

# **B Corps and Benefit Companies**

## **A Practical Guide for Canadian Businesses**



**Green Economy Law Professional Corporation** is a boutique Toronto-based corporate, commercial, and environmental law firm for the new green economy. The firm specializes in working with green businesses and non-profits. The firm also works with clients in the health and psychedelic sectors, as well as clients seeking services pertaining to housing.

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This guide does not and should not be understood to constitute legal advice. If you have questions or comments about B Corps or benefit companies, please contact the firm at [info@greeneconomylaw.com](mailto:info@greeneconomylaw.com).

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# What are B Corps and Benefit Companies?

**B Corps:** In 2005, Jay Coen Gilbert and Bart Houlahan sold their basketball apparel company AND1 to American Sporting Goods. Following the successful sale, Gilbert devised the idea of starting “an organization that would allow companies to apply for a designation that would publicly hold them accountable for the ways they benefitted workers, communities, the environment, and customers.”<sup>1</sup>

In 2006, Gilbert and Houlahan founded the non-profit organization B Lab with their friend Andrew Kassoy.

**B Corps are for-profit businesses certified by B Lab (or an international affiliate organization) as meeting “the highest standards of verified social and environmental performance, public transparency, and legal accountability to balance profit and purpose.”<sup>2</sup>**

Notable B Corps include Patagonia, Ben & Jerry’s, and Frank And Oak.

By prioritizing social benefit, B Corps conceptually reject the idea that corporations have no higher purpose than maximizing shareholder profits, as popularized by the Nobel Prize-winning American economist Milton Friedman.<sup>3</sup>

Though even before Friedman, shareholder primacy was a foundational principle of American corporate law - and it remains so today.<sup>4</sup>



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**Benefit Companies:** Because American corporate law generally requires corporations to prioritize shareholder returns above all other corporate purposes, B Lab lobbied state governments to create a new legal form that would permit B Corps to get around this.

And they succeeded.

**The result was the creation of a distinct corporate form called a benefit company or similar (e.g., under Delaware law, they are called “public benefit corporations”).**

Though benefit companies share the social benefit mission of B Corps, **benefit companies are distinct in that they are legal entities established by law.** Currently, at least 37 American states, the District of Columbia, Puerto Rico, Italy, and France all permit a form of benefit company incorporation.

In Canada, British Columbia (BC) is the only Canadian jurisdiction to permit benefit company incorporation.

Though benefit company legal requirements vary across jurisdictions, they must typically publish regular “benefit reports” showing social and environmental contribution measured against a third-party standard.<sup>5</sup> The

B Corp Impact Assessment metric is often used. In BC, these reports are not audited by government.

Under American law, benefit company status provides corporate directors legal protection from shareholder lawsuits for breach of fiduciary duty in the event they prioritize (or appear to prioritize) social or environmental goals over profits in any given instance.

In Canada, however, the Supreme Court has interpreted the *Canada Business Corporations Act* (CBCA) to determine that a Canadian corporation’s duty is to act in the best interest of *the corporation itself*, rather than just the shareholders.<sup>6</sup> The determination was codified into the CBCA’s legislative text in 2019.<sup>7</sup>

**As a result, directors of Canadian corporations can consider the interests of stakeholders, including debtholders, employees, and even the environment, when making corporate decisions.**

Accordingly, some would argue there is no need for Canadian law to recognize benefit companies, since directors already have legal freedom to consider stakeholders and social issues when making decisions on behalf of their respective corporations.

## The Benefits of B Corps

**The primary reason for a company to become a certified B Corp is to demonstrate to consumers, employees, and investors that they are *in fact* committed to making a positive social and environmental impact in the world, and not simply engaging in greenwashing.**

Recent social trends suggest this is more important for businesses than ever before.

**Consumers:** Surveys show that younger consumers, namely Millennials (born 1980-1994) and Gen Z members (born 1995-2012), are more likely than older ones to consider a company’s social and environmental

reputation when making purchasing decisions.

- 62% of Millennials and Gen Z members prefer to buy products from sustainable brands;<sup>8</sup>
- 73% of Gen Z and 68% of Millennials are willing to pay more for sustainable products;<sup>9</sup> and
- 38% of Millennials have “begun or deepened” their relationships with business they believe to have a positive impact on society or the environment.<sup>10</sup>

**Employees:** Just as younger generations are more likely to consider a company’s social and environmental reputation when making purchasing decisions, they also consider these factors when choosing where they want to work.

- 75% of Millennials report being willing to take a pay cut to work for a socially responsible company;<sup>11</sup>

- 76% of Millennials say they consider a company’s social and environmental commitments before choosing where to work;<sup>12</sup> and
- 64% of Millennials say they will not work somewhere that does not have strong corporate responsibility practices.<sup>13</sup>

**Investors:** Along with a surge of interest in environmental, social, and governance (ESG) investing over the last several years,<sup>14</sup> a segment of investors is beginning to value B Corp status. Some private funds even list the B Impact Assessment scores of their holdings (we explain these scores more below).

