

The Role of Legislation in Encouraging Impact Investing:
Canada in Comparative Perspective

Major Research Paper
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Abstract

This Major Research Paper explores Canada's charitable and corporate legislation in comparative perspective, and how it affects social entrepreneurs looking to attract investors interested in investing in blended value, or in other words a financial return in addition to a social and/or environmental return. These investors will be referred to as impact investors, and their investments referred to as impact investments. Specifically, the research question that will be examined is as follows: In what ways does Canadian legislation encourage or discourage impact investing in Canada, and what can be learned about how to encourage impact investing from recent experience in the UK and the US?

In order to examine this question in more detail, this paper will consist of a literature review, as well as an analysis of corporate and charitable tax laws in Canada on the federal and provincial level, compared with those in the U.K. and the U.S. The U.K. and the U.S. are examined for two main reasons. First, they were the first countries to implement policies, specifically related to tax and market regulation, designed to encourage impact investments. Second, they are both common law countries with similar legal systems and traditions.

Recent legal changes recognizing social enterprises on the federal and state/provincial will then be examined. Community Interest Companies (CICs) were first recognized by the U.K government. This was followed by New York State and most recently Delaware adopting state legislation recognizing Certified Benefit Corporations (B Corps). The province of British

Columbia soon followed, as the trend of legally recognizing B Corps seems to be spreading into Canada. CICs and B Corps are organizations who create blended value through their work.

It is hoped that by comparing Canada's current policies with those of the U.K. and the U.S. in these ways will provide some useful insight in answering the research question above.

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1. Introduction

In recent years impact investing—referred to by the Canadian government as *social finance* and by the U.K government as *social investing*—has gained significant attention. It should be noted that the use of these differing terminologies in different countries should eventually be streamlined in order to simplify this market to new market observers. Clear and concise definitions of terminology used would also prove helpful in understanding this market and what success in this market might look like. Regardless, under a variety of labels, this innovative concept has developed significantly since its conception in 2005 and has shown great potential for unlocking new capital for addressing social and economic concerns.

The research question of this major research paper is as follows: In what ways does Canadian legislation encourage or discourage impact investing in Canada, and what can be learned about how to encourage impact investing from recent experience in the UK and the US? This Major Research Paper will explore recent government announcements from the U.K., Canada, and U.S. state governments outlining their intended plan to promote impact investing in their respective countries. Impact investing occurs when financial capital intentionally creates positive environmental and/or social outcomes in addition to financial returns. These intentional efforts should result in tangible, measurable evidence of having a social and/or environmental impact at the level of individuals, households, or marginalized communities facing some form of distress¹. This outcome is also known as blended value or a triple bottom line. The emergence of several

¹ E.T. Jackson and Associated Ltd, “Accelerating Impact: Achievements, Challenges and What’s Next in Building the Impact Investing Industry” *The Rockefeller Foundation* (2012): 6

economic trends has led policy makers to view impact investment as a potential source of much needed social service funding.

Some of these economic trends include the following: the recent global financial crisis of 2008-2009 and the resulting limited government budgets; aging populations; changing attitudes towards the capability of governments to fund social and development programs; the facilitation of communications through technology; and increased concerns over the environment, social justice, and sustainability². In addition, there are emerging examples both in Canada and abroad that illustrate it is possible to finance scalable and profitable business models that also create social and environmental value³.

2. Literature Review

Rather than relying on shrinking public funding and individual donations, more and more organizations are now looking for new ways to generate revenues to pay for the increasing demand for their services. These revenues are increasingly coming from a growing sector referred to as the “Lifestyles of Health and Sustainability” (LOHAS) consumers and corporations. The economic trends described above seem to have produced a unifying and motivating force for socially-minded consumers and corporations who want their products and services to reflect their personal values. They collectively aspire to make purchases and business

² Martin, Maximillian, “Making Impact Investable”, *Impact Economy Working Papers* 4 (2013): 4

³ E.T. Jackson and Associated Ltd, “Accelerating Impact: Achievements, Challenges and What’s Next in Building the Impact Investing Industry” *The Rockefeller Foundation* (2012): 5

decisions that will have a positive influence on society and the environment⁴. The LOHAS market in the U.S. alone has been estimated at over USD\$300 billion, and is growing at a rate of more than 10 per cent per annum. Consumers engaged in the LOHAS market represent 80 per cent of the adult population, which has created strong incentives for corporations to learn how to tap into this sector⁵.

New innovations emerging from the private sector, such as impact investment, will be strongly influenced by national policy and the presence of vital public institutions⁶. Despite the potential shown by the LOHAS movement, markets do not always reward companies that address social problems, and socially conscious investors have been unable to raise sufficient capital to address social problems (such as homelessness, high recidivism rates, etc) that exist both at home and abroad. In an effort to encourage individuals and corporations willing to take the risk of entering this market, the U.K. and U.S. governments have created pioneering corporate and tax legislations and market regulations which have driven capital to this market. These new policies and market regulations will be discussed in further detail.

Due to similar charitable and corporate laws, social entrepreneurs looking to attract impact investors in the U.K., U.S. and Canada have historically faced similar challenges. The ability to invest money where it will create blended value has been severely limited due to the legal divisions defining the behaviour of non-profit and for-profit organizations. Government

⁴ Ibid, 15

⁵ Lifestyle of Health and Sustainability, “LOHAS Background” (2010) accessed December 15 2013, URL: <http://www.lohas.com/about>

⁶ Porter, Michael E. and Scott Stern, “National Innovative Capacity”, Harvard Business School (2002), accessed Dec 3 2013, URL: http://www.isc.hbs.edu/Innov_9211.pdf

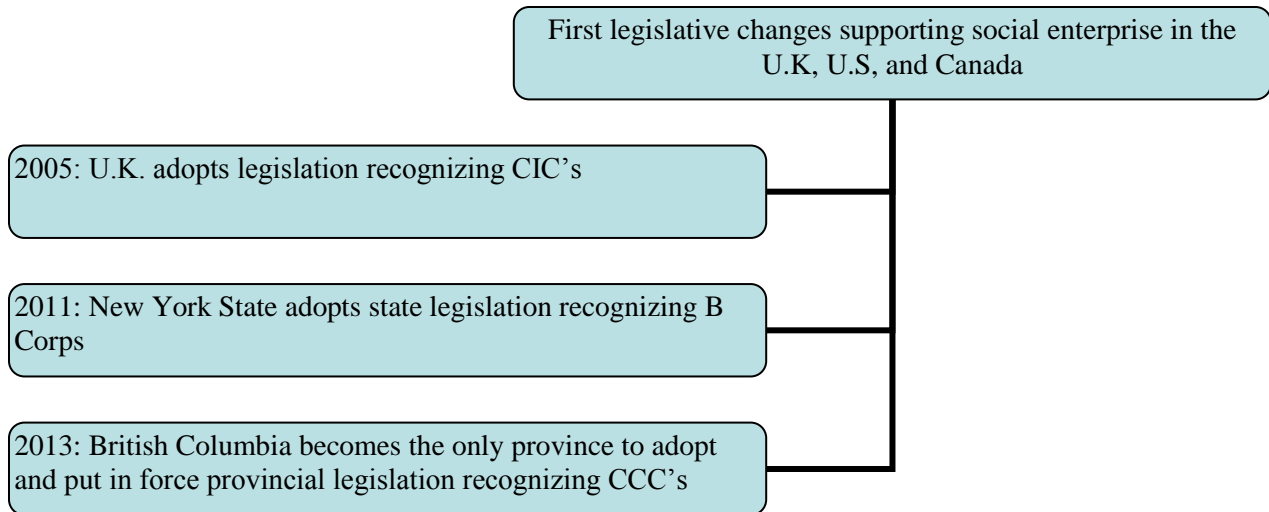
subsidies, incentives and mandates have played a crucial role in the emergence and growth of budding industries such as venture capital, private equity and green technology⁷. In contrast, with impact investing falling between investment and philanthropy, governments have largely shied away from their market building role in this new sector⁸.

Recently, the U.K and a growing number of U.S states and Canadian provincial governments have adopted new legislation that is intended to contribute to the development this sector. This legislation has primarily included changes in tax regimes and corporate laws, ultimately encouraging new types of corporations now legally allowed to act in the impact investment market. These new types of corporations include Community Interest Corporations (or CICs), Certified Benefit Corporations (or B Corps), and Community Contribution Companies (or CCCs). In general, all three of these corporations share in common one goal: to create some level of blended value.

