



Legal structures and income tax categories for community-based social enterprises in BC

Written by Stacey Corriveau | Reviewed by Richard Bridge

This information is not intended as a substitute for professional legal and accounting advice. Its focus audience is community-based organizations operating in British Columbia, Canada.

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Who is this guide for?

This resource is presented by the [BC Centre for Social Enterprise](#), [Thriving Non-Profits](#) and [Scale Institute](#) to support representatives of nonprofit leaders in British Columbia, Canada who are exploring, launching, or expanding a social enterprise. Here, we provide practical, accessible guidance on the legal structures available to house a social enterprise, with specific attention to relevant income tax categories, plus the opportunities and limitations that these options may present.

Reviewed by charity lawyer Richard Bridge, this document is designed for nonprofit leaders, boards, and social entrepreneurs who are considering how to structure or grow a mission-aligned business venture.

What the guide offers

- A plain-language overview of key legal structures and associated income tax classes for social enterprise in British Columbia, Canada
- A side-by-side comparison of structures based on mission alignment, ownership, governance, profit distribution, and taxation
- A decision-making lens to help identify which structure and associated tax class best aligns with your mission, governance framework, and goals



Use this guide to

- Inform early conversations about risk, control, and compliance
- Evaluate your current organizational structure and its capacity to hold business activity
- Understand the difference between legal structures and tax classes
- Support board education and decision-making
- Strengthen due diligence for business planning



About the BC Centre for Social Enterprise

Since 2005, the BC Centre for Social Enterprise has offered tailored technical advice, workshops, and general social enterprise research and education. The Centre helps groups assess which structures are most appropriate for new ventures, and how to adapt existing nonprofit and charitable organizations to support their social enterprises. The BC Centre for Social Enterprise is a common brand for two separate legal structures: a registered charity, plus a tax-paying nonprofit organization. Learn more at centreforsocialenterprise.com



About Scale Institute

Scale Institute supports the impact sector through a variety of different means: resources and toolkits, case studies, webinars, workshops, and programs. Scale Institute is funded through a combination of grants, government funding, contracts, and sponsorships. We work on a project-to-project basis, identifying areas of innovation and developing new approaches grounded in research and tested for impact. Learn more at scaleinstitute.ca



About Thriving Non-Profits

Thriving Non-Profits is a learning and coaching program that equips nonprofit leaders with the mindset, skills, and strategies to build financial resilience and increase their community impact. Developed by Scale Collaborative, the program explores nine entrepreneurial revenue strategies, including social enterprise, and supports organizations in developing a customized Revenue Diversification Action Plan. Learn more at thrivingnonprofits.ca

Structuring social enterprise^[1] (SE) is a generally misunderstood area.

Common pitfalls and thinking errors include:

- Oversimplifying the issues, and rushing through decision-making; potentially jeopardizing the income tax exemption of the parent organization.
- Committing to a separate legal structure to house the SE, when the venture could have remained within the parent organization.
- Confusing legal structure with certification programs.
- Conflating legal structure with tax status.
- Trusting that as long as profits from SEs are directed to community good, then they are never taxable and/or can always be held within a typically tax-exempted structure.
- Believing that community-based organizations aren't permitted to operate SEs.
- Thinking that charities can only own a minority portion of an SE.
- Holding the view that a charity's SE is a 'related business' (a CRA term) without fully understanding the nuances of the definition.
- Viewing the newer 'hybrid' BC structures (Benefit Companies and Community Contribution Companies also known as 'C3s') as the sole (or best!) option for structuring SE.
- Generating tax-deductible donation receipts (as a charity) in exchange for financial support of an unrelated business.

[1] The Social Enterprise Council of Canada defines 'social enterprises' as businesses that sell goods or services in the marketplace. They have a social, cultural, and/or environmental purpose; and they reinvest the majority of their profits or surplus to maximize their social [and/or cultural and/or environmental] mission.



Groups that are either considering the launch of a new SE, or that may be questioning the structure of a current SE, should consult with an experienced lawyer or accountant. It's crucial to engage with professionals who fully understand the nuances of the niche area of Canadian social enterprise.

