

**VAGUE, VOLUNTARY, AND VOID:
A CRITIQUE OF THE BRITISH COLUMBIA
COMMUNITY CONTRIBUTION COMPANY
HYBRID MODEL**

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INTRODUCTION

In 2013, British Columbia (BC) became the first province in Canada to pass legislation expressly creating a hybrid corporate model. Specifically, amendments to the BC *Business Corporations Act*¹ (the “Act”) and supplementary regulation² now provide for the creation of community contribution companies (C3s). Like other hybrid models, the C3 is an organizational form intended to use the financial engine of the for-profit business enterprise to generate social benefits. Although the C3 retains a traditional company framework and includes a limited investor entitlement to dividends, it envisions the pursuit of a community purpose as its primary objective.³

While C3s are new to BC, they have a recognizable pedigree. Hybrid models fall under the broad umbrella of social enterprise (SE),⁴ a

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¹ *Business Corporations Act*, SBC 2002, c 57 [BCA].

² BC Reg 63/2013 [*C3 Regulations*].

³ See BC Ministry of Finance, Information Bulletin, 2012FIN0011-000240, “B.C. Introduces Act Allowing Social Enterprise Companies” (5 March 2012), online: BC Government <<http://www.news.gov.bc.ca>>.

⁴ Also sometimes referred to as “blended enterprise” or “for-benefit enterprise”. See e.g. Dana Brakman Reiser, “Blended Enterprise and the Dual Mission Dilemma”

burgeoning “fourth sector”⁵ that has developed to fill the void at the intersection between the purely public, private, and social sectors. Unlike corporate social responsibility (CSR), which remains a business strategy first and foremost, SE prioritizes the pursuit of social missions, albeit through the use of commercial methods. SE is therefore predicated on a belief that profits and purpose are not mutually exclusive, but can be simultaneous and complementary objectives.⁶ Hybrid models are also an extension of the vibrant and long-standing tradition of co-operatives,⁷ which rely on an organizational structure characterized by a distinct values-based and community-owned and -controlled approach to governance, varying slightly depending on the particular kind of co-operative in question.⁸

Interest in SE and hybrid models has increased significantly in recent years, within both the academy and the business community. Broadly speaking, key features of traditional non-profit and for-profit structures put them at odds with the inherently bifurcated character of SEs: for-profit models are too powerfully dominated by shareholder primacy and the resulting drive to maximize profits to comfortably accommodate the pursuit of public purposes, while non-profit models struggle to effectively generate scalable benefit due to the scantiness of funding streams available to channel back into the enterprise. Hybrid models are intended to overcome these limitations by expressly permitting the pursuit of multiple missions, allowing for the legally enforceable pursuit

(2010) 35:1 Vt L Rev 105 (“blended enterprise”); Heerad Sabeti, “The For-Benefit Enterprise” (2011) 89:11 Harvard Bus Rev 98 (“for-benefit enterprise”).

⁵ See Heerad Sabeti et al, *The Emerging Fourth Sector: Executive Summary* (Washington, DC: The Aspen Institute, 2009), online: <<http://www.aspeninstitute.org>> [*The Emerging Fourth Sector*].

⁶ See generally Julie Battilana et al, “In Search of the Hybrid Ideal” (2012) 10:3 Stanford Social Innovation Rev 51.

⁷ See Nelarine Cornelius et al, “Corporate Social Responsibility and the Social Enterprise” (2008) 81:2 J Bus Ethics 355 at 357–59.

⁸ Common types of co-operatives include retail co-operatives, credit unions, service provider co-operatives, and housing co-operatives. See The Co-operative Learning Centre, “What Is a Co-operative?”, online: <<http://www.learningcentre.coop>>.

of a public purpose, expanding access to investment, and fostering the development of a new “brand” of company that is meaningfully distinguishable from both for-profits and non-profits.⁹ Thus, hybrid models are envisioned to be an exciting addition to the repertoire of organizational structures available to social entrepreneurs.

However, hybrid models pose challenges as well as opportunities, and the introduction of the C3 to BC raises questions as to its viability, especially in terms of its potential to make a significant contribution to the growth of the SE sector. The unique legal structure of the C3 and the context into which it has been born are both important considerations in this respect. Hence, this article aims to put the C3 in perspective, in order to better understand what the intent of the model is and what effect the adoption of the model may have. Although the newness of the C3 renders scrutiny of actual outcomes an impossibility, situating the model in the context of its past, present, and (projected) future provides fertile grounds for analysis.

This article proceeds as follows. Part 1 sets the stage by providing a brief overview of the rise of the corporation and free market economics, with a corresponding discussion of the growth of CSR and SE. Evaluating the C3 against this backdrop not only establishes the intent of hybrid models in contrast with the dominant paradigm, but also contextualizes the assessment of whether the direction that corporate law is moving is one that is likely to be successful in terms of envisioning a more sustainable role for business.

