



Centre for Sustainable Community Development  
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## **Social Enterprise Legal Structure: Options and Prospects for a ‘Made in Canada’ Solution**

### **ABSTRACT**

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By

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The purpose of this project was to canvass social entrepreneurs and social economy “experts” about the prospects and potential drawbacks associated with pursuing a separate legal structure for social enterprise in Canada. The project emerged from a variety of drivers associated with the advancement and maturation of the Canadian social enterprise sector, including coordination and mobilization within the sector, a variety of recent research initiatives seeking to better understand the social economy, and government interest in seeking – or accommodating – ways to stimulate private capital for public good. The goal is to contribute to the discourse on social enterprise sustainability and add value to much needed efforts to educate and inform both the sector and policy actors surrounding issues of social enterprise structure.

The methodology for the project consisted of four main phases: 1) a literature review; 2) key informant interviews with social enterprise and legal experts; 3) questionnaire design and peer review; and 4) questionnaire implementation. Our final sample consisted of 20 community-based social enterprise representatives (plus key informants), from across Canada, whom we engaged in a questionnaire interview that enabled us to maintain question consistency, but also to have the option of a more general discussion about the issues (i.e. semi-structured).

The implementation of the research design yielded perhaps our most significant finding: social enterprise operators are generally ill-informed about the dynamics of social enterprise legal structure. This included knowledge of their own structure (and reasons

for having chosen it), and knowledge of other structures and possibilities / limitations associated with different possible reforms.

Despite the complexity of the issue, our key informants and sample of social entrepreneurs were able to clearly articulate a variety of issues associated with the pros and cons of creating a separate social enterprise legal structure in Canada. The table on the final page of this abstract summarizes these findings, providing a quick reference of main points that we elaborate upon in the full report.

Our findings hint at support within the social enterprise system for structural reform; however, given our small sample size, the findings more reliably highlight the need for more education and awareness raising with respect to the entire issue of social enterprise legal structure. Our challenge in identifying knowledgeable respondents, combined with the ability of these individuals to offer compelling reasons both for and against change, in addition to readily stating their own levels of uncertainty about the reform process, speaks to the need to “get the process right.”

That said, there exist a variety of challenges associated with education and information sharing to address knowledge gaps in the sector:

1. While we have spent months on this research, we can readily sympathize with the sentiments of social enterprise practitioners that this is not an exciting topic. Social enterprise operators tend to place responsibility for these issues in lawyers' hands,

many of whom are not expert in the area of social enterprise and related structural options and limits;

2. Some social enterprise operators may be hesitant to learn more, for fear of learning that their own organization has been offside for some time. This is the ‘ignorance is bliss’ argument that some respondents suggested... albeit half-jokingly.
3. Most social enterprise operators are consumed by the day-to-day operation of their businesses. This information is not necessarily viewed as the most important use of their precious time and resources.

As noted in the table, one of the objections to the introduction of a new legal structure for social enterprise is that the structure will be misused, or that unintended consequences will result. A related objection to any structural innovation is that certain elements won’t work (e.g. the interest cap might deter investment). It is essential to release educational materials that acknowledge these fears while pointing out that no innovation is introduced that doesn’t require some additional tweaking – and that new structures will not remove current choices.

If expanded efforts of consultation and education result in informed, broad sectoral support for structural change, the structure should seek to maximize benefits while being made up of as few components as possible, to enable progressive adaptation.

To be most effective, such changes should also be accompanied by supportive infrastructure and promotion, without diminishing the value of social enterprises not choosing to adopt the new structure.

It is essential to identify champions within government to work proactively with the sector to introduce structural innovations. Beyond typical government consultations (which tend to solicit written feedback only, with no personal interaction), a consultation on structure would work optimally if ‘workshopped’ at best, or flowed through a diverse sectoral committee of operators and thought leaders of community-based social enterprise.

Beyond champions, however, it is necessary to establish institutionalized structures that are capable of being sustained beyond changes in governments, elected officials, and staff. Structural reforms will enable certainty within the system that will build confidence to experiment and innovate. Without such certainty, changes become subject to ideological whims and will not establish any significant market engagement.

This is evident in that respondents raised concerns that given a general lack of government funds, any regulatory change would likely not be part of an overall strategy to support social enterprise development. This would represent a lost opportunity to attract operators, investors, and customers – and institutionalize social enterprise within the economy.

Pro	Research Theme	Con
<ul style="list-style-type: none"> <li>Clarified legal structure will bring certainty to the sector.</li> <li>Clear definition will help to coordinate efforts surrounding presenting a specific brand identity to communities and investors.</li> </ul>		<ul style="list-style-type: none"> <li>A concrete definition of social enterprise may have unintended consequences.</li> <li>Concern that the government will not “get it right”.</li> </ul>
	<b>Definition</b>	
<ul style="list-style-type: none"> <li>Legal structure will help to create a common language for social enterprise.</li> <li>Ability to learn from examples in other countries and adapt to Canadian context.</li> <li>Legal structure will go through a period of adaptation. The sector and regulators can monitor the situation and seek to address any unintended consequences through regulatory amendments.</li> </ul>		<ul style="list-style-type: none"> <li>Imposing a legal structure on social enterprises could inhibit or prevent possible future innovations.</li> <li>“If it’s not broken, don’t fix it”.</li> </ul>
	<b>Innovation</b>	
<ul style="list-style-type: none"> <li>Ability to access new sources of capital.</li> <li>Diminished granting environment expected in future.</li> </ul>		<ul style="list-style-type: none"> <li>Loss of access to grants through conversion to new structure.</li> <li>Jurisdictional confusion re: tax application and tax rates.</li> <li>Reform rather than regulate.</li> </ul>
	<b>Finance</b>	
<ul style="list-style-type: none"> <li>Simply one more vehicle (or choice) that is available to a dynamic sector – not “either / or”.</li> <li>Recognize general trend of decline in government funding – need for new investment vehicles.</li> </ul>		<ul style="list-style-type: none"> <li>Legal reform could be used as an excuse for cutting funding – off-loading – to the social enterprise sector.</li> </ul>
	<b>Government</b>	
<ul style="list-style-type: none"> <li>Concern that current innovations in the system may be operating “off-side” of CRA rules. Legal reform would serve to clarify this uncertainty.</li> </ul>		<ul style="list-style-type: none"> <li>Risk that the new legal entities could be abused by for-profit companies.</li> <li>Any abuses to the system via the new business models may unduly tarnish an emergent sector.</li> </ul>
	<b>System Abuse</b>	