Overview of legal structure options in BC

There is no formal 'registration' process for social enterprise in Canada. The name of the game is choosing (then using!) the optimal legal structure (from a whole range of available options), ensuring that the unique characteristics of the specific SE are a fit for that structure. It's also crucial to understand the taxation element of the specific situation, and that adopting a particular structure does not guarantee a tax category[2].

Here are the common legal structures for those operating in BC, along with the usual income tax status:

Structure Name	Characteristics	Typical Taxation
Sole proprietorship	One owner, personal ownership	Taxed at personal income tax rates
Partnership	Multiple owners, personal ownership	Taxed at personal income tax rates
Company aka corporation	Owned by one or more shareholders that can be individuals and/or entities; can be incorporated federally[3] or within BC[4]; features certain legal protections that somewhat shield owners from liability	Taxable at corporate income tax rates
<u>Benefit Company</u>	A specific type of BC corporation available since 2020, purpose-built for SE	Taxable at corporate income tax rates
<u>Community Contribution Company</u>	A specific type of BC corporation available since 2013, purpose-built for SE	Taxable at corporate income tax rates

[2] For example, the writer's own BC Society is subject to income tax.

[3] Under the [Canada Business Corporations Act](#)

[4] Under the [BC Business Corporations Act](#)

Structure Name	Characteristics	Typical Taxation
Cooperative[5]	A corporation that is democratically controlled by members; can be incorporated federally[6] or within BC[7]	Usually taxable[8] at corporate income tax rates; sometimes exempt under specific sections[9] of the federal <i>Income Tax Act</i>
Society (with charitable tax exemption)	Non-share corporation, formed for exclusively charitable purposes; can issue donation receipts; can be incorporated federally[10] or within BC[11]	Exempt from tax as a charity under S149(1)(f) of the federal <i>Income Tax Act</i> Charitable registration (tax exemption) aspect is regulated federally by CRA, irrespective of whether the organization is incorporated provincially or federally
Society (with Non Profit Organization status, aka 'NPO' tax exemption)	Non-share corporation, formed for non-charitable purposes; can be incorporated federally or within BC; cannot issue donation receipts	Vast majority are exempt from tax as a Non Profit Organization (NPO) under S149(1)(l) of the federal <i>Income Tax Act</i> Care should be taken if considering the generation of significant profit within this structure.[12]

[5] The cooperative legal structure is not treated in detail within this publication. Those interested in learning more are invited to review <https://bccca.coop/knowledge-centre/co-op-business-model/>

[6] Under the [Canada Cooperatives Act](#)

[7] Under the BC [Cooperative Association Act](#)

[8] In fact, a co-op can be taxed as a for-profit, a NPO, or a charity: depending on their purposes and activities, and whether dividends are allowed or expressly prevented in the incorporation documents. Thanks to charity lawyer Richard Bridge for this note.

[9] E.g. sections 135, 136, 149(1)(l)

[10] Under the [Canada Not-for-profit Corporations Act](#)

[11] Under the BC [Societies Act](#)

[12] For more information, visit [this webpage](#)

A joint venture (JV) is not a legal structure, per se. It's a way of organizing a (usually revenue-generating) project. Sometimes, a new corporation is created to advance a JV. Sometimes a formal partnership is struck. And sometimes, the relationships are contractual.

The legal structures at play in a JV tend to be those of the participants that are collaborating on the project.

Each member entity is then taxed according to their own tax class (this is referred to as 'pass-through' taxation). The participating entities report the JV activity on their own tax return, claiming their own share of the profits or losses.

For example, a JV might be a collaboration between a charity, an individual (sole proprietor), and a company (corporation). Assuming that the project is charitable, then the charity is tax exempt; the individual is taxed at personal income tax rates; and the company is taxed at corporate income tax rates.

Certification programs are not legal structures.

Organizations – each with their own unique legal structures – have the option of pursuing certification according to the specific criteria of the certifying body.

Think 'certified organic' foods, or in the world of Canadian social enterprise: B Corp certification and Buy Social Canada certification.

Social enterprises may opt to become certified as a means of setting themselves apart from others (as having pursued and successfully demonstrated certain attributes which are required by the certifier), for networking benefits, for inclusion in particular directories and other promotional opportunities, and for movement-building.