Part 2 moves beyond the intent of hybrid models and looks at their design, reviewing some salient features of the nascent C3 and highlighting analogous features of hybrid models adopted in the United States (US) and the United Kingdom (UK). This comparative evaluation grounds an analysis of some of the most significant deficiencies of the C3 model in Part 3—namely, it is vague, voluntary, and void. The hope is that critiquing the C3 in its infancy will reveal

⁹ See Susan M Manwaring & Andrew Valentine, *Social Enterprise in Canada: Structural Options* (Toronto: Social Innovation Generation at MaRS Discovery District, 2011) at 14, online: <<http://www.marsdd.com>>.

important avenues for further analysis and potentially productive lines of reform.

Part 4 then considers the future of the C3. The inquiry examines the organizational, sectoral, and systemic constraints to deploying the C3 as a realistic alternative to traditional organizational forms. This section does not attempt to predict the direction that further developments may take, but aspires instead to add nuance to the discussion about whether C3s are likely to live up to their transformative potential, and why this may or may not be the case.

Part 5 suggests that perhaps, for SE to rise, something else must fall—in order to fully realize the goal of realigning social values with institutions and the systems in which they operate, a more profound paradigm shift than that offered by hybrid models may be necessary. Finally, Part 6 concludes.

I. GETTING HERE: FROM CAPITALISM TO CSR

At bottom, corporations are state-sanctioned institutions, devoid of any natural liberties.¹⁰ However, in many jurisdictions, legislation has breathed the life of legal personhood into corporations by bestowing them with the rights, powers, and privileges of an individual of full capacity.¹¹ Free market logic played a significant role in revolutionizing the current investor-capitalist economic system by fueling the growth of corporatism, and the two remain closely intertwined. As Joel Bakan puts it, “the corporation is an institutional reflection of the principle of laissez faire capitalism.”¹² The end result has been a remarkable symbiosis that has facilitated trade, commerce, and ultimately, human progress.

Markets tend to deliver results, and the explosive growth in business they have facilitated has correspondingly generated numerous benefits for significant portions of society. Market forces are highly effective at

¹⁰ Here, “natural” is meant in the ordinary sense of not existing but for the actions of people.

¹¹ In BC, the relevant provision is found in the *BCA*, *supra* note 1, s 30.

¹² Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (Toronto: Penguin, 2004) at 161.

rewarding creativity, industriousness, and innovation, aligning well with the reality that people, acting rationally in their own self-interest, respond well to incentives. Advocates of free market economics and capitalism maintain that the nexus between interest, behaviour, and incentive creates the optimal system for spurring gains in efficiency, thereby creating a better world for all.¹³

However, markets also suffer from serious flaws. One significant drawback of markets is that their narrow obsession with profits creates ruthless competition among corporations to constantly improve the bottom line, with little regard not only to the social and environmental costs generated as a result of business activities, but also to who bears them. Ramez Naam optimistically insists that “so long as the best way to generate a profit is to provide something of value . . . at a low cost, the fierce Darwinian competition drives [businesses] toward positive contributions.”¹⁴ While this line of reasoning neither ignores nor condones the externalities created by market pressures, it implicitly accepts them as an unfortunate side effect, ultimately offset by the net rewards.

Meanwhile, some see this inherent drive to cut costs and generate profits as much more destructive. Bakan, for one, laments the fact that nothing in the legal makeup of the corporation allows it to recognize or act on moral reasons to refrain from harming others, or limits the extent of its single-minded pursuit of profit, culminating in a situation where the benefits of causing harm often outweigh the costs: “As a psychopathic creature . . . [o]nly pragmatic concern for its own interests and the laws of the land constrain the corporation’s predatory instincts, and often that is not enough to stop it from destroying lives, damaging communities, and endangering the planet as a whole.”¹⁵ Accordingly, the very nature of the corporate entity engenders a threat to the public

¹³ See e.g. Niall Ferguson, *The Ascent of Money: A Financial History of the World* (New York: Penguin, 2008).

¹⁴ Ramez Naam, *The Infinite Resource: The Power of Ideas on a Finite Planet* (Hanover, NH: University Press of New England, 2013) at 191.

¹⁵ Bakan, *supra* note 12 at 60.

interest, especially in combination with its ever-increasing power and scope. A corporation thus construed can only exist in harmony with the public interest when its injurious instincts are effectively curtailed by regulation.