*Legislative changes in the U.K., U.S., and Canada
(Figure A)*

⁷ Bugg-Levine, Anthony & Jed Emerson, “Impact Investing” San Fransisco: Jossey-Bass (2011): 132

⁸ Ibid



Sources:

- (1) U.K: The National Archives, “Companies (Audit, Investigations, and Community Enterprise) Act 2004” (2004) accessed March 12 2014, URL: <http://www.legislation.gov.uk/ukpga/2004/27/contents>
- (2) Certified B Corporation, “Legislation”, (2014) accessed January 5 2014, URL: <http://www.bcorporation.net/what-are-b-corps/legislation>
- (3) British Columbia: Finance Statutes Amendment Act, “Business Corporations Act SBC 2002 Chapter 57” (2012), accessed February 20 2014, URL: http://www.leg.bc.ca/39th4th/1st_read/gov23-1.htm

Considering the recent mention of impact investment (or social finance) in the 2013 Speech from the Throne in the Canadian House of Commons, and in the Canadian Economic Action Plan 2013, it is undeniable that pilot projects to test the effectiveness of impact investments, legislative changes and new tax incentives being put in place abroad have captured the attention of Canadian policy makers. However to date, impact investing remains largely a form of venture capital philanthropy in Canada. Investors come primarily from the non-profit and foundation sectors, and are willing to provide patient capital and to bear high risk with a primary focus on creating social and environmental returns⁹. A report published by JPMorgan estimated that impact investment could draw up to US\$1 trillion worldwide in capital over the next ten years¹⁰.

⁹ Warner, Mildred E, “Private finance for public goods: social impact bonds” *Journal of Economic Policy Reform* 16:4 (2013): 305

¹⁰ Shufelt, Tim. “Do Good and Make Money with Social Impact Bonds” *Canadian Business* (2013), accessed March 1 2014, URL: <http://www.canadianbusiness.com/investing/social-impact-bonds-under-review-in-canada/>

However, due to reasons such as strict performance payback schemes, high risks, and legal barriers, the report goes on to argue that without supportive government policies, Canada is unlikely to attract its share of impact investors wanting to contribute capital to this new market¹¹.

Following the examples from the British and the American governments, the Canadian federal government is currently looking into supporting pilot projects to measure the effectiveness of social investment in Canada. This was reflected in the government's Call for Concepts for Social Finance lead by the Ministry of Employment and Social Development Canada¹². Some of the projects being considered include using the following tools: Social impact bonds, social investment funds, pay-for-performance contracts, sector capacity-building organizations, and social enterprise¹³. For the purposes of this paper, the focus will remain on projects that involve empowering social enterprise and social finance in U.K., U.S. and Canada. Despite considering these projects, unlike the U.K. and somewhat like the U.S., developing a regulatory framework for this new market remains largely incomplete in Canada. Examining the experiences emerging from the U.K. and the U.S. provide important lessons on how legislative changes in Canada could contribute towards driving capital to this emerging sector.

3. Methods

¹¹ Saltuk, Yasemin. "Counter (imp)acting Austerity: The global trend of government support for impact investing" *JPMorgan: Social Finance Research* (November 2011), accessed March 8 2014, URL: <http://www.jpmorganchase.com/corporate/socialfinance/publications.htm>

¹² Employment and Social Development Canada, "Harnessing the Power of Social Finance" (2014), accessed January 29 2014, URL: http://www.hrsdc.gc.ca/eng/consultations/social_finance/report/index.shtml

¹³ Ibid

This Major Research Paper will examine primary sources, including Bills and recently passed Laws. In the case of the U.K. and Canada, government announcements are coupled with public consultations and responses from potential market participants, suggesting ways in which their respective governments should go about developing legislation to encourage growth in this new sector.

Articles written by respected market observers in the field will also be examined. In particular, the writings of Canadian experts such as Edward T. Jackson, U.S. experts such as Anthony Bugg-Levine and Jed Emerson, and U.K experts such as Worthstone and Wragge & Co LLP, a U.K. headquartered international law firm serving as a leading advisor to the U.K. government on Venture Capital Schemes and social finance, will be considered.

Current corporate and charity laws in Canada on the federal level will be compared to corporate and charity laws in the U.K. previous to legislative changes recognizing Community Interest Companies (CICs) in 2005. They will also be compared to the corporate and charity laws in the 30 American states that have not yet adopted legislative changes recognizing Certified Benefit Corporations (B Corps). Specifically, aspects of the corporate and charity laws that will be examined are the legal boundaries charities face when pursuing profits, and the legal boundaries corporations face when pursuing environmental and/or social benefit. New legislation, and its effectiveness at contributing to the growth of the sector where applicable, will be explored from the U.K, 20 American states and three Canadian provinces.

4. The U.K. experience

4.1 The tax regime in the U.K. and the frustrations of the impact investor

Before the U.K. government adopted new legislation in 2005 recognizing Community Interest Companies (CICs), and in 2014 adopted new legislation putting in place tax incentives for impact investors, British social entrepreneurs looking to attract impact investors faced significant challenges. In order to set up a new investment organization in the U.K., entrepreneurs first had to decide whether to pursue a social purpose or profits. Deciding to pursue a social purpose alone meant the entrepreneur had to register as a non-profit or a charitable enterprise. Doing so would present the following benefits: tax relief, the ability to claim tax repayments, and recognition by the government which provides donors with some assurance that their money is being used for charitable purposes¹⁴. However, if a registered charity used any of the money it received for a purpose that was not deemed charitable, or in other words was not directly used for public benefit, the charity would run the risk of not receiving tax relief on its income, and may even have to pay some tax¹⁵.

If the entrepreneur decided to generate profits, he or she would have to register as a for-profit entity. As a for-profit entity, the entrepreneur would have to pay an average of 21% in corporate taxes (the rate for 2014). This new for-profit corporation would then be legally required to act in the best interest of the company's owners, the shareholders¹⁶. To overcome this unhelpful binary legal structure, the U.K. government has begun to implement reforms to their legislation in order

¹⁴ Her Majesty's Revenue & Customs, "Applying for recognition as a charity for tax purposes", accessed February 4 2014, URL: <http://www.hmrc.gov.uk/charities/tax/recognition.htm>

¹⁵ Her Majesty's Revenue & Customs, "Tax and charitable or non-charitable expenditure", accessed February 4 2014, URL: <http://www.hmrc.gov.uk/charities/tax/expenditure.htm>

¹⁶ Her Majesty's Revenue & Customs, "Corporate Tax rates", accessed February 4 2014, URL: <http://www.hmrc.gov.uk/rates/corp.htm>

to support social entrepreneurs and drive capital towards impact investments. These revisions provide social entrepreneurs in the U.K. with more flexibility when setting up a new organization aimed at generating blended value.

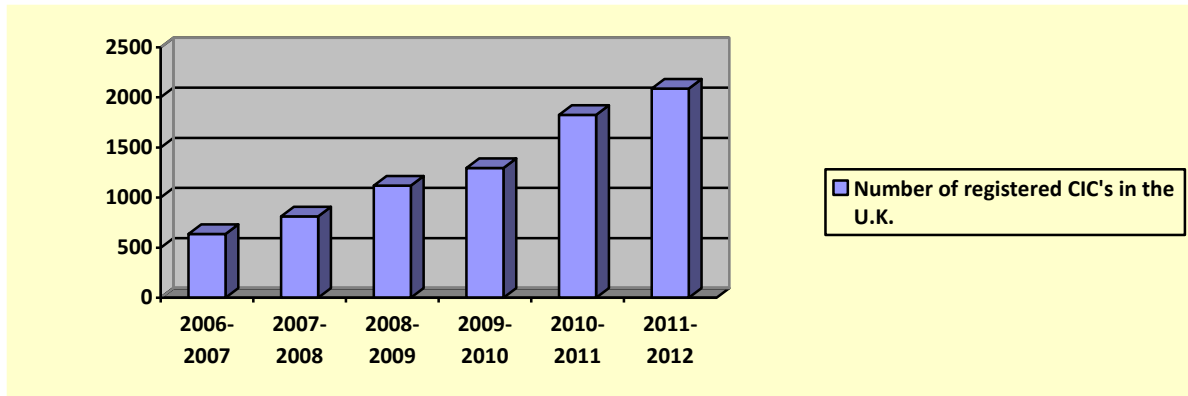
4.2 Driving capital through legislative reform

Becoming the first country to adopt legislation allowing CICs, as well as the first country to explore and implement tax incentives to impact investors are two reasons why the U.K. makes an interesting case study as Canada begins to examine how best to tap into the potential of this emerging market.

