

The Benefit Corporation should become a legitimate business model

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If King Charles II had the chance to do it all again, the Hudson's Bay Co. might have been a benefit corporation - and Canada might have been a very different country.

A benefit corporation is a forprofit corporation committed to a Triple P bottom line of people, profit and the planet. Using this vehicle, Charles II's grant to HBC in 1670 could have included obligations to take the people of North America and the environment into account when exploiting mineral resources and searching for the Northwest Passage. If Indigenous inhabitants of Rupert's Land had been on the board of directors, for example, the company might have realized that our natural resources have limits and acted accordingly in its own - and Canada's - best interests.

Canadian law requires directors to act in the best interests of the corporation. At the same time, it does not require them to adhere strictly to the "shareholder primacy" rule, which governs in the United States.

In practice, however, that's a distinction without a difference: whether they acknowledge it or not, directors do tend to focus on the best interests of the shareholders.

What may also be little understood is that the documents that govern the creation of the vast majority of Canadian for-profit corporations do not limit the entity's purpose. Indeed, that purpose is rarely stated.

So why not enact legislation that allows corporations to insert an explicit commitment to a business model that includes accountability for the impact of its actions on people and the planet? There's a strong argument that doing so would be nothing less than good business.

The long-term profit of many business enterprises is connected to their reputations, impact on the world and how they deal with broader stakeholders' interest. The time has come not to mandate the benefit corporation model but to recognize it as a legitimate business model.

Arguably, the benefit-corporation movement is one of the most exciting things happening in the business world today. Some 35 states in the United States now have benefit corporation legislation explicitly permitting corporations to pursue the Triple P bottom line. Companies such as Unilever, Patagonia, Etsy (the online craft co-operative) and Kickstarter have embraced the concept. One early adopter says the movement seeks to, among other things, merge the concepts of "forprofit enterprise" and "social enterprise" into just "enterprise."

Legislation authorizing benefit corporations will allow companies to build corporate social responsibility principles into their legal DNA. Governments and corporations (both non-profit and for-profit) could partner in the delivery of social services utilizing the for-profit model. Charities could create forprofit entities.

Working with this model, the best employees will choose their employer and take pride in and direction from the guiding mission of that employer. Investors who want their money to have a positive impact on communities will have another tool for identifying likeminded companies.

Transitioning to a benefit corporation would, of course, be optional, a choice that required shareholders' consent. This need for consent would give shareholders a say not only in whether to establish the benefit corporation, but also input into the public benefit chosen, the transparency with which it is pursued and the corporation's reporting regime. They can vote with their feet and their money.

A corporation is a person at law.

However, as one writer observed, they "have neither bodies to be kicked nor souls to be damned."

And therein lies the problem. The corporation is perceived by many as an amoral actor not subject to the fear of punishment.

A corporate regime that includes benefit corporations could change all that. It could help a company to define its "soul." Legislation that permits corporations to use the power of the for-profit model to do as much good as they wish, in a transparent and accountable way, would go a long way to that end.

This is an arena in which Canada has the opportunity to lead. Yet, the prevalence of assumptions and prejudices about for-profit motives are holding us back. So, too, is the absence of benefit-corporation legislation in Canada and the uncertainty in Canadian boardrooms as to the distinction between the best interests of the corporation and the best interests of the shareholders.

The federal and provincial governments are looking into this issue, but its proponents lack the critical mass to make it happen.

Other legislative priorities, misunderstandings regarding the nature of social enterprise, a patriarchal need to regulate and a feeling that corporations are "free enough" all stand in the way of progress on this front.

Our goal should be to build a constituency that will make benefit corporations a legislative and practical reality in this country. Only in this way will we set our corporations free.

References

<https://beta.theglobeandmail.com/report-on-business/rob-commentary/the-benefit-corporation-should-become-a-legitimate-business-model/article36770136/>

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