Regardless of how one views the corporation—as a hero, a villain, or something in between—the invented nature of the entity signals that its pathologies are symptoms of a deeper underlying sickness. Kent Greenfield asserts that the market context in which corporations function contributes as much as or more than the structure of the corporation to the current state of affairs.¹⁶ Consequently, to uncover the root of the problem, one must look further back into history. Indeed, history can be illuminating in terms of evaluating the corporation's intended purpose against the role it has come to play in modern life. Moving away from a purely economic take, the corporation, in its current form, is not necessarily the result of some inevitable evolution towards increasing efficiency and utility.

In tracing the corporation's evolution, Douglas Rushkoff suggests that corporatism and commerce did not evolve symbiotically, but rather, were brought together as a reflection of sophisticated political agendas.¹⁷ The corporation's ascendance to institutional primacy is not, in fact, the result of some natural progression that should be accepted as an uncomplicated given. As Allan Hutchinson further points out, “[t]he corporation itself is neither essentially nor necessarily a vehicle for the single-minded pursuit of power or for the rampant accumulation of

¹⁶ Kent Greenfield, *The Failure of Corporate Law: Fundamental Flaws and Progressive Possibilities* (Chicago: University of Chicago Press, 2006).

¹⁷ Douglas Rushkoff, *Life Inc: How Corporatism Conquered the World, and How We Can Take It Back* (New York: Random House, 2011) (“Though not completely distinct from commerce or the free market, the corporation is a very specific entity, first chartered by monarchs for reasons that have very little to do with helping people carry out transactions with one another. Its purpose, from the beginning, was to suppress lateral interactions between people or small companies and instead redirect any and all value they created to a select group of investors.” at 3).

profits.”¹⁸ Although shareholder profit maximization is a lynchpin in the current legal and regulatory regime, this status quo is neither incontestable nor self-evident. The corporation began as and remains a construction, influenced by the informing ethos of prevailing philosophies and politics.

As the corporation evolved to become the favoured instrument of private enterprise, countervailing forces were also percolating through the system. The general concept that corporate power is coupled with social responsibility has a long and varied history, but CSR as it is now understood first began to emerge around the 1960s, predicated on a number of competing theoretical and ethical underpinnings.¹⁹ Increasingly, companies were beginning to dedicate more resources to delivering social and environmental benefits and to serving a broader range of stakeholders. Although for many, there was a basic desire to mitigate harm and to increase social benefit, CSR principles and practices were largely promoted as strategies to help make businesses more innovative, productive, and competitive through the pursuit of enlightened self-interest.²⁰ Notwithstanding its limitations as a voluntary measure, CSR was championed as a way for companies to “do good” while they continued to “do well.”²¹

Although CSR’s aspirations are laudable on their face, they certainly cannot be characterized as uncontroversial, and the entire notion of CSR has come under heavy fire from a number of different camps. The famous dialogue between Adolf Berle and E. Merrick Dodd in the early 1930s (representing the shareholder- and stakeholder-primacy views of the corporation, respectively) was the opening exchange of what would

¹⁸ Allan C Hutchinson, *The Companies We Keep: Corporate Governance for a Democratic Society* (Toronto: Irwin Law, 2005) at 210.

¹⁹ See generally Cornelius et al, *supra* note 7 at 356 (for a discussion of the philosophical underpinnings of CSR).

²⁰ George Steiner, *Business and Society*, 1st ed (New York: Random House, 1971).

²¹ See e.g. Oliver Falck & Stephan Heblich, “Corporate Social Responsibility: Doing Well by Doing Good” (2007) 50:3 *Business Horizons* 247.

become a spirited argument concerning the primary purpose of the publicly owned corporation.²² That debate continues to this day.

One of the most scathing and well-known criticisms of CSR comes from Milton Friedman, who decries efforts to require corporations to pursue any goal other than that of maximizing shareholder profit. Friedman posits that in a corporate context, the pursuit of public-spirited efforts by directors and managers is, in fact, immoral, and should only be taken up insofar as there is a business case for it.²³ Others argue that CSR is an inappropriate business strategy because it introduces a conflicting mandate, diverting time and money from a corporation's core economic mission.²⁴ Another position, espoused by David Vogel, contends that the relationship between CSR and financial performance is tenuous—CSR is “neither a necessary nor sufficient condition for business success”.²⁵ From the opposite side of the ideological spectrum, Peter Dauvergne and Jane Lister lambast CSR efforts for not going far enough, amounting to little more than a clever business tactic adopted to placate ethically minded consumers and increase sales, rather than representing an actual effort on the part of business to act more responsibly.²⁶

Courts have also struggled with the question of how far the responsibility of companies to be socially responsible extends. This issue was first contemplated in 1919, in the case of *Dodge v Ford Motor*

²² See generally Joseph L Weiner, “The Berle-Dodd Dialogue on the Concept of the Corporation” (1964) 64:8 Colum L Rev 1458 (for a discussion of the Berle-Dodd debate).