In its first attempt to drive capital towards to the impact investing market, the U.K government adopted the Companies (Audit, Investigations, and Community Enterprise) Act 2004. Enacted in 2005, this Act recognized the creation of Community Interest Companies (CICs). CICs across the U.K. soon became the largest recipient of impact investments in the country, as the number of registered CICs began to grow steadily in the years to follow, as shown in Figure B¹⁷. A CIC could not be a charity or an incorporated for-profit organization. A few years after this important change in legislation, the U.K government began to explore the role of a tax incentive to further incentivize impact investors to put their money in social enterprise and further develop the sector.

The Growth of Registered CICs in the U.K (Figure B)

¹⁷ U.K: The National Archives, “Companies (Audit, Investigations, and Community Enterprise) Act 2004” (2004) accessed March 12 2014, URL: <http://www.legislation.gov.uk/ukpga/2004/27/contents>



Source: The Office of the Regulator of Community Interest Companies, “Operational Report” (2013), accessed March 11 2014, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265600/operational-report-first-quarter-2013-2014.pdf

After going through the most damaging financial crisis in a generation, public spending in the U.K. as a proportion of GDP has been on the decline for the past few years¹⁸. Public spending is expected to drop from over 47 per cent in 2008-2009 to less than 40 per cent in 2017-2018¹⁹. It is against this backdrop that the British government launched further reforms to promote social enterprise.

In the days leading up to the G8 conference of June 2013, Prime Minister David Cameron publicly made his intentions regarding impact investment (referred to by the UK government as social investment) clear by publishing “Consultation on social investment tax relief.”²⁰ The consultation reflected feedback from social enterprises, legal and accountancy advisers, as well

¹⁸ Her Majesty’s Treasury, “The Autumn Statement 2012” (2012) accessed December 2013, URL: http://www.hm-treasury.gov.uk/as2012_index.htm

¹⁹ Ibid

²⁰ Her Majesty’s Treasury, “Social Investment Tax Relief: Summary of Responses” (Dec 2013) accessed December 10 2013, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264507/social_investment_tax_relief_summary_of_responses.pdf

as investment and financial advisers. This document states that changes to the tax system would be essential for creating the optimum environment and for acting as a powerful catalyst for social investment²¹.

Recognizing that the tax code is a powerful tool for steering private capital, the U.K. government published legislation which was introduced in Finance Bill 2014 as an addition in the Income and Corporation Tax Act 2007. This new addition, published on March 27 2014, is designed to incentivise social enterprises seeking external investments. The policy objective of the tax relief is to incentivise impact investors by making available a range of tax relief measures for qualifying individuals who make investments in certified social enterprises (CICs)²². The UK government has stated that social enterprises are currently experiencing difficulty in raising capital from investors and commercial lenders and, without changes in the national tax regime, they are not likely to attract the capital needed to compliment current funding for essential social services²³. The proposed tax relief structure is claimed to be the first of its kind in Europe that provides income and capital gains tax relief to those investing in social enterprise²⁴.

The proposed revisions are expected to:

²¹ Ibid

²² Her Majesty's Revenues and Customs, "Social Investment Tax Relief" (Jan 2014) accessed February 4 2014, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264628/8_Social_investment_tax_relief.pdf

²³ Ibid

²⁴ Her Majesty's Treasury, "Social Investment Tax Relief: Summary of Responses" (Dec 2013) accessed December 10 2013, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264507/social_investment_tax_relief_summary_of_responses.pdf

- Provide income tax relief to eligible individuals making qualifying investments in certified social enterprises;
- Apply to payments for shares in enterprises or certain types of loans to the enterprises;
- Apply to a limited annual amount of investment per investor but with investment able to be carried back to the previous year;
- Allow enterprises to raise a maximum amount of investment over a period of three years²⁵.

Investments may be in shares or certain types of debt. The proposed relief will be available for investments made on or after 6 April 2014²⁶.

This new government-run accreditation scheme for social investment tax relief in the U.K. closely follows the Enterprise Investment Scheme (EIS) provisions, which was requested by the stakeholders during public consultations²⁷. The tax break includes an income tax relief on qualifying investments in the form of a deduction from income tax liability. The rate of income tax relief was announced in the Budget 2014²⁸. Similar to the EIS, the capital gains tax relief will be in the form of a deferral of chargeable gains. The deferred gain will become taxable when the qualifying social investment is either sold, matures or is redeemed. A further capital gains tax relief in the form of an exemption from tax on gains will be implemented on the disposal or

²⁵ Her Majesty's Revenues and Customs, "Social Investment Tax Relief" (Jan 2014) accessed February 4 2014, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264628/8_Social_investment_tax_relief.pdf

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

repayment of social investments after a minimum investment period of three years. Again keeping in line with EIS, the government will not be providing tax relief on dividends or similar returns. In terms of share loss, this relief will only be available where the investment made is in shares. Capital losses may be allowable against chargeable capital gains under existing rules. And finally on inheritance tax, there will be no specific Business Property Relief (BPR) or other explicit relief for qualifying investments²⁹.

An article written for Big Society Capital and the City of London identifies four main reasons why the new tax incentive is expected to be crucial for driving capital to social investment³⁰. First, the Social Investment Tax Relief provides an official endorsement to individuals looking to invest in social enterprises proven to create blended value. Second, providing this tax incentive will create public awareness, as the government is now clearly indicating that social investment is important. Third, it gives the sense that the social sector is not only sharing the cost with the government but also some of the benefits gained by blended value projects. Finally, the tax relief has a broad appeal to those who want to pay less tax by allowing the government to encourage investments that produce favourable economic and social outcomes³¹.

4.3 Community Interest Companies (CICs) in the UK

²⁹ Her Majesty's Treasury, "Social Investment Tax Relief: Summary of Responses" (Dec 2013) accessed December 10 2013, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264507/social_investment_tax_relief_summary_of_responses.pdf

³⁰ Worthstone and Wraggle &Co LLP, "The Role of Tax Incentives in Encouraging Social Investment", (2013) accessed August 2013, URL: <http://www.cityoflondon.gov.uk/business/economic-research-and-information/research-publications/Documents/research-2013/the-role-of-tax-incentives-in-encouraging-social-investment-WebPDF.pdf>

³¹ Ibid

As mentioned, Community Interest Companies were recognized in 2005 under the Companies (Audit, Investigations, and Community Enterprise) Act 2004, and was henceforth subject to company law in general. The core features of organizations with CIC status are twofold: the assets owned by the company are held in an asset lock which ensures those assets are used for the good of communities; and limitations are applied to dividend and interest payments made to shareholders and financiers while still ensuring that a profit can be made. Notable in this act is that the primary focus of the CIC must remain achieving benefit for the community³². In other words, a CIC must be beneficial to society at large or to a segment of the population that is broader than the group of persons related to the community interest company³³. Both of these features are regulated by the Community Interest Company Regulator's office, which is governed through the federal Department for Business, Innovation and Skills. Regulation is managed through the submission of an annual report to the Regulator's office, entitled the "CIC 34"³⁴. Having a regulating body to provide transparency and accountability to investors seems to have become a useful complement to the tax relief structure

A CIC can vary in size and can be anywhere between a small 'kitchen table' organization to multimillion pound organization employing thousands of people. They can be set up either as

³² U.K.: The National Archives, "Companies (Audit, Investigations, and Community Enterprise) Act 2004" (2004) accessed March 12 2014, URL: <http://www.legislation.gov.uk/ukpga/2004/27/contents>

³³ U.K., "Bill 153: Community Interest Companies Act" (2012) accessed February 11 2013, URL: http://nslegislature.ca/legc/bills/61st_4th/1st_read/b153.htm

³⁴ Ibid

Company Limited by Shares or Company Limited by Guarantee, and are often described as Mutuals of Social Enterprise³⁵.