Certification is optional, and not a pre-requisite for being a social enterprise. In contrast, a legal structure – which is a 'container' for the social enterprise – is essential.

Overview of the most common tax categories under the *Income Tax Act*

These are:

1. Taxable
2. Tax exempt – as charities
3. Tax exempt – as Non Profit Organizations (NPOs)

Let's get the most common tax category out of the way first. This category is 'taxable'. The entity's income is taxed at personal or corporate rates, depending on its situation. Groups that are privately-owned and organized in a taxable structure (such as a corporation), are freed from complications. Their SEs can be nested within the parent company, and taxed at corporate rates alongside their other business activities.

Likewise, charities operating unrelated businesses are structured as taxable entities: usually corporations. More about this later.

Many groups in the social enterprise space are tax-exempt. However, not all tax exemptions are the same. When considering how to structure a social enterprise, it's imperative that a group have clarity on whether it seeks or enjoys its income tax exemption as a charity or as an NPO[13].

Tax exemption is not to be confused with legal structure. Many community-based groups are incorporated as provincial societies. Others are incorporated federally. These are their legal structures.

And although most are tax-exempt, they enjoy those exemptions under different provisions of the *Income Tax Act*. These are their tax exemption classes.

CRA offers distinct sets of social enterprise guidance for tax-exempt groups classed as NPOs, as compared to charities. An organization cannot be 'both' a charity and an NPO, from the perspective of its tax exemption.

[13]Section 149 of the federal *Income Tax Act* outlines many more categories of tax exemption. The focus here is only on the two most common classes.



Typically, a group with an NPO tax exemption applies for charitable status. If CRA confers charitable status, the organization casts off its existing tax exemption (S149(1)(l)) in exchange for a charitable one (S149(1)(f): somewhat confusingly called a 'not-for-profit corporation' tax exemption). The charity retains its 'BC Society' legal structure with Victoria if provincially incorporated. Or it retains its Federal Not-for-Profit Corporation legal structure if federally incorporated. But the source of its income tax exemption shifts.

If your organization can give tax-deductible receipts in exchange for donations, it has charitable (tax exempt) status. A charity has 'RR' within the suffix of its CRA Business Number. If unsure, [all charities are listed online in a searchable database.](#)

Groups with the tax exemptions associated with charities or NPOs can jeopardize their respective income tax exemptions by housing a SE within their existing structure. Many are surprised to learn that the restrictions on business activities are more limited for NPOs as compared to charities. Although more enabling, the rules for charities are also more complex.

NPOs operating social enterprises

The simplest way to consider social enterprise compliance for NPOs (that is, non profit groups without charitable status) is through the lens of profit generation.

For NPOs interested in engaging in social enterprise activity, a key element^[14] is the federal government's definition of the NPO tax exemption, as outlined in the federal *Income Tax Act*. It lies in a section – 149(1)(l) – which covers miscellaneous tax exemptions.

In this legislation, NPOs are defined as, among other things, having been formed 'for any other purpose except profit'. The 'purpose' can be expressly stated (that is, entrenched within the group's written constitution), or unstated (i.e. as demonstrated in the fact patterns of the group's actual situation).

A common misperception is the assumption that as long as NPO profits are directed to social causes, then profit generation by the NPO is permitted. This is called the 'destination of profits test' or 'destination test', and is not accepted in Canada.

^[14] The social enterprise activity must also be 'directly connected' to the organization's legal purposes.

Canadian NPOs are permitted to generate 'incidental' profits that arise from the NPO's purpose-focused activities. Unintended profits are also permitted. So is maintaining a reasonable reserve for operations. And NPOs can save for the future purchase of capital items (such as a new building in which to house its non-profit activities). NPOs might also host lower-profit (or breakeven) ventures like Work Integrated Social Enterprises (WISEs)[15].

For NPOs considering operating a WISE, in order to offer training and/or employment opportunities for its people served, the venture is unlikely to generate significant profit. This is due to the additional (non-business) costs involved in accommodating and supporting the workforce (Anne Jamieson, formerly of Toronto Enterprise Fund, refers to these additional costs as the 'social costs' of SE[16]). In cases of WISEs that are operating at a loss, or at breakeven (i.e. purely cost recovery), the WISE can likely be safely housed within the parent NPO. It's worth ensuring that the WISE activity is supported by the NPO's formal purposes (legal constitution).