²³ See Milton Friedman, “The Social Responsibility of Business Is to Increase Its Profits”, *The New York Times* (13 September 1970) SM17.

²⁴ See e.g. Michael C Jensen, “Value Maximization, Stakeholder Theory, and the Corporate Objective Function” (2010) 22:1 J Applied Corporate Finance 32.

²⁵ David Vogel, “The Limits of the Market for Virtue”, *Ethical Corporation* (25 August 2005), online: <<http://www.ethicalcorp.com>>.

²⁶ Peter Dauvergne & Jane Lister, *Eco-Business: A Big-Brand Takeover of Sustainability* (Cambridge, Mass: MIT Press, 2013).

Company.²⁷ Henry Ford, Ford Motor Company's president and majority stockholder, sought to expend capital surplus on expansion of the business rather than declaring special dividends to distribute to shareholders. Minority shareholders objected to the strategy. While unpersuaded that they should interfere with the proposed expansion of the business, a majority of the Michigan Supreme Court upheld the trial court's order requiring that directors declare a dividend, noting that:

A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the nondistribution of profits among stockholders in order to devote them to other purposes.²⁸

However, subsequent cases demonstrate that the strict shareholder-primacy view as expressed in *Dodge* has not held fast in Canada. For example, in *Peoples Department Stores Inc (Trustee of) v Wise*,²⁹ the Supreme Court of Canada noted that:

Insofar as the statutory fiduciary duty is concerned, it is clear that the phrase the "best interests of the corporation" should be read not simply as "the best interests of the shareholders". . . . [T]he courts have long recognized that various other factors may be relevant in determining what directors should consider in soundly managing with a view to the best interests of the corporation.³⁰

The Court explicitly specified that in determining whether they are acting with a view to the best interests of the corporation, "it may be legitimate, given all the circumstances of a given case, for the board of directors to consider, *inter alia*, the interests of shareholders, employees,

²⁷ *Dodge v Ford Motor Company*, 170 NW 668 (Mich 1919) [*Dodge*].

²⁸ *Ibid* at 684.

²⁹ *Peoples Department Stores Inc (Trustee of) v Wise*, 2004 SCC 68, [2004] 3 SCR 461 [*Peoples*].

³⁰ *Ibid* at para 42.

suppliers, creditors, consumers, governments and the environment.”³¹ Several years later, in *BCE Inc v 1976 Debentureholders*,³² the Supreme Court of Canada further contemplated that:

The fiduciary duty of the directors to the corporation is a broad, contextual concept. It is not confined to short-term profit or share value. Where the corporation is an ongoing concern, it looks to the long-term interests of the corporation. The content of this duty varies with the situation at hand.³³

Thus, in principle, the concept of the fiduciary duty of the directors to the corporation is more expansive than the narrow confines of short-term profit maximization, both in terms of stakeholder interests and the temporal scope to be considered. Yet despite the Court’s affirmations in *Peoples* and *BCE*, the exact nature of this duty remains vague and contentious.

Even this brief and necessarily oversimplified summary of the debate surrounding CSR illustrates that the corporation itself is not the eye of the storm. The uncomfortable quandary of attempting to sort out what the problem is, if there is one, and if so, how to fix it, turns on broader questions of ethics and morality, politics, and economics. Accordingly, there has been a growing recognition that the complex systemic problems faced by modern society may be grounded in structural failures at the organizational level. That is to say, CSR may not even begin to scratch the surface.

Rather than simply encouraging responsible business practices, SE moves beyond the shallow scope of CSR by outright reorienting the ends of a company. Despite their social focuses, SEs exhibit more businesslike characteristics than their counterparts in the public and non-profit sectors, utilizing income-earning strategies and a market orientation rather than relying solely on contributions like charity grants and tax subsidies. SEs also differ from traditional non-profit models in the use to

³¹ *Ibid.*

³² *BCE Inc v 1976 Debentureholders*, 2008 SCC 69, [2008] 3 SCR 560 [*BCE*].