The additional provisions that govern CICs provide investors with the assurance that a level of blended value is likely to be created when they invest in these organizations. However, the Office of the Regulator of Community Interest Companies has stated that more work is needed to attract funding and support this new sector³⁶. Similar organizations have been prominent in the U.S. and have played a central role in driving capital to social enterprises aimed at creating blended value.

As it stands, the Social Investment Tax Relief remains limited to “social enterprise” which, according to the tax relief includes charities, Community Interest Companies (CICs) and Community Benefit Societies (or Bencoms). However, further consultations between the government and investing organizations raised the concern that restricting the Social Investment Tax Relief to these three groups would discriminate against cooperatives and many existing social organizations that were creating blended value through their work but were not registered under any of these three title organizations³⁷. In recognizing that the registration process can be a heavy burden for smaller organizations, both in time and cost, the government in the end decided

³⁵ Community Interest Company Association, “What is a CIC?” (2014) accessed February 11 2014, URL: <http://www.cicassociation.org.uk/about/what-is-a-cic>

³⁶ Community Interest Company Regulator, “CIC Regulator: Operational Report, January to March 2013” (2013) accessed January 27 2013, URL: <https://www.gov.uk/government/publications/cic-regulator-operational-report-january-to-march-2013--2>

³⁷ Her Majesty’s Treasury, “Social Investment Tax Relief: Summary of Responses” (Dec 2013) accessed December 10 2013, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264507/social_investment_tax_relief_summary_of_responses.pdf

to mitigate this problem by allowing cooperatives who demonstrate a community purpose to register as a Bencom at no extra cost, thus becoming eligible for the tax relief³⁸.

4.4 Social Investment (or impact investment) in the U.K.: Looking Ahead

The U.K. government published a *Social Investment Roadmap* in January of 2014 outlining their intended next steps to further promote investment and growth in this new sector. Some of the challenges discussed in the document included the need to seek European State Aid clearance for a larger tax relief scheme. As part of the European Union, the U.K. has approached the European Commission to have the Commission approve a larger scheme with a higher investment limit in the U.K. This matter will be settled by the Commission in the next 18 months³⁹. Other challenges included the need to consider alternative options for indirect investment such as a scheme similar to Venture Capital Trust scheme, and finally the need for changes to the CIC regulations.

According to the document, the government intends to publish a consultation paper on how to remedy these challenges during the summer of 2014⁴⁰.

Although it is too early to measure how the changes to the national tax regime will affect the impact investing market, a report prepared for Big Society Capital and the City of London predicts the affects based on previous changes to the national tax regime. The report claims that the number of Venture Capital Trust schemes (VCTs), a scheme aimed at reducing barriers for

³⁸ Ibid

³⁹ Her Majesty's Treasury, "Social Investment Roadmap" (2013) accessed February 11 2013, URL: <https://www.gov.uk/government/publications/social-investment-roadmap/social-investment-roadmap>

⁴⁰ Ibid

application to social enterprise investment, indicated strong growth when the government reignited VCTs by doubling the income tax relief from 20 percent to 40 percent in 2004-2005. As the tax relief was reduced to 30 percent in 2006-2007, it was accompanied by a decrease in funds raised.

This example indicates just how sensitive investors are to tax relief rates. Based on similar trends and previous success of temporary tax reliefs such as the VCTs, the authors of the report predict that £480m could be invested in social investment over a five year period due to the new tax relief⁴¹.

The CIC Association has announced its intention to aid in the development of impact investment legislation, in order to address what it considers “flaws” in the current legislation. The CIC Association hopes that its work will contribute to the growth of community enterprise under CIC regulations as both a brand and landmark legislation⁴². Some of their recommended changes that are now being considered by the government are the following: removing the maximum dividend per share cap, which would end the peg between dividend payments and the paid-up value of shares; retaining the maximum aggregate dividend cap at 35 percent; and increasing the maximum interest rate for performance related interest from 10 percent to 20 percent⁴³.

⁴¹ Worthstone and Wraggle & Co LLP, “The Role of Tax Incentives in Encouraging Social Investment” (2013) accessed August 2013, URL: <http://www.cityoflondon.gov.uk/business/economic-research-and-information/research-publications/Documents/research-2013/the-role-of-tax-incentives-in-encouraging-social-investment-WebPDF.pdf>

⁴² Community Interest Company Association, “What is a CIC?” (2014) accessed February 11 2014, URL: <http://www.cicassociation.org.uk/about/what-is-a-cic>

⁴³ Her Majesty’s Treasury, “Social Investment Roadmap” (2013) accessed February 11 2013, URL: <https://www.gov.uk/government/publications/social-investment-roadmap/social-investment-roadmap>

The CIC Association argues that these changes will help to attract capital to this new social finance market, and will help increase the number of investments dedicated to seeking a triple bottom line. The Community Interest Company Regulator's office is currently seeking time in the House of Commons to have these changes debated and approved by June 2014, with the view of having revised legislation becoming effective on October 2014⁴⁴.

5. The U.S experience

5.1 The tax regime in the U.S. and the frustrations of the impact investor

Attracting private investments for social and development projects also remains a challenge in the U.S. Unlike the U.K, the development of a tax incentive on the federal level has not been made, nor has it been discussed. As the current federal law stands, in order to qualify for federal tax exemption status as a charity or a not-for-profit, social enterprises must follow the terms outlined in the Internal Revenue Code Section 501(c)(3)⁴⁵. The charter of the social enterprise must explicitly specify that no part of its assets shall benefit any persons who are members of the organization, which included directors, officers and agents. In addition, the enterprise must have a legally recognized charitable purpose, which would include supporting educational, religious or charitable activities⁴⁶.

⁴⁴ Ibid

⁴⁵ Internal Revenue Service "Organizational Test: Internal Revenue Code Section 501(c)(3)", accessed March 10 2014, URL: [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Organizational-Test-Internal-Revenue-Code-Section-501\(c\)\(3\)](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Organizational-Test-Internal-Revenue-Code-Section-501(c)(3))

⁴⁶ Internal Revenue Service "Exemption Requirements", accessed February 18 2014, URL: <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501%28c%29%283%29-Organizations>

If the entrepreneur decides to generate profits, they must register as a corporation. Corporate law in the U.S. is made up of a collection of 50 different systems of corporate law, one for each state. Under the U.S. constitution, corporations are free to incorporate in any state regardless of whether they are doing business or are headquartered there.

Legislative changes have, however, been rapidly spreading at the state level, with changes in corporate law sweeping across each state. This is largely because, under the U.S. constitution, corporate law is largely determined by individual states. This has led to large discrepancies between states in the rules and regulations that govern corporate law. New legislation facilitating the process of making impact investments has made it legally possible for social enterprises in certain states to pursue a triple bottom line. These new social enterprises are referred to by law as Certified Benefit Corporations, or B Corps, and will be discussed later in greater detail.

To date, 20 states have adopted legislation supporting B Corps⁴⁷. These states include: Arizona, Arkansas, California, Colorado, Delaware, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and Washington DC. These “B Corp states” include several of the largest U.S. states (i.e. California and New York among others) that are home to the headquarters of numerous corporations. Many corporations have found the flexibility of the Delaware General Corporation

⁴⁷ Certified B Corporation, “Legislation”, (2014) accessed January 5 2014, URL: <http://www.bcorporation.net/what-are-b-corps/legislation>

Law attractive, with its low tax rates, and its corporation-friendly court, the Court of Chancery⁴⁸. This has made Delaware the home of more than half of all U.S. incorporated corporations and thus Delaware corporate law is particularly influential⁴⁹.

In these states, B Corps are exempt from paying state corporate tax; however, they may have to pay federal corporate tax. Before these new laws came to force, impact investors looking to invest in social enterprises in these 20 states faced similar challenges that are currently experienced by impact investors in Canada who are interested in generating blended value.

In order to set up a new investment organization in the 30 American states that have not yet adopted legislation supporting B Corps, entrepreneurs first have to decide whether to pursue a social purpose or profits. Pursuing a social purpose will lead the entrepreneur to register as a not-for-profit or a charitable enterprise. However, unlike Canada and the U.K., in the U.S. it is possible to be recognized as a non-profit organization by the state but not by the federal government. Such state approved organizations would then be exempt from state taxes but would still be required to pay federal taxes.