[15] Work Integrated Social Enterprises (WISE's) are ventures whose primary purpose is to train and/or employ people who are traditionally excluded from the mainstream economy. Generally speaking, these workers might have diverse abilities, or they could be socially marginalized, or simply in need of practical experience. Specific examples include but are not limited to youth, people living in poverty, individuals exiting incarceration, newcomers, and those who have physical or intellectual disabilities.

[16] Anne's online SFU lecture entitled *Sustainability is not Self Sufficiency: The Social Costs of Social Enterprises* can be found by clicking [here](#). The presence of these additional non-business costs justifies perpetual subsidy of WISE's, particularly by governments, which reap return on this investment through the workers' lessened reliance on the social safety net, reduced health costs, increased sales tax revenues through enhanced purchasing power of workers, etc.



In some cases, the allowances detailed above may not be permissive enough, when considering a profit-generating social enterprise. One potential solution is for the NPO to form a separate taxable business structure, to hold its profit-generating social enterprise. In this scenario, the NPO would be the sole shareholder of this second legal structure, and would continue to carry on its regular activities within the 'parent' NPO.

A somewhat grey area (CRA stresses that the fact patterns of the particular situation must always be considered), some CRA guidance suggests that 'where an organization [that qualifies as an NPO] engages in an income-generating activity that is carried out in a taxable, wholly-owned corporation, and this corporation pays dividends out of its after-tax profits to [the NPO] to enable the organization to carry out its not-for-profit activities, the organization may still qualify for the [NPO income tax exemption]'. In other words, in this scenario, the taxable corporation would pay corporate income tax on its profits; then the remainder, after tax, would flow to the parent NPO to support its operations. Attempts by the NPO to support the corporation (via grant or loan) could signal a for-profit purpose within the NPO, so should therefore be avoided.

Charities operating social enterprises

Where there are grey areas for NPOs operating (profitable) social enterprises, the path is more certain (and generally more enabling) for registered charities, but the guidance is more voluminous.

CHARITY DESIGNATIONS

First, there are three types (designations) of registered charities^[17]:

- Charitable organization – ~88%^[18] of registered charities
- Private foundation – ~7% of registered charities
- Public foundation – ~5% of registered charities

Private foundations are not permitted to operate social enterprises.

The other two charity types are permitted to operate SEs, according to considerations related to the charity's purposes, the nature of the venture itself, and a few other elements.

^[17] Greater detail on the charitable designations can be found [here](#).

^[18] Canada's charitable sector by the numbers: 85,955 organizations total | 74,544 charitable organizations | 4,862 public foundations | 6,549 private foundations. From [CRA's Report on the Charities Program 2022 to 2023](#). It's generally believed that there exist a roughly equal amount of organizations (i.e. as total charitable organizations) with an NPO tax exemption, but definitive numbers aren't tracked as the charitable sector is.

KEY CRA GUIDANCE

Take time to carefully review the key pieces of guidance that relate to Canadian charities operating social enterprises:

Canada Revenue Agency (2017), [Community economic development \[CED\] activities and charitable registration](#). CRA guidance paper CG-014.

Canada Revenue Agency (2003), [What is a related business?](#) CRA policy statement CPS-019.

The information that follows is a summary only.

Work Integrated Social Enterprises (WISEs), or training/employment businesses

The 2017 guidance paper CG-014 by CRA, entitled [Community economic development activities and charitable registration](#) includes key areas of interest for charities considering the operation of SEs that provide temporary training and/or permanent employment for people who are typically excluded from mainstream employment.

In its guidance, CRA refers to training enterprises as 'employment-related training' and more permanent employment as 'social businesses for individuals with disabilities.'

Both of these expressions of SE are considered by CRA to be 'community economic development activities that further charitable purposes.' In other words, CRA views these enterprises as charitable work rather than business operations. Projects that fall under their definitions of 'employment-related training' and 'social businesses for individuals with disabilities' can, therefore, operate within the auspices of the charity.