³³ *Ibid* at para 38.

which they put their assets, their governance structures, the manner in which they conduct their operations, and to whom they are accountable.³⁴ Although SEs still grapple with procedural questions of how to best fulfill their goals, they downgrade profit maximization to a secondary consideration, preferring social benefits over monetary gains. In so doing, SEs fill an important gap in providing goods and services in areas deemed unprofitable by the private sector and neglected by the state.³⁵

Given the vast and ever-growing body of literature on SE, canvassing all of the relevant issues is well beyond the scope of this article. It suffices to say that SE is garnering increased attention as an alternative way of doing business, as evidenced by the surging uptake of SEs witnessed in recent years. The *BC Social Enterprise Study*, published in 2009, indicates that 70% of the SEs surveyed had been created in the 10-year period from 1999 to 2009, signifying that, at least in BC, the sector is in both a period of robust growth and relative infancy.³⁶ Moreover, this trend is not likely to reverse anytime soon. There is a growing interest in SE at Canadian business schools, as new generations of budding entrepreneurs are attracted to the opportunity to address pervasive societal challenges through business models motivated by considerations other than profit.³⁷

³⁴ See generally John Thompson & Bob Doherty, "The Diverse World of Social Enterprise: A Collection of Social Enterprise Stories" (2006) 33:5/6 *Intl J Social Economics* 361 (for a discussion of the characteristics of SEs and several examples thereof).

³⁵ See Stephen Ko, "Viability of Social Enterprises: The Spillover Effect" (2012) 8:3 *Social Enterprise J* 251 at 254.

³⁶ SFU Centre for Sustainable Community Development, *BC Social Enterprise Study: Developing Community Capital* (2009) at 7, online: <<http://www.socialenterprisecanada.ca>> [*BC Social Enterprise Study*].

³⁷ See Virginia Galt, "Profit Not the Only Motive Among Today's Business School Students—Social Concerns on Their Minds", *The Globe and Mail* (10 November 2013), online: <<http://www.theglobeandmail.com>>.

The combination of social purpose and business method is a core attribute of SE,³⁸ but SE is by no means a homogenous sector. As a result, there is an ongoing struggle in delineating the boundaries of what constitutes SE and what does not, both conceptually and in practice.³⁹ Peter Elson and Peter Hall define SE operationally, as “a business venture . . . that sells goods or provides services in the market for the purpose of creating a blended return on investment; financial, social, environmental, and cultural”.⁴⁰ They also suggest that SE is both a contextual and legal construct, and takes on different meanings both within and across countries.⁴¹ Janelle Kerlin similarly notes that SEs appear to fit the particular needs and institutional structures of the countries they are situated within.⁴² Consequently, it is important to acknowledge that in undertaking a comparative evaluation of various hybrid models enacted in different jurisdictions, the analogies drawn will necessarily be imperfect.

II. HYBRID MODELS

A. BC COMMUNITY CONTRIBUTION COMPANIES (C3S)

In BC, there is a clear connection between the growth of SE and the birth of the C3, with the latter being a legislative response to increasing demand for institutional support for the former. The C3 model was

³⁸ See *The Emerging Fourth Sector*, *supra* note 5 at 5.

³⁹ See e.g. Wolfgang Bielefeld, “Issues in Social Enterprise and Social Entrepreneurship” (2009) 15:1 *J Public Affairs Education* 69 at 71–73; Monica Diochon & Alistair R Anderson, “Ambivalence and Ambiguity in Social Enterprise; Narratives About Values in Reconciling Purposes and Practices” (2011) 7:1 *Intl Entrepreneurship & Management J* 93.

⁴⁰ Peter R Elson & Peter V Hall, “Canadian Social Enterprises: Taking Stock” (2012) 8:3 *Social Enterprise J* 216 at 220.

⁴¹ *Ibid.*

⁴² Janelle A Kerlin, “Defining Social Enterprise Across Different Contexts: A Conceptual Framework Based on Institutional Factors” (2013) 42:1 *Nonprofit & Voluntary Sector Q* 84 at 102.

developed with the advice and support of stakeholders from the SE community, and public consultations held in 2010 indicated a favourable view towards the adoption of a hybrid model in BC.⁴³ Introducing the C3 in the legislature, BC's Minister of Finance and Deputy Premier Kevin Falcon noted that the model "will promote [SE] by allowing this sector to tap into the emerging demand for socially focused investment options."⁴⁴

The basic framework for C3s was created by Bill 23,⁴⁵ which passed in spring 2012. Precise details were established in the supporting regulation,⁴⁶ which passed in March 2013, and the C3 became available for use on 29 July 2013.⁴⁷ New companies can register as C3s from their inception, but C3s can also be created through conversion of existing for-profit businesses and non-profit organizations.⁴⁸ As of 9 August 2013, at least three companies had registered to become C3s.⁴⁹

The heart of a C3 is its community purpose. A "community purpose" is defined expansively within the legislation as a "purpose beneficial to society at large or a segment of society" beyond the shareholders of the company.⁵⁰ As defined, "[o]ne or more of the primary purposes of a [C3] must" meet this threshold, and "those community purposes must be set out in its articles."⁵¹

⁴³ See BC Ministry of Finance, "Questions and Answers, Community Contribution Companies (C3s)", online: <<http://www.fin.gov.bc.ca>> ["Q&A"].