In these 30 non-B Corp states, any surplus or income left after the organizations operating expenses are paid, accrued by public fundraising or government funding must be spent on the charitable or public purpose(s) for which it was organized. Surplus income cannot be paid out as

⁴⁸ Black, Lewis S. "Why Corporations Choose Delaware", Delaware Department of State (2007), accessed on February 18 2014, URL: http://corp.delaware.gov/whycorporations_web.pdf

⁴⁹ State of Delaware, "About Agency", accessed February 18 2014, URL: <http://www.corp.delaware.gov/aboutagency.shtml>

a dividend or benefit anyone associated with running the organization. If the organization engages in a transaction of excess profit, an excise tax may be imposed on the person and any organization managers agreeing to the transaction⁵⁰. In addition, the organization may face losing their status as a charity or not-for-profit.

5.2 Driving capital through tax reform

Some U.S. states have quickly become leaders in developing policies aimed at creating enabling environments for social investments. A notable obstacle facing social enterprise in the U.S. is the legal barriers in the form of corporate regulations that continue to exist in the majority of states. As discussed above, these laws prohibit any for-profit organization from pursuing a triple bottom line. To date, there have been no changes to federal law aimed at creating an enabling environment for impact investors looking to pursue blended value; however, there has been a steady increase in legislation being adopted on the state level that supports the pursuit of blended value.

B Corps in the U.S receive their certification through B Lab, an American non-profit organization⁵¹. Any corporation is able to request certification as a B Corp, and this certification will be granted provided the corporation can meet the environmental and social performance standards set by B Lab⁵². Certification is based on whether or not organizations can earn a

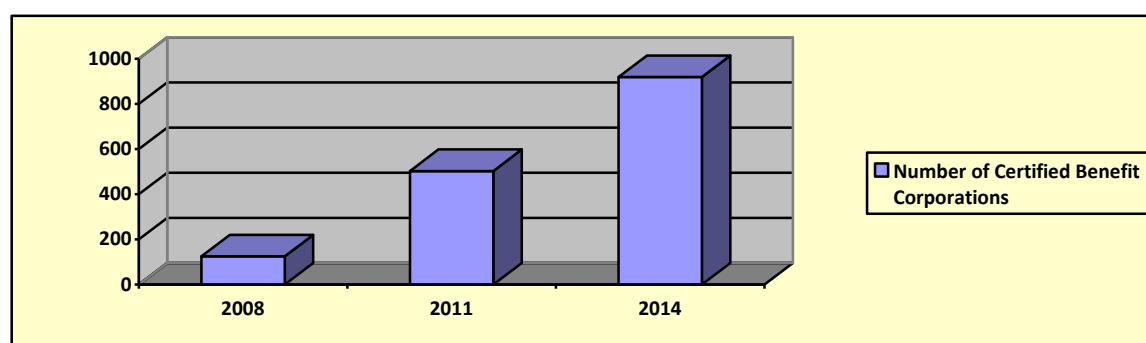
⁵⁰ Ibid

⁵¹ Certified B Corporation, “Why B Corps Matter” (2014) accessed March 1 2014, URL: <http://www.bcorporation.net/what-are-b-corps/why-b-corps-matter>

⁵² Sustainable Prosperity, “Beneficial Corporations” *University of Ottawa* (2012), accessed February 20 2014, URL: <http://www.sustainableprosperity.ca/dl894&display>

minimum score of 80 out of 200 points, which is largely measured based on how an organization performs against dozens of recognized “best practices” on employee, community and environmental impact. This measuring system has been referred to by B Lab as representing a ‘race to the top’, as B Corps are put informally into competition with one another to see which can develop the best practices that result in the largest blended value. The organization can improve their score by creating an approved plan to improve their practices⁵³. B Corps differ from traditional corporations not only in regards to their purpose of pursuing a triple bottom line, but also share an emphasis on accountability and transparency to shareholders and equally to communities both at home and abroad. Providing certain organizations with this status has encouraged shareholders to invest their money where it can create a regulated and monitored level of blended value⁵⁴. Currently there are over 900 certified B Corps in the U.S. representing close to USD\$2.4 billion in revenues⁵⁵.

*The Growth of Certified B Corps in the U.S.
(Figure C)*



⁵³ B Impact Assessment, “Measures What Matters” (2014), accessed March 10 2014, URL: <http://bimpactassessment.net/>

⁵⁴ Sou, Joyce “Why do Certified B Corporations Matter in Canada?” *Social Finance* (2013), accessed July 2013, URL: <http://socialfinance.ca/2011/12/12/why-do-certified-b-corporations-matter-in-canada/>

⁵⁵ Ibid

Sources:

(1) Certified B Corporation, “Annual Report 2012” (2012), accessed March 11 2014, URL:

http://www.bcorporation.net/sites/all/themes/adaptivetheme/bcorp/pdfs/BcorpAP2012_Web-Version.pdf

(2) Certified B Corporation, “Find a B Corp” (2014), accessed March 10 2014, URL:

http://www.bcorporation.net/community/find-a-b-corp?search=&=Search+Companies&field_industry=&field_city=&field_state=New+York&field_country=United+States

Figure C illustrates the growth in the support of B Corps. The trend of investing in B Corporations presents an opportunity for state and federal governments to pursue policies that will further unlock substantial new capital flows to augment their budgets and fulfill the common goals of addressing social and environmental problems.

5.3 Certified Benefit Corporations (B Corps) in New York State and Delaware

In the 20 B Corp states, unless the organization adheres to federal charitable or corporate law, they may still not receive the benefits of a charity and may have to pay federal corporate taxes even though they would be exempt from paying state corporate tax⁵⁶.

With the adoption of different legislation in each state, the legislation in New York State and Delaware are here examined as examples of the legal changes gaining momentum across the U.S. New York provides an interesting case study because in 2011 it was one of the first states to adopt this impact investment-friendly legislation. It has since become the home of 79 certified B Corps as of March 2014⁵⁷. Delaware is the newest addition to the 20 “B Corp” states, as well

⁵⁶ Internal Revenue Service “Exemption Requirements”, accessed February 18 2014, URL:

<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501%28c%29%283%29-Organizations>

⁵⁷ Certified B Corporation, “Find a B Corp” (2014) accessed March 10 2014, URL:

http://www.bcorporation.net/community/find-a-b-corp?search=&=Search+Companies&field_industry=&field_city=&field_state=New+York&field_country=United+States

as an interesting case study, considering the large number of corporations incorporated in that state. This wave of legislative changes that began in 2011 corresponded with the number of B Corps nearly doubling between 2011 and 2014, as shown above in Figure C.

On 4 February 2011, New York State became one of the first states to legally recognize and allow B Corps⁵⁸. According to the New York law, B Corps must have the purpose of creating general “public benefit.” Public benefit can include any of the following: providing low-income or underserved individuals or communities with beneficial products or services; promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of their business; preserving the environment; improving human health, promoting the arts, sciences or advancement of knowledge; increasing the flow of capital to entities with a public benefit purpose; and supporting the accomplishment of any other particular benefit for society or the environment⁵⁹. Similar to a corporation, B Corps are ultimately the responsibility of their shareholders, who are entitled to vote on corporate action, which includes how to define “public benefit”⁶⁰. B Corps are also liable to submit an annual Benefit Report to their shareholders following the end of each fiscal year.

The annual Benefit Report must describe the ways in which the B Corp pursued general public benefit throughout the year and the extent to which specific public benefit was created. The report may also describe any circumstances that may have hindered the creation of general or

⁵⁸ State of New York, “Bill A4692A-2011” (2011) accessed February 5 2014, URL: <http://open.nysenate.gov/legislation/bill/A4692A-2011>

⁵⁹ Ibid

⁶⁰ Ibid

specific benefit to an individual or community. B Corps are also informally held accountable by the public because they are legally required to post their most recent Benefit Report on the public portion of their website. However, any compensation paid to directors as well as any financial or propriety information included in the original Benefit Report may be omitted from the Benefit Report shared on the public website⁶¹.

An act to amend the Delaware code relating to the General Corporation Law entitled Senate Bill 47w/SA1 was adopted in the state of Delaware on 18 April 2013. Considering the large number of corporations incorporated in Delaware, Section 368 of this Law establishes that any rules applicable to public B Corps do not and will not impact any laws that are applicable to corporations currently incorporated in Delaware that are not legally registered as a B Corp⁶².