It's crucial that the charity's own purposes align with this charitable work. The charity may need to amend its charitable purposes language (in its constitution), in order to more clearly align their activities with their reason for being.

The same document (CG-014, section 11) provides some sample purposes language that is worth reviewing if the charity needs to amend its purposes to align with operating WISE's. The phrasing is pre-approved by CRA, so using it verbatim (assuming that it aligns with the charity's own practices) is recommended. Examples include:

- 'Relieving poverty by relieving the unemployment of people experiencing poverty'
- 'Advancing education by providing employment-related training'
- 'Benefitting the community in a way that the law regards as charitable by relieving unemployment of individuals who are unemployed or facing a real prospect of imminent unemployment and are shown to need assistance'
- 'Benefitting the community in a way that the law regards as charitable by relieving conditions associated with disability'

Some parts of CRA's definitions of 'employment-related training' and 'social businesses for individuals with disabilities' bear quoting in full (i.e. in italics to follow).



From the section on 'employment-related training', subsection 22:

On-the-job training: providing on-the-job training in vocational or work skills that enhance an individual's employability. These activities cannot simply provide individuals with employment or supply an employer with staff. The aim and result of the program must be to provide training, not jobs. To be acceptable, programs should feature the following characteristics:

- *Instruction is provided to complement the on-the-job training (before or during the on-the-job component)*
- *The participants are employed for a limited period of time*
- *The charity offers a job placement service to help graduates of the program find work in the labour force*
- *The proportion of workers from the beneficiary group in relation to the total number of employees is 70% or higher, but alternative ratios may be justifiable if considerable supervision is required*
- *The focus of the activity must be to further a charitable purpose, not to generate revenue*^[19]

^[19] An earlier version this guidance (RC4143(E), 1999) seemed to prohibit profit generation. Presumably due to feedback from the charitable sector, this language has softened, to now suggest that revenue generation can be present, but cannot be the priority. It bears noting that if profit generation were a priority, employing workers with barriers would not be the optimal pathway: due to the social costs associated with WISEs.



From the section on 'social businesses for individuals with disabilities', subsections 69-74:

69. Operating social businesses for individuals with disabilities[20] may be charitable when the businesses directly further one or more of the charitable purposes listed in [paragraph 11](#). Social businesses differ from on-the-job training opportunities because they seek to provide permanent employment, not employment for a limited time.

70. A social business may provide services, sell goods, manufacture articles, or undertake other kinds of work. A social business may operate a retail outlet or send products manufactured in a workshop to a store.

71. Social businesses may directly employ eligible beneficiaries. They may also provide technical assistance, tools, materials, and marketing to eligible beneficiaries who use the workshop, but are self-employed.

72. To further a charitable purpose, a social business must have the following characteristics:

- *the workforce is composed entirely of individuals with disabilities, with the exception of employees who provide necessary training and supervision*
- *the work is specifically chosen and structured to take into account the special needs of individuals with disabilities and to relieve conditions associated with those disabilities*

[20] CRA's own footnote, defining their use of 'disability' in this context: 'According to the Canadian Human Rights Act, R.S.C. 1985, c. H-6, s. 25: 'disability' means any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug.'



73. The following characteristics, although not required, are generally expected:

- *associated job-related training that enhances the general skills of the eligible beneficiaries*
- *significant involvement of eligible beneficiaries in managing and making decisions for the social business*

74. A social business must focus on helping eligible beneficiaries and not on making a profit. For more information, go to [Policy statement CPS-019, What is a related business?](#)

To summarize, if the charity's SE fits within either of CRA's two training and employment scenarios above, then the business can remain housed within the charity. The charity's constitution (charitable purposes) must align with this work.

ADVANTAGES TO POSITIONING A SOCIAL ENTERPRISE WITHIN A CHARITY

Provided that the fact patterns of the SE support it, there are solid reasons[21] for housing a charity's SE within the existing (aka 'parent') charity:

- SE profits are tax exempt
- Donations can fund the SE
- Ease of administration / bookkeeping[22]
- No need for a separate Board of Directors
- No need to file separate annual government filings (all charity activities are reported on the same T3010)
- The charity can use its own resources (such as funds, people, and space) to support the SE

It follows that housing an SE outside of the parent charity (e.g. in a taxable corporation) would produce these circumstances:

- SE profits are taxable
- Charitable donations cannot be used to fund the SE: that is, the charity cannot issue donation receipts to donors wishing to direct their giving to the SE
- More complex administration / bookkeeping / separate bank account
- A separate Board of Directors is needed, to govern the new entity[23]

[21] A legitimate worry associated with housing a SE within the parent charity is the liability-related concerns of potential exposure for the entire organization. Generally speaking, insurance mitigates this risk. Depending on the nature of the venture, a legal opinion might be sought (using the liability lens) as part of structural decision-making.

[22] Project accounting within the parent agency's ledger is suggested to isolate the SE activity, in order to monitor the venture's specific income and costs.

[23] The separate SE Board can consist of the same people as the parent charity; but usually the SE Board members are selected for their business acumen and experience with the particular commercial offering.

- Need to file a corporate tax return (T2)
- The charity cannot use its own resources (such as funds, people, and space) to support the SE, except for fair market value. This means that the SE would pay the charity to use such resources. Furthermore, the charity cannot grant funds to the separate corporate entity: it can extend loans but only where it makes sense to the charity (i.e. 'prudent use of the charity's assets'), including generating market rates of interest from the loan.

WHEN A SOCIAL ENTERPRISE CAN BE HOUSED IN THE PARENT CHARITY

In an earlier section, two examples of SE types that can be housed within the parent charity were examined in detail: these are 'employment-related training' and 'social businesses for individuals with disabilities'. If the agency is not operating a WISE that falls within the scope of these two allowable venture types, then review of a key CRA document is necessary.

CRA's 2003 What is a related business? (CPS-019) describes when a SE can be operated within a charity, and when another structural option (a taxable corporation) must be chosen. This policy statement is 'must' reading for charities considering or engaged in SE, where their practices do not fall within the WISE characteristics described in CRA's CG-014.

Because 'social enterprise' has no legally enshrined meaning in Canada, CRA refers to 'related' and 'unrelated' business. Related business can be operated within a charity. Unrelated business cannot. The difference between the two is a great source of misunderstanding among social enterprise operators. Most believe that they are operating a related business.

Many times, they are not. The differences between the two are clarified below. Unrelated businesses are not forbidden, but must be housed within a taxable structure.

CRA does not consider as business (i.e. social enterprise): soliciting donations, selling donated goods (without modifying them)[24], and fees charged for charitable programs and services. These activities can absolutely happen within a charitable organization.

An unrelated business is easiest to define by examining what it is not, that is, a 'related business'.

The CRA defines 'related businesses' as two kinds:

- 1) businesses that are run substantially by volunteers; or
- 2) businesses that are linked to a charity's purpose and subordinate to that purpose.

CRA loves volunteers! If the social enterprise is 90% volunteer-run (by head count, not hours), then the venture is automatically delineated as a related business by CRA.

The tests for linkage and subordination need not be considered. SEs that are 90% volunteer-run can safely remain within the charity, regardless of whether the enterprise is connected to the charity's purposes.

Imagine a charity purchasing a franchise with a track record of revenue generation, which is run with a 90% (or more) volunteer workforce. This SE can remain nested within the parent charity. Profits can be used to support the charity's social mission, and are tax-exempt.

[24] Clarification from CRA in the area of permitted scope with respect to selling donated goods has been expected for years. If this comes to pass, thrift stores will likely not be included in this particular exemption, but many will nevertheless be considered as related businesses due to the high proportion of volunteers that typically support thrift stores.

To expand on the second definition of related business above, 'linkage' cannot be claimed merely by the fact that the profits from an SE are directed to a charity's good works.

Specifically, 'linkage' to the organization's charitable purpose means that the business needs to meet one of the following tests. The SE must:

1. Be a usual and necessary concomitant of charitable programs[25] (e.g. a hospital parking lot, a university bookstore, a museum gift shop); or
2. Be an offshoot or byproduct of a charitable program (e.g. a church that records and sells choir recordings); or
3. Represent a use of excess capacity[26] (e.g. charging for parking lot use during hours of closure, or renting out event tents[27] when they are not being used by the charity); or
4. Involve the sale of items that promote the charity and its objects (e.g. calendars, T-shirts, etc.).

All of the examples given above are CRA's own.

Many organizations define 'linkage' far too loosely. They assume that if the SE relates to the beneficiaries that they serve in some way, then it is automatically a related business that can, therefore, be operated within the charity.

[25] In other words: does the public expect to find this business associated with this charity work? In CRA's examples, the charities are a hospital, a university, and a museum. The linked businesses (SEs) are the cafeteria, bookstore, and gift shop.

[26] The charity cannot 'build in' excess capacity on purpose, e.g. it wouldn't be able to construct a new building that includes vacant street level space for retailers to rent. If the charity accidentally faces excess capacity, this is acceptable e.g. they lose funding for a program that was offered in a particular space, then they rent out the now unused area to a private business, yielding a new rental income stream.

[27] CRA gives no 'excess capacity' examples that relate to staff. That is, if the charity is running a program and then loses the program funding, they likely cannot use the 'excess capacity' argument to legitimize redeploying the staff to work in a SE.

This is not the case – at least one of the four areas of linkage outlined above must be demonstrable, in order for the charity to assert the linkage argument.

‘Subordination’ means that the business activity must:

1. Receive a minor[28] portion of the charity’s attention and resources; and
2. Be integrated into the charity’s operations, rather than acting as a self-contained unit; and
3. Not dwarf the charity’s decision making so that charitable goals take a backseat to the enterprise’s; and
4. Not involve private benefit.

All four of these areas of subordination must apply to the SE, for it to be considered a related business.

If the SE is not substantially run by volunteers, and if linkage and subordination cannot be demonstrated, then the charity is operating what CRA calls an unrelated business.

In the case of ‘unrelated business’, the charity would establish a separate legal entity (usually a taxable corporation[29]) to house the SE, which must operate at arms’ length from the charity.

The ‘unrelated business’ has its own Board of Directors, and staff team. The separate legal entity that holds the SE cannot benefit in any way from the charity that owns it.

[28] ‘Minor’ does not imply a simple calculation ‘proving’ that the SE makes up 49% of the charity’s income, expenditures, and attention. A charity might incubate a related business inside of a charity: if it reaches a point when ‘subordination’ is cast into doubt, then the SE can be moved out of the charity and into a taxable corporation at that time. Thanks to charity lawyer Richard Bridge for this note.

[29] CPS-019, sections 47 and 48.

Penalties for a charitable organization or public foundation carrying on an unrelated business:

1st infraction: 5% penalty on gross unrelated business revenue earned in a taxation year

2nd infraction: 100% penalty on that revenue and a one-year suspension of tax-receipting privileges

To err on the side of caution, charities should enact absolute separation of staff, equipment, and sundry supplies; or a clear paper trail that shows the corporation paying fair market value for use of the charity’s resources, such as rent and staff.

An unrelated business cannot be run as a ‘project’ within the charity. This SE must be established as a separate legal entity, remitting corporate taxes on profits generated. The corporation is permitted to donate up to 75% of its net profits to the charity[30], and only pays income tax on the remaining net profit, after the donation is made. So income tax costs of a corporate subsidiary owned by a charity are much lower than one might expect.

[30] In fact, any Canadian corporation can donate up to 75% of its pre-tax profits to any Canadian charity. This allowance encourages corporate philanthropy, by reducing the company’s income tax bill considerably.



About the writer



Stacey Corriveau is the founding Executive Director of the **BC Centre for Social Enterprise**.

Her formal educational background is in small business counselling, bookkeeping and accounting, community economic development (CED), sustainable community development, and English Language and Literature. If she could do it all over again, she'd be a charity lawyer.

About the reviewer

Richard Bridge is a lawyer based in Nova Scotia who has supported charities and NPOs for nearly 30 years. He has worked and taught across Canada, and internationally, on issues relating to philanthropy. His clients have included foundations, charitable organizations, philanthropists, social entrepreneurs, NPOs, co-operatives, and government organizations of all kinds.

Richard's current focus is on working to build new relationships between Indigenous communities and organizations, and the philanthropic sector.