In an interview with Bloomberg Media, Jeff Tannenbaum of Titan Grove Holdings championed B Corps, noting that they “**tend to be better run, attract better employees and, in our case, have margins that are higher than their competitors.**”<sup>15</sup>

Tannenbaum also said he viewed B Corps as “not unlike where ESG was five years ago.”<sup>16</sup>

## How to Become a B Corp or Benefit Company, and How We Can Help

**Becoming a B Corp:** To be certified as a B Corp, a company must undergo the B Impact Assessment (BIA).

The BIA is completed through B Lab’s online platform and used to rigorously evaluate how a company interacts with its workers, customers, community, and environment.

Upon completion of the BIA, B Lab will verify a company’s score to determine if it scores the minimum 80 out of 200 points required for certification.

Some of the questions featured in the BIA include:

- Does the company offer workers paid or unpaid secondary parental leave?
- Does the company monitor, record, and work to reduce its greenhouse gas emissions?
- Does the company explicitly incorporate social and environmental performance in the job description of management roles?
- Does the board of directors or other governance bodies include women,

people of colour, LGBTQIA persons, and other underrepresented individuals?

Applicant companies must also:

- Exist for over one year and report annual revenue;
- Include the B Corp legal element in the company's articles or certificate of incorporation (if the company is incorporated);
- Sign the B Corp declaration of interdependence; and
- Pay an annual fee contingent on company revenue.

Once a company becomes a certified B Corp, it is required to recertify every three years to maintain certification status.

**Becoming a Benefit Company:** Benefit company status is only available in Canada under the laws of British Columbia.

Instructions for how to incorporate a new BC benefit company can be found at this URL (shortened from the original): <https://tinyurl.com/je26cy74>

An existing BC corporation can become a benefit company by including:

- a “benefit statement” in its notice of articles; and
- a “benefit provision” in its articles.

These changes must be authorized by a special resolution of the corporation's shareholders.

**Green Economy Law Professional Corporation can help your company**

**receive B Corp certification or comply with benefit company requirements by:**

- (a) **ensuring your articles feature the requisite legal language; and**
- (b) **working to implement as many point-garnering policies as possible in your bylaws, internal documents, and contracts with specific reference to BIA scoring methodology.**

For more information on how Green Economy Law can help your business, please contact the firm at 647-725-4308 or via email at [info@greeneconomylaw.com](mailto:info@greeneconomylaw.com).

## The Authors

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<sup>1</sup> Richard Feloni, “More than 2,600 companies, like Danone and Patagonia, are on board with an entrepreneur who says the way we do business runs counter to human nature and there's only one way forward”, BUSINESS INSIDER (December 8, 2018).

<sup>2</sup> “About B Corps”, B LAB (<https://bcorporation.net/about-b-lab>).

<sup>3</sup> Milton Friedman, “A Friedman doctrine-- The Social Responsibility Of Business Is to Increase Its Profits”, NEW YORK TIMES (September 13, 1970).

<sup>4</sup> See *Dodge v. Ford Motor Co.* (Mich. 1919); *Revlon, Inc. v. McAndrews & Forbes Holdings, Inc.* (Del. 1986).

<sup>5</sup> “Benefit Company Reporting Requirements”, BENEFIT CORPORATION (<https://benefitcorp.net/businesses/benefit-corporation-reporting-requirements>).

<sup>6</sup> See *BCE Inc. v. 1976 Debentureholders*, [2008] 3 S.C.R. 560, 2008 SCC 69; *Peoples Department Stores Inc. (Trustee of) v. Wise*, [2004] 3 S.C.R. 461, 2004 SCC 68.

<sup>7</sup> See s. 122(1.1), *Canada Business Corporations Act* (R.S.C., 1985, c. C-44).

<sup>8</sup> “The State of Consumer Spending: Gen Z Shoppers Demand Sustainable Retail”, FIRST INSIGHT (January 2020).

<sup>9</sup> *Ibid.*

<sup>10</sup> “The Deloitte Global Millennial Survey 2020: Resilient generations hold the key to creating a “better normal””, DELOITTE (2020).

<sup>11</sup> “Three-Quarters of Millennials Would Take a Pay Cut to Work for a Socially Responsible Company, According to the Research from Cone Communications”, CONE COMMUNICATIONS (November 2, 2016).

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> Casey Wagner and Claire Ballentine, “Record Flows Pour Into ESG Funds as Their ‘Wokeness’ Is Debated”, BLOOMBERG (October 25, 2020).

<sup>15</sup> Emily Chasan, “Jeff Tannenbaum Bets on Kinder Capitalism, Even for LBOs”, BLOOMBERG GREEN (September 1, 2020).

<sup>16</sup> *Ibid.*