According to the Law, the state authorizes the creation of public benefit corporations, which are defined as a for-profit entity managed not only for the particular interest of its stockholders but also for the benefit of other persons, entities, communities or interests. Directors of public benefit corporation are required to manage their B Corp in a manner that balances three things: the stockholders' pecuniary interests; the interests of those materially affected by the corporation's conduct; and a public benefit or benefits identified in the corporation's certificate of incorporation⁶³.

⁶¹ Ibid

⁶² State of Delaware, "Senate Bill 47w/SA1" (2013) accessed on February 5 2014, URL: <http://www.legis.delaware.gov/LIS/LIS147.NSF/vwLegislation/SB+47?Opendocument>

⁶³ Ibid

Similar to New York State and others, B Corps incorporated in Delaware are legally responsible to their stockholders; however, the process of ensuring this accountability remains more flexible in Delaware. At least every two years, the B Corp must issue a statement to stockholders containing certain prescribed information in relation to the type of public benefit that was created. Without outlining a specific definition of public benefit, Section 366(c) permits the B Corp to impose additional specified requirements to facilitate stockholders ability to evaluate the public benefit corporation's achievement of its purpose⁶⁴. There is no mention in the Law of how the B Corp should share information with the general public, as is the case in New York State. This may reduce the overall accountability and transparency of B Corps located in Delaware.

5.4 Impact Investment in the U.S.: Looking Ahead

Currently in the U.S. although there is talk on the subject, there remains no effort to change laws on the federal level that would encourage the growth of the impact investing sector across the U.S. and recognize B Corps or similar organizations on the federal level. Tax incentives remain limited and on the state level. Certified B Corps are often required to pay federal taxes, as the federal laws stand today. In addition to the 20 B Corp states, a further 16 states currently amending their corporate laws to recognize B Corps⁶⁵.

6. The Canadian Experience

6.1 Why the Government of Canada is promoting social finance (or impact investing)

⁶⁴ Ibid

⁶⁵ Certified B Corporation, "Legislation", (2014) accessed January 5 2014, URL: <https://www.bcorporation.net/what-are-b-corps/legislation>

Recently, the Government of Canada has become more assertive in its stand that traditional public and grant funding can no longer adequately support the social services being demanded by those in need both at home and in developing countries⁶⁶. With global inequality on the rise coupled with the sharp cuts in foreign aid from Western nations that began in 2011, new investment structures are increasingly being considered by donor countries⁶⁷. Another prominent trend has been the overall decline in philanthropic giving for both domestic and international projects⁶⁸.

6.2 The present tax regime in Canada and the frustrations of the impact investor

According to the projected figures published by JPMorgan and other market observers, impact investing in Canada has had limited success in attracting capital. The lack of impact investing may be due to the legal and regulatory systems in Canada on the federal level, which remain obstacles to investors and enterprises looking to generate blended value in an integrated way⁶⁹.

Today in Canada, there are no federal legal structures in place to support socially conscious entrepreneurs wishing to pursue business models aimed at producing blended value. Before setting up a new investment organization in most provinces, entrepreneurs must first decide

⁶⁶ Canada, “Seizing Canada’s Moment: Speech from the Throne October 16 2013” (2013), accessed November 1 2013, URL: http://speech.gc.ca/sites/sft/files/sft-en_2013_c.pdf

⁶⁷ Martin, Maximillian, “Making Impact Investable”, *Impact Economy Working Papers 4* (2013): 11-12

⁶⁸ E.T. Jackson and Associates Ltd. “Accelerating Impact: Achievements, Challenges and What’s Next in Building the Impact Investment Industry”, The Rockefeller Foundation (2012): 13

⁶⁹ Saltuk, Yasemin. “Counter (imp)acting Austerity: The global trend of government support for impact investing” *JPMorgan: Social Finance Research* (November 2011), accessed March 8 2014, URL: <http://www.jpmorganchase.com/corporate/socialfinance/publications.htm>

either to pursue a social purpose or profit. Pursuing a social purpose will mean the entrepreneur will have to register as a non-profit or a charitable enterprise⁷⁰.

There are notable benefits for the entrepreneur who registers as a charitable enterprise. A major benefit is the ability of the charity to issue tax receipts to their donors, which can play a significant role in strengthening fundraising activities⁷¹. In addition, charities in Canada are not required to pay income tax. Finally, being a registered charity evokes trust and evokes a positive image in the minds of Canadian donors as they are given some assurance that their money is in fact going towards charitable purposes⁷².

However, registered charities in Canada are legally barred from pursuing “unrelated business activity,” which is described as commercial activity with the intention of generating a profit⁷³. A profit is defined as when the income received exceeds the cost incurred⁷⁴. Charitable organizations and public foundations are permitted, however, to carry out “related business activities” that accomplish or promote their charitable purposes. For example, a related business activity is any commercial (revenue-generating) activity, usually a fundraising campaign, that is related to a charity's purposes, as long as the charity is 90 percent run by volunteers⁷⁵. Once a

⁷⁰ Canada Revenue Agency, “Factors that will prevent an organization from being registered as a charity”, (2010) accessed January 16 2014, URL: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/ftwp-eng.html>

⁷¹ Imagine Canada, “Benefits of Being a Charity”, (2010) accessed January 16 2014, URL: <http://charitytax.imaginecanada.ca/topics/-be-charity-or-not/implications-becoming-charity/benefits-being-charity>

⁷² Ibid

⁷³ Canada Revenue Agency, “Factors that will prevent an organization from being registered as a charity”, (2010) accessed January 16 2014, URL: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/ftwp-eng.html>

⁷⁴ Ibid

⁷⁵ Ibid

charity begins to raise more profit that is deemed appropriate or needed to address their stated mission, they risk losing their status as a charity with the Canada Revenue Agency (CRA).

Although charities often do engage in some business-like transactions such as fundraising, a substantial percentage of the gross revenue from the event must be applied for a charitable purpose, and not applied to their business or overhead costs. The entrepreneur is thus prohibited from pursuing any profits in their business model, rendering their enterprise completely dependent on external funding⁷⁶.

This dependence on external funding is compounded by the Goods and Services Tax (or Harmonized Sales Tax or Quebec Sales Tax), which leaves charities at a disadvantage relative to normal business corporations. Although businesses generally receive all of the GST/HST/QST that they pay through input tax credits, charities normally receive only half of the tax they pay. This can pose a significant problem especially if the charity is not anticipating a surplus of revenues in relation to their expenditures, and must pay GST/HST/QST regardless⁷⁷. The regulations relating to “related business activity” and having to pay GST/HST/QST limit the ability of the charity sector to grow and to be self-sustaining.

If entrepreneurs decide to generate profits, they must register as a for-profit entity. As a for-profit entity, they must pay an average of 15 percent in federal and provincial corporate taxes, which

⁷⁶ Ibid

⁷⁷ Imagine Canada, “Benefits of Being a Charity”, (2010) accessed January 16 2014, URL: <http://charitytax.imaginecanada.ca/topics/-be-charity-or-not/implications-becoming-charity/benefits-being-charity>

can vary depending on the province in which the business is being conducted⁷⁸. For-profit corporations are owned by their shareholders, who may receive a portion of the organization's profits in the form of dividends⁷⁹. A director of a corporation can be released by the corporation's shareholders for no stated reason. Although for-profits can be potentially accountable to an individual, an entity, or even multiple parties, in most cases the most skillful directors will recognize and accommodate shareholder needs whenever possible in order to ensure the long term health of their organization⁸⁰.

Because for-profit directors are legally responsible to act in the best interests of the corporation, and are held responsible by their shareholders, this can limit their ability to pursue a triple bottom line if that involves making decisions that may put profits at risk. This limited ability is further supported by legislation that aims to ensure market participants do not violate the basic standards of corporate behaviour, i.e. hinder management's ability to maximize profits by engaging in risky market or hinder business decisions that impact investors may be required to take on⁸¹.

6.3 Social Finance (or impact investing) in Canada: Looking Ahead

⁷⁸ Industry Canada, "Corporate Tax Rates", (2013) accessed January 16 2014, URL: <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/crprtns/rts-eng.html>

⁷⁹ Industry Canada, "Chapter 1: Corporations and Directors, What, Who, Why and How", (2011) accessed January 16 2014, URL: <https://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/cl00691.html>

⁸⁰ Ibid

⁸¹ Ibid

The Canadian Government has begun to explore the possibility of developing federal policies that enable and support impact investing, which is referred to by the Canadian government as “social finance”. This sentiment was reflected a few months earlier in the Economic Action Plan 2013, where the Government of Canada announced it would work towards bringing together “key players” in the non-profit and private sectors to “develop investment-worthy ideas and tap the potential of the social finance marketplace to promote economic growth and prosperity⁸².” Details on these ideas have also not yet been released as of the time of writing.