⁴⁴ British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 39th Parl, 4th Sess, Vol 31, No 2 (5 March 2012) at 9712 (Hon Kevin Falcon).

⁴⁵ British Columbia, Bill 23, *Finance Statutes Amendment Act, 2012*, 4th Sess, 39th Parl, 2012 (assented to 14 May 2012).

⁴⁶ *C3 Regulations*, *supra* note 2.

⁴⁷ See "Q&A", *supra* note 43.

⁴⁸ See *BCA*, *supra* note 1, s 51.97.

⁴⁹ See Brenda Bouw, "B.C.'s New Business Model Makes It Easier to Make Money and Give Back", *The Globe and Mail* (9 August 2013), online: <<http://www.theglobeandmail.com>>.

⁵⁰ *BCA*, *supra* note 1, s 51.91(1).

⁵¹ *Ibid*, s 51.92.

To guarantee that the bulk of a C3's profits are dedicated to the fulfillment of its community purpose, a C3 is subject to an asset lock, which means that assets are not to be traded "during the company's existence or on its dissolution" other than "for fair market value to a qualified entity".⁵² There is also a strict cap on the dividends that can be paid out to shareholders, as well as restrictions on interest.⁵³ The current regulations cap the amount that can be paid in dividends at 40 percent of annual profits,⁵⁴ although C3s are free to set dividend caps below this threshold in their articles.⁵⁵ C3s are also prevented from amalgamating to circumvent the asset lock, either by becoming non-C3s or by operating in a different jurisdiction.⁵⁶ C3s do not qualify for tax exemptions and are instead taxed as regular business corporations.⁵⁷

C3s are subject to a higher degree of transparency and accountability than regular business corporations, particularly through the requirement that they publish annual community contribution reports describing their activities and how they relate to the fulfillment of their community purpose.⁵⁸ It is an offence "to fail to publish or post a community contribution report", or to publish or post a non-compliant community contribution report.⁵⁹ To ensure that shareholders and the public have a mechanism for monitoring compliance with transfer restrictions, C3s are denied the ability to waive financial statements.⁶⁰ In addition to making

⁵² *Ibid*, s 51.931. A qualified entity includes a charity or a community service co-operative, themselves subject to asset locks.

⁵³ *Ibid*, s 51.94.

⁵⁴ *C3 Regulations*, *supra* note 2, s 4.

⁵⁵ *BCA*, *supra* note 1, s 51.94(2).

⁵⁶ *Ibid*, ss 51.98, 51.99.

⁵⁷ See British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 39th Parl, 4th Sess, Vol 35, No 5 (25 April 2012) at 11120 (Hon Kevin Falcon).

⁵⁸ *BCA*, *supra* note 1, s 51.96(2).

⁵⁹ *Ibid*, s 426(1)(d.1).

⁶⁰ *Ibid*, s 51.951.

them available in the corporate records office, a C3 must publish these materials “on the company’s publicly accessible website”, if it has one.⁶¹

C3s must have at least three directors,⁶² “who must act with a view to the community purposes of the company”.⁶³ This requirement does not limit the general duties of directors and officers of corporations to “act honestly and in good faith with a view to the best interests of the company” and “exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances”.⁶⁴ However, directors of C3s are subject to personal liability if they vote for or authorize the transfer of assets from a C3 in contravention of the restrictions imposed.⁶⁵ In terms of enforcement, C3s are subject to the general shareholder right of action—beneficiaries and other third-party stakeholders are not afforded standing.⁶⁶

B. US BENEFIT CORPORATIONS

The US has adopted a number of different hybrid models in the past decade. This article focuses solely on benefit corporations,⁶⁷ which are established under statutory authorization by individual states. Maryland was the first state to formally adopt benefit corporation legislation in 2010.⁶⁸ Since then, at least 20 other states have followed suit, including corporate haven Delaware in 2013,⁶⁹ and still more are currently in the

⁶¹ *Ibid*, s 51.96(4).

⁶² *Ibid*, s 51.93(1).

⁶³ *Ibid*, s 51.93(2).

⁶⁴ *Ibid*, s 142(1).

⁶⁵ *Ibid*, s 154.

⁶⁶ *Ibid*, s 227.

⁶⁷ Not to be confused with “B Corporations” or “B Corps”, a private certification available through a private non-profit organization called B Lab, online: <<http://www.bcorporation.net>>.

⁶⁸ Md Code Ann, Corps & Ass’ns, § 5-6C-01 (2010) [*Maryland Act*].

⁶⁹ Del Gen Corp Law, Tit 8, Ch 1, §§ 361–68.

process of implementing benefit corporation legislation.⁷⁰ While there are some points of divergence in the various legislations enacted, many key characteristics are shared. The discussion in this section will refer generally to the common provisions that have been enacted across states, using Maryland by way of example where necessary.

The three defining features of benefit corporations relate to corporate purpose, accountability, and transparency.⁷¹ All benefit corporations must have a corporate purpose related to creating a general public benefit, defined in Maryland as “a material, positive impact on society and the environment, as measured by a third-party standard.”⁷² Although benefit corporations must pursue public benefit generally,⁷³ they are free to pursue one or more specific public benefits as defined in their articles.⁷⁴

Some states require benefit corporations to have a dedicated benefit director on the board, while in others, “the benefit director’s duties are shared by the entire board.”⁷⁵ The scope of director liability also varies by state,⁷⁶ although directors of benefit corporations generally enjoy the same immunity from liability as directors of regular business corporations.⁷⁷ In all US benefit corporation legislation, the broadened legal protection afforded to directors to pursue public benefit and the codification of stakeholder interests in directorial decision making are significant provisions that clearly differentiate this hybrid model from

⁷⁰ See Benefit Corp Information Center, “State by State Legislative Status”, online: <<http://www.benefitcorp.net>>.

⁷¹ See William H Clark Jr & Elizabeth K Babson, “How Benefit Corporations Are Redefining the Purpose of Business Corporations” (2012) 38:2 Wm Mitchell L Rev 817 at 838.

⁷² *Maryland Act*, *supra* note 68, § 5-6C-01(c).

⁷³ *Ibid*, § 5-6C-06(a).

⁷⁴ *Ibid*, § 5-6C-06(b). Some specific public benefits are enumerated in § 5-6C-01(d).

⁷⁵ See Clark & Babson, *supra* note 71 at 848, n 124.

⁷⁶ *Ibid* at 848.

⁷⁷ See e.g. *Maryland Act*, *supra* note 68, § 5-6C-07(c).

the traditional corporate form. The fiduciary duties of directors of benefit corporations are adjusted to accommodate these requirements.

There are a number of enhanced accountability measures in benefit corporation legislation. Like C3s, benefit corporations are responsible for producing annual benefit reports for their shareholders and the public, describing how the benefit corporation pursued a public benefit during the year, assessing the extent to which the public benefit was created, and reviewing its social and environmental performance in accordance with a third-party standard.⁷⁸ The reporting requirements vary in stringency, but generally speaking, the definition of “third-party standard” has become considerably more rigorous since the inception of benefit corporations in 2010.⁷⁹

Benefit corporation legislation does not provide for a third-party right of action for beneficiaries or other stakeholders.⁸⁰ However, “shareholders, directors, investors with a specified percentage interest . . . in the parent company, and other persons as specified in the company’s articles” have standing to bring benefit enforcement proceedings.⁸¹ Benefit enforcement proceedings are not intended to enforce a particular outcome, but rather, to challenge the decision-making process if “the director[s] failed to pursue the stated general or specific public benefits, failed to consider the interests of the various stakeholders set forth in the statute, or failed to meet transparency requirements.”⁸²

C. UK COMMUNITY INTEREST COMPANIES (CICs)

The C3 model closely resembles that of the UK CIC, which is a forerunner in the hybrid community. CICs were established in 2005 as a new corporate form for those who desired to conduct a business or businesslike activity for community benefit, rather than private

⁷⁸ See e.g. *ibid.*, § 5-6C-08.

⁷⁹ See Clark & Babson, *supra* note 71 at 843.

⁸⁰ See e.g. *Maryland Act*, *supra* note 68, § 5-6C-07(b).

⁸¹ Clark & Babson, *supra* note 71 at 849.

⁸² *Ibid* at 849–50.

advantage.⁸³ CICs are governed by the *Companies (Audit, Investigations and Community Enterprise) Act 2004*⁸⁴ and regulations,⁸⁵ and are subject to UK company law generally.⁸⁶

At law, CICs are limited companies with social mandates, and can be created through formation⁸⁷ or conversion.⁸⁸ As with C3s, the asset lock and cap on dividend and interest payments⁸⁹ are core features of CICs, intended to ensure that their assets and profits are retained for community purposes. Recently, in a joint response of the Regulator of CICs (the “Regulator”) and the Secretary of State for Business Innovation and Skills, changes have been made to the dividend and interest caps,⁹⁰ and tax relief for SE is expected in the near future.⁹¹

CICs are subject to a “community interest test,” which asks whether “a reasonable person might consider that [the company’s] activities are being carried on for the benefit of the community.”⁹² For the purposes of the community interest test, a group of individuals is considered to constitute a section of the community if they share a readily identifiable

⁸³ See Office of the Regulator of Community Interest Companies, “Chapter 1: Introduction” (November 2012) in *Community Interest Companies: Guidance Chapters* at 3 [*CIC Guidance Chapters*], online: <<http://www.gov.uk>>.

⁸⁴ *Companies (Audit, Investigations and Community Enterprise) Act 2004 (UK)*, c 27 [*Companies Act 2004*].

⁸⁵ *The Community Interest Company Regulations 2005 (UK)*, SI 2005/1788 [*CIC Regulations*].

⁸⁶ See *Companies Act 2006 (UK)*, c 46, s 6 [*Companies Act 2006*].

⁸⁷ *Companies Act 2004*, *supra* note 84, s 36.

⁸⁸ *Ibid*, ss 37–40.

⁸⁹ *Ibid*, s 30.

⁹⁰ UK Department for Business Innovation & Skills, “Changes to the Dividend and Interest Caps for Community Interest Companies: Response to the CIC Consultation on the Dividend and Interest Caps” (10 December 2013), online: <<http://www.gov.uk>>.

⁹¹ *Ibid* at 5.

⁹² *Companies Act 2004*, *supra* note 84, s 35(2).

characteristic that is not shared by other members of the community of which that group forms a part.⁹³

To qualify as a “community interest object,” the test is whether “a reasonable person might consider that the carrying on of activities by the company in furtherance of the object is for the benefit of the community.”⁹⁴ Whether or not an activity constitutes a community benefit⁹⁵ and what constitutes a section of the community⁹⁶ can both be limited by regulation, but no such circumscription has yet occurred. The fact that there were over 8,500 CICs on public record as of November 2013 points to the conclusion that both “community” and “community interest” are construed quite broadly.⁹⁷

The most significant distinguishing feature of CICs is that the model provides for a dedicated government Regulator. The Regulator has a clear mission to provide information and raise awareness of the CIC model throughout the UK,⁹⁸ and also has broad powers to oversee the formation and conduct of CICs and ensure that they remain accountable,⁹⁹ for example, by monitoring the mandatory annual reports that CICs must produce.¹⁰⁰ Although the Regulator’s role is much more than that of a mere silent bystander, the fulfillment of this role is meant to be carried out in a manner that is more light-touch than heavy-handed.¹⁰¹

⁹³ *CIC Regulations*, *supra* note 85, s 5.

⁹⁴ *Companies Act 2004*, *supra* note 84, s 35(3).

⁹⁵ *Ibid*, s 35(4).

⁹⁶ *Ibid*, s 35(5).

⁹⁷ See Department for Business Innovation & Skills, *supra* note 90 at 6.

⁹⁸ *Companies Act 2004*, *supra* note 84, s 27.

⁹⁹ *Ibid*, ss 41–51.

¹⁰⁰ See *ibid*, s 34(4); *CIC Regulations*, *supra* note 85, ss 26–29.

¹⁰¹ “Chapter 11: The Regulator” (March 2013) in *CIC Guidance Chapters*, *supra* note 83 at 4.

CICs are only required to have one director as per general UK company law.¹⁰² Apart from the fiduciary duty to act with a view to the community purposes of a CIC, directors of CICs have overarching duties to act honestly and in good faith, conduct business with a reasonable degree of care and skill, and promote the success of the company for the members' benefit.¹⁰³ Directors and officers are subject to personal liability if an offence is proved.¹⁰⁴ CICs are subject to general shareholder rights.¹⁰⁵

III. PROBLEMS WITH C3S—THE THREE V'S

A. VAGUE

For hybrid models to be effective as a form of SE, they must further—or at least be perceived to further—the goals that they are intended to pursue. Delivering meaningful results is a self-reinforcing way for C3s to generate impact, but the opposite reality is that failing to provide evidence of “real rather than rhetorical impact”¹⁰⁶ may be more harmful than helpful to SE as a sector. Various hybrid models enacted in other jurisdictions have been met with mixed levels of enthusiasm, signalling that in and of themselves, hybrid models do not offer a formula for success. The UK CIC has flourished, and the US benefit corporation appears to be gaining momentum, but there are other examples of hybrid models that have quickly fizzled.¹⁰⁷

¹⁰² *Companies Act 2006*, *supra* note 86, s 155. See also “Chapter 9: Corporate Governance” (March 2013) in *CIC Guidance Chapters*, *supra* note 83 at 3 [“Chapter 9”].

¹⁰³ See *Companies Act 2006*, *supra* note 86, ss 170–77.

¹⁰⁴ See *Companies Act 2004*, *supra* note 84, s 60(1); “Chapter 9”, *supra* note 102 at 4.

¹⁰⁵ *Companies Act 2006*, *supra* note 86, ss 116, 145, 168, 303–05, 314–17, 338.

¹⁰⁶ Mark Richard Hayllar & Roger Wettenhall, “As Public Goes Private, