public benefit corporations are known by a number of names including Benefit Corporations and B Corps. They are often confused. Benefit Corporations are these new hybrid corporations governed by *statute*. A B Corp is one that is certified by B Labs. This certification involves an existing corporation applying for certification that it meets certain requirements of the 3P bottom-line approach to business. B Labs has a rating system and the applying corporation must maintain a passing grade as well as make a change to its company articles to include in its purpose a statement, such as the following:

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.

¹³ *Supra* note 11.

¹⁴ The changes to British Columbia’s *Business Corporations Act*, [SBC 2002] c 57 to permit the creation of a new category of share capital corporation called a Community Contribution Corporation came into effect July 29, 2013.

¹⁵ Nova Scotia passed *An Act Respecting Community Interest Companies*, SNS 2012, c 38, allowing for a share capital company known as a Community Interest Company or “CIC” in December 2012 (not yet in force).

*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 and shall not be required to regard the interests of any particular Stakeholder as determinative.*¹⁶

It is about existing businesses taking the pledge, changing the way that they operate so as to be better corporate citizens, and actively monitoring and reporting on their operations.

Delaware is one of many states in the United States that have created a new hybrid class of corporation. In the case of Delaware, the first public benefit corporations were incorporated, and existing corporations were allowed to amend their articles to become public benefit corporations, starting August 1, 2013. Eighteen other states have already passed legislation permitting public benefit corporations to incorporate.¹⁷ The main outward distinguishing features of a public benefit corporation is that "PBC" will replace "Inc" in the name and the purposes for which the corporation carries on business will be broadened to include a public benefit purpose.

It is believed that with these requirements, investors will have a better understanding of what the Corporation and its management are all about and directors will have some certainty that they have the support of their shareholders and the legislation when they make decisions based on purposes that go beyond making a profit.

Existing for-profit operating companies that want to consider becoming a public benefit corporation will also have to determine the extent to which the choice of jurisdiction will require a change in the way they operate. All of the choices require committing to a public benefit purpose in addition to any lawful activities that the corporation may carry on. The legislation in Nova Scotia and British Columbia puts additional limitations on the operation of the business, such as the use of funds and returning money to the shareholders. The B Corp certification requires an annual review and rating based upon their standards, while the laws in Delaware and other states require annual or biennial reporting to the stockholders.

These legislative changes are very much a culmination of the efforts of a large number of individuals and organizations who have been the pioneers in finding ways to harness the entrepreneurial spirit in the pursuit of public benefit. In the coming years we will see to what extent the ability to incorporate a for-profit company with a 3P purpose will attract entrepreneurial pioneers who have been working without the benefit of these structures. For many years a number of successful business people have not been content to give their money away for good causes. Rather than being a philanthropist, some people who made their money in business have tried to link business and doing good.¹⁸ There are also the successful people who

¹⁶ B Corporation, *Corporation Legal Roadmap* (07 August 2013), online: B Lab <<https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/legal-roadmap/corporation-legal-roadmap>> (Last visited 16 August 2013).

¹⁷ *Ibid.*

¹⁸ Neil Sandell, "Atkinson Series: Social Capital Partners helping businesses connect with unemployed" *Toronto Star* (30 November 2012), online: Toronto Star <http://www.thestar.com/news/canada/2012/11/30/atkinson_series_social_capital_partners_helping_businesses_connect_with_unemployed.html> (Last visited 16 August 2013). In the article, Mr. Sandell profiles Bill Young, founder of Social Capital Partners in Toronto.

lose faith with making money all day for themselves, who believe that the first call on their skills should be worthwhile purposes and, while they have not become wealthy, they have decided that they will use their skill and experience to teach and raise public awareness of social issues.¹⁹

There have always been business schools but now there are also schools to assist entrepreneurs with a social conscience. The Regent Park School for Social Entrepreneurs-Ontario was founded in Toronto in 2012 and it has graduated some of its first social entrepreneurs in 2013.²⁰ (Ironically, there is no PBC legislation on the horizon in Ontario.)

Can we change the cultural expectations about corporations?

The role of the corporation in society is also cultural. Our cultural bubble filters out influences from other countries and other cultures and reinforces some of the best and worst of our own cultural biases.

In an interview on CBC radio in 2011 discussing corporate tax rates, CEO pay and the 99 percent movement, John Manley, former Deputy Prime Minister of Canada and current president and chief executive officer of the Canadian Council of Chief Executives, stated that “We know that capitalism...is not meant to be a moral system, it is meant to be an economic system.” “That is why we elect people to parliament in order to moderate some of the extremes.” “But as a process for raising incomes and giving people opportunities it is pretty hard to think of a system that has done as well.”²¹

Other cultures and countries have a different view.

The Japanese government is facing a great deal of opposition to overhauling the rigid labor system in Japan and bring the country out of more than a decade of economic stagnation. Corporations are finding it very difficult to lay off workers, even with severance packages generous by Canadian standards. They are looking at the example of other countries and trying to make corporations more flexible and responsive to the international economic environment.

¹⁹ Carol Goar, “Hard-driving adman becomes promoter of social change: Goar” *Toronto Star* (11 March 2009), online: Toronto Star
<http://www.thestar.com/opinion/commentary/2013/03/27/harddriving_adman_becomes_promoter_of_social_change_goar.html> (Last visited 16 August 2013). In the article, Ms. Goar profiles a graphic designer working in an advertising agency who teaches students how to use graphic design to raise public awareness of social issues. Goar refers to a manifesto entitled *First Things First* by Ken Garland, published in 1964, wherein he and other designers agree: “We have reached a saturation point at which the high-pitched scream of consumer selling is no more than sheer noise.”

²⁰ The School for Social Entrepreneurs was founded in 1997 by Michael Young in the UK. Its mission is to address inequalities and social exclusion by supporting social entrepreneurs. It supports businesses in the UK, Australia and Canada. See The School for Social Entrepreneurs, *About Us*, online: The School for Social Entrepreneurs
<<http://www.the-sse.org/about-us>> (Last visited 16 August 2013).

²¹ John Manley, “Power and Politics with Evan Solomon” CBC News (17 October 2011), online:
<<http://www.cbc.ca/player/News/Politics/ID/2155363639/>> (Last visited 16 August 2013).

However, “As part of their role in society, corporations have been expected to help ensure full employment as much as-or more so than-they have been expected to create shareholder value.”²²

There are a number of for-profit corporations that can be expected to amend their articles and adopt the PBC status because it is the next step in a process started many years ago when they became mindful of the impact they were having on the multitude of communities with which they interact. They believe that long-term profitability and stewardship of corporate assets and opportunities do not have to be sacrificed.

However, many companies will not have that built-in reason and may question why they should do it. Many of the things these new corporations want to do can be done by a for-profit company and publicly minded entrepreneurs. It is not necessary to take this step of becoming a B Corp, a CIC or a PBC.

The first step is to get and maintain a consensus from their shareholders, employees, officers and directors on the public benefit purpose to be included in its mandate, and even its articles, and build in the means of measuring and identifying success in achieving that purpose.

Word Cloud

Is there a big difference between how public benefit corporations and for-profit corporations perceive themselves and represent themselves? I have done a simple experiment and prepared a couple of Word Clouds. Word Clouds give greater prominence to words that appear more often in the source. As the source, I used the home page of the websites of 30 B Corps (certified organizations vs. statute-defined PBCs or CICs). I then did the same thing with 30 public corporations from the TSX, Canada's largest stock market. The results are attached. I have some observations and you may have a few of your own when you place them side-by-side:



B Corp Cloud

²² Mitsuru Obe, "Japan Puts Off Plan to Make Firing of Workers Easier" *Wall Street Journal* (9 May 2013), online: <http://online.wsj.com/article/SB10001424127887324582004578458300210590628.html> (Last visited 16 August 2013).

priorities, law and goals in their decision-making and come up with breakthroughs of the type that are needed every day and are achieved by entrepreneurial, for-profit corporations. Corporations are still run by teams of people. Corporations are still probably the best bet for innovation, sustainability and improved standards of living for the entire world. The criticism of profit driven corporations is that the people responsible for the direction and management of the corporation feel compelled to pursue profit at almost any cost because of a shareholder centric construction of business judgment rules, stock market expectations and a fear of litigation. The cost of operating this way has consequences not only to people and the planet but arguably also the corporation's profits.

What is happening is not a change in corporations but an evolution in the way people think about the corporation and co-existing with the planet and other people. This thinking has evolved to a point which is perhaps in conjunction with the evolution of the economic, social and global environment. Out of the crescendo of voices can be heard a message that both demands change and also accepts the freedom of corporate entities to pursue profit, but in a way that also benefits a broader public purpose. Entrepreneurial business must listen to the voices of their customers and communities. Perhaps the rise of the PBC is just for-profit forces doing what they do best-- adapting. This can be accomplished without infringing on the ability of existing or future corporations to pursue a purely for-profit purpose. It also creates a situation where governments and organizations can experiment with a for-profit structure that does not have profit as anything close to its primary purpose and does not require tax-exempt status. I say "experiment" because I believe that this form will be more attractive to a number of social enterprise organizations and traditional not-for-profit causes that require capital, and have a strong and well-meaning public benefit purpose.

For the PBC form to thrive and survive will be determined by the number of successful, for-profit companies that amend their articles and become PBCs. The governments will probably have to loosen up the insistence on the adherence to the primacy of the public benefit purpose as opposed to whatever else the corporation does.

Once those things happen, then the next test will be when large, publicly listed corporations do the same. Finally, when corporations carrying on "objectionable", but legal and necessary businesses, amend their articles and adopt express public benefit purposes, the evolution will have been a success. At that point, the PBC movement will have overcome crucial hurdles, the broader constituencies will have accepted the proposition that the for-profit corporation is an unimaginably successful tool for driving the economy, innovation and profit and the public benefit purpose will be just one of the many basic standards of operating a successful business. There will be a sufficient number of investors, shareholder activists, company owners, employees, officers and directors willing to take some responsibility for an explicit public benefit purpose in the operation of their businesses and there will be a form of corporation to accomplish it all.

My review suggests to me that it is better to inject public benefit DNA into for-profit businesses as an evolutionary process rather than harangue and hamper the not-for profit "good" businesses and try to drive the for-profit "bad" businesses to extinction.

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