In the 2013 Speech from the Throne, the government once again announced its (somewhat vague) intention to “act on the opportunities presented by social finance and the successful National Call for Concepts for Social Finance”⁸³.

The Call for Concepts, launched by the Minister of Employment and Social Development Canada (ESDC) in November of 2013, was created to seek social finance ideas from individual Canadians, not-for-profit and for-profit organizations, to help the Government identify new ways to address social and economic issues present across Canada⁸⁴. The response to the Call was greater than expected, with 154 submissions from across the country, each seeking to present solutions to the complex social issues currently funded through social finance instruments on a

⁸² Canada, “Budget Plan: Jobs, Growth and Long Term Prosperity- Economic Action Plan 2013” (2013), accessed December 10 2013, URL: <http://www.budget.gc.ca/2013/doc/plan/toc-tdm-eng.html>

⁸³ Canada, “Seizing Canada’s Moment: Speech from the Throne October 16 2013”, (2013) accessed November 1 2013, URL: http://speech.gc.ca/sites/sft/files/sft-en_2013_c.pdf

⁸⁴ Canada’s Economic Action Plan, “Support for Social Finance” (2013), accessed January 28 2014, URL: <http://actionplan.gc.ca/en/initiative/support-social-finance>

pilot basis⁸⁵. Future tools and structures were proposed for ESDC's consideration to build capacity in the social finance sector and scale up promising or proven programs traditionally supported by grants and contributions⁸⁶.

Concepts were submitted addressing the “supply” side (investments and new sources of capital), the “demand” side (social enterprises and projects ready for investment), and intermediaries that will lower transaction costs (investment funds, entrepreneurial support and innovation incubators). In response, ESDC announced that “. . . it is clear that the market is primed for social finance to assume a meaningful role”⁸⁷. Although the details on how this will be done have not yet been released, ESDC made clear its support for social finance: “In the coming months, the Government of Canada will take several steps to bring players together, incentivize leveraging, encourage new partnerships and stimulate innovative ideas for addressing social and economic challenges.”⁸⁸

The U.K and the U.S. governments have already begun to implement changes in their legal and regulatory systems, which are aimed to drive capital towards impact investments. These new policy changes have provided a basic scaffolding to support impact investment activities⁸⁹. Some of these lessons have been embodied by legislation presented by three provinces in Canada;

⁸⁵ Ibid

⁸⁶ Employment and Social Development Canada, “Harnessing the Power of Social Finance” (2014), accessed January 29 2014, URL: http://www.hrsdc.gc.ca/eng/consultations/social_finance/report/index.shtml

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Ibid, 112

however, in July 2013 British Columbia became the first and so far only province to successfully put in force their new legislation to date⁹⁰. Details around these legislative changes will be discussed below.

6.4 B corps and Similar Organizations in Ontario, British Columbia, and Nova Scotia

Regulators abroad are realizing that the binary of philanthropic giving versus making a profit is no longer useful or needed to maximize the well-being of all market players. As they stand, the current charitable and the corporate laws at the federal level do not support the goal of social enterprise to create blended value. Three provinces have recently become the exception in Canada, and have begun to experimenting with the promotion of blended value.

Today, there are over 99 B Corps in Canada who have been certified by B Lab, the American non-profit organization⁹¹. These B Corps remain unrecognized by Canadian federal law.

Provincial legislation in British Columbia received Royal Assent and was in force in 2013, making British Columbia the first province to legally recognize social enterprises wanting to pursue blended value. The provinces of Nova Scotia and Ontario followed British Columbia's lead shortly after, which will be further discussed later on. These new social enterprises mirror the B Corp concept to combine socially beneficial purpose with an ability to distribute profits to

⁹⁰ Sustainable Prosperity, "Beneficial Corporations" *University of Ottawa* (2012), accessed February 20 2014, URL: <http://www.sustainableprosperity.ca/dl894&display>

⁹¹ Certified B Corporation, "Find a B Corp" (2014), accessed March 10 2014, URL: http://www.bcorporation.net/community/find-a-b-corp?search=&=Search+Companies&field_industry=&field_city=&field_state=New+York&field_country=United+States

shareholders⁹². They have been labeled Community Contribution Companies (CCCs) in the case of British Columbia and Community Interest Companies (CICs) in the case of Nova Scotia. This legislation has been put in force in British Columbia; however, is not yet in force in Ontario or Nova Scotia.

Some market observers suggest that, until a significant movement signals to legislators that the market is ready for legally supported B Corps in Canada, federal and the majority of provincial legislation will remain the same in Canada⁹³. Efforts to achieve this movement are being made through initiatives such as Impact Ontario, which is a conference that brings together mainly Ontario ventures with leading investors and intermediaries. Impact Ontario claims their mission is to increase capital flow towards profitable ventures with a scalable, sustainable impact, all through supporting impact investment opportunities. The organization strives to do this through private and public pitch sessions, one-on-one meetings, expert panels, as well as the opportunities to network with players in this new sector⁹⁴. With this caliber of reputable initiatives taking place in the province of Ontario, it was no surprise to market observers when the Government of Ontario released their proposed provincial legislation aimed at supporting this growing market⁹⁵. Despite this milestone for this new sector, upon reviewing the proposed

⁹² Sustainable Prosperity, “Beneficial Corporations” *University of Ottawa* (2012), accessed February 20 2014, URL: <http://www.sustainableprosperity.ca/dl894&display>

⁹³ Sou, Joyce “Why do Certified B Corporations Matter in Canada?” *Social Finance* (2013), accessed July 2013, URL: <http://socialfinance.ca/2011/12/12/why-do-certified-b-corporations-matter-in-canada/>

⁹⁴ Impact Ontario, “Impact Ontario: Invest for Impact in World-Changing Social Ventures”, accessed February 20 2012, URL: <http://socialfinanceforum.marsdd.com/>

⁹⁵ Sustainable Prosperity, “Beneficial Corporations” *University of Ottawa* (2012), accessed February 20 2014, URL: <http://www.sustainableprosperity.ca/dl894&display>

provincial legislation critics argue that it is unclear whether it will in fact contribute to the growth of this budding sector.

Introduced in 2010, Ontario's Not-for-Profit Corporations Act will explicitly permit commercial activities by not-for-profit corporations, with the condition that their profits are rolled back into the corporation's charitable purpose⁹⁶. Although to date the Bill has only been introduced and not put into force, it is expected that the act will not apply to corporations with share capital. A notable concern about this proposed act is that it would not override the Canada Revenue Agency's interpretation of the Income Tax Act's requirements in regards to the activities of not-for-profit corporations. These requirements refer to the not-for-profits ability to engage in commercial activity unrelated to their purpose, which would continue to remain significantly limited under the proposed Ontario act⁹⁷.

Receiving Royal Assent in May 14, 2012 and putting into force the Business Corporations Act in July 2013, the province of British Columbia became the first province to take legislative steps towards making legally recognized social enterprise in Canada a reality⁹⁸. The amendments allowed Community Contribution Companies (referred to as CCCs or C3), which are similar to Certified B Corps, to combine socially beneficial purposes with an ability to distribute profits to shareholders. Some requirements of the new act include the following: The CCC must include in its articles of incorporation a statement of its commitment to some community objective; and the

⁹⁶ Government of Ontario, "Not-For-Profit Corporations Act, 2010" (October 2010), accessed February 20 2014, URL: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10n15_e.htm

⁹⁷ Sustainable Prosperity, "Beneficial Corporations" *University of Ottawa* (2012), accessed February 20 2014, URL: <http://www.sustainableprosperity.ca/dl894&display>

⁹⁸ Ibid

CCC must publish an annual “community contribution report” specifying details on the company’s finances and how its activities produced social benefit⁹⁹. As a taxable corporation, CCCs also include a 40 percent cap on dividends paid out to investors, which ensures more capital remains within the social enterprise¹⁰⁰. Interestingly, the act also contains investigation powers: if one-fifth 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 the authority to collect information about the company which may be used in court against individuals associated with running company affairs¹⁰¹.

Similar to Ontario, the province of Nova Scotia has recently passed a similar act which has not yet been put in force. The Community Interest Company Act in Nova Scotia received Royal Assent on December 6, 2012¹⁰². Once in force, the act will allow businesses who demonstrate characteristics of both for-profits and not-for-profits to be designated as a Community Interest Company (CIC) under law¹⁰³. It is unknown when this act will be put in force. A CIC must declare its “community purpose” before it can become a legally recognized CIC, with “community purpose” being defined as being beneficial to either society at large or to a segment

⁹⁹ Ibid

¹⁰⁰ BC Centre for Social Enterprise, “Community Contribution Companies: Now available in British Columbia” (2014), accessed February 20 2014, URL: http://www.centreforsocialenterprise.com/C3_BC.html

¹⁰¹ British Columbia: Finance Statutes Amendment Act, “Business Corporations Act SBC 2002 Chapter 57” (2012), accessed February 20 2014, URL: http://www.leg.bc.ca/39th4th/1st_read/gov23-1.htm

¹⁰² Social Enterprise Canada, “Nova Scotia has notable social enterprise wins in 2013” (Jan 2014), accessed February 20 2014, URL: http://www.socialenterpriseCanada.ca/en/newsroom/service.prt?svcid=enp_newsroom1&iddoc=339408

¹⁰³ Nova Scotia, “New Opportunities for Social Entrepreneurs” (Nov 2013), accessed February 20 2014, URL: <http://novascotia.ca/news/release/?id=20121128010>

of society that is broader than the group of persons who are related to the CIC¹⁰⁴. Details around how this act is expected to be carried out will be announced once the Department of Finance has created the supporting regulations and registries to support this new legislation¹⁰⁵.

As mentioned above, it is too early to determine the success or lessons to be learnt from the legislation put in force in British Columbia, and passed but not yet put in force in Ontario and Nova Scotia. However, similar to the U.S., it appears that legal reform to allow B Corps and similar organizations such as CCCs and CICs in Canada has begun to take root at the provincial level. This movement has been driven by a growing trend of impact investors and shareholders realizing the value of linking capital with social ventures, and a growing trend of governments looking to supplement their social program budgets with new sources of funding¹⁰⁶.

7. Conclusion: Lessons for Canada from the U.S. and U.K. experiences

Experiences emerging from the U.K. and the U.S. on the role of government in furthering social investment markets present lessons for Canada as our governments embark on similar paths. Laws and regulations on the federal and state/provincial level can provide the framework to support impact investment and business activities. The rapid growth of B Corps, CICs and CCCs

¹⁰⁴ Nova Scotia, Bill 153, “Community Interest Companies Act” (2012) accessed February 11 2013, URL: http://nslegislature.ca/legc/bills/61st_4th/1st_read/b153.htm

¹⁰⁵ Sustainable Prosperity, “Beneficial Corporations” *University of Ottawa* (2012), accessed February 20 2014, URL: <http://www.sustainableprosperity.ca/d1894&display>

¹⁰⁶ Spence, Adam “Impact Ontario & SVX: Connecting Capital to World Changing Ventures” *Social Finance* (February 2014), accessed February 20 2014, URL: <http://socialfinance.ca/2014/02/21/impactontario-svx-connecting-capital-ventures/>

as legally recognized organizations able to pursue blended value abroad present alternatives to the traditional “profit-maximizing corporation” model, by making environmental and social benefit part of a company’s mission¹⁰⁷. This growth is demonstrated in Figure B and C respectively.

¹⁰⁷ Sustainable Prosperity, “Beneficial Corporations” *University of Ottawa* (2012), accessed February 20 2014, URL: <http://www.sustainableprosperity.ca/dl894&display>

*Summary of Legislative Changes and Requirements
(Figure D)*

	U.K	U.S.	Canada
National Legislation supporting tax incentives for impact investors	Adopted March 27 2014 under the Finance Bill 2014	None	None
State/Provincial Legislation supporting social enterprises looking to attract impact investors	N/A	Beginning in 2011, 20 states today have adopted legislation allowing B Corps	Beginning in 2013, 3 provinces have received Royal Assent; 2 have not put the legislation in force.
Who certifies social enterprises (i.e. CIC's, CCC's and B Corps)?	CIC's Regulators Office (Govt agency)	Non-profit B Lab	BC: Provincial registrar. Ontario and Nova Scotia: To be announced.
Reporting requirements for social enterprises (i.e. CIC's, CCC's and B Corps)	Must report to the Regulators Office (Govt agency)	Reports to shareholders (reporting requirements vary between states)	Reports to shareholders (reporting requirements vary between provinces)

Although it is too early to determine the success of these newly adopted legislative changes at home and abroad, these trends of growing numbers of CICs and B Corps in the U.K. and the U.S. indicate a strong supply of socially and environmentally minded entrepreneurs wanting to pursue a business model that is suited to a triple bottom line, supported by a strong demand from investors who are looking for alternative, socially and environmentally conscious ways of investing their money. However, when adopting laws determining the behaviour of B Corps or similar organizations, policy makers will have to decide whether new legislation should include clear rules and definition of “public benefit” as is the case in the State of New York, or, should take a more hands-off approach and provide the organization with more freedom to define such terms and reporting regulations according to the preferences of shareholders, as is the case in

State of Delaware. Important questions such as whether or not new policies supporting impact investments leave room for abuse from organization leaders are worthy of careful consideration. It is too early to predict the long term repercussions of these decisions taken in these U.S. states, as these markets remain young.

The current legal barriers facing an impact investor or socially conscious entrepreneurs looking attract impact investors in Canada are significant. With the current charity laws limiting the amount of profit a charity can make while having to pay GST/HST/QST, registered charities in Canada are rendered dependent on public funding. Under the current legal regime, Canadian charities are thus discouraged from becoming self-sustaining or profitable. On the other hand, ordinary corporations are legally encouraged to act in the interest of shareholders, which, more often than not means to maximize profits. However, such risky decisions are a necessary part of ensuring that the new impact investing market is able to grow and flourish. With the province of British Columbia being the only province to successfully put in force legislation to provide corporations with a new alternative, and with Ontario and Nova Scotia passing legislation not yet in force, Canadian provinces now have new homegrown examples of how to go about creating legislation to support this new market if they choose to do so. Increasingly, examples abroad and at home are leading Canadian policy makers on the federal and state levels to consider adopting impact-investment friendly policies and regulations.

The U.K and a growing number of U.S. state and Canadian provincial governments are realizing that dividing enterprises into non-profits and for profits under current regulatory and tax relief laws no longer makes sense while promoting impact investment as a compliment to government

funding. As the regulatory and tax relief laws begin to adapt on national and state/provincial levels, the number of certified CICs in the U.K. and B Corps in the U.S. continues to grow. The participating U.S states, Canadian provinces and U.K governments continue to promote this certification to gain the trust and support of investors who are eager to enter this new conscience market, while ensuring profits but more importantly ensuring social and environmental benefits are being created.

Updating the national tax system for corporations claiming to have a triple bottom line has become a priority for the U.K. government. Prime Minister David Cameron has argued that, without the necessary legislation supporting these corporations, their momentum and potential for helping with challenging social and environmental problems is threatened¹⁰⁸. As argued in a report prepared for the City of London and Big Society Capital, providing tax relief is a proven way of unlocking needed capital for solving social problems and improving our global environment.

Under Canada's current federal tax regime, entrepreneurs looking to attract impact investment dollars are limited by taxation laws. The ability of entrepreneurs to pursue blended value is severely limited due to the legal divisions defining the behaviour of non-profit and for-profit organizations. Considering the legislation in British Columbia, Ontario and Nova Scotia is very recent, it is too early to tell whether or not these innovative legislative changes on the provincial level will produce enough interest to encourage the federal government to follow suit.

¹⁰⁸ Her Majesty's Treasury, "Social Investment Tax Relief: Summary of Responses" (Dec 2013), accessed December 10 2013, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264507/social_investment_tax_relief_summary_of_responses.pdf

Developing new legislation and taxation incentives to effectively support impact investors and social entrepreneurs will be necessary if the Canadian Government wishes to unleash capital into Canada's social finance market, and to ensure the capital does in fact create blended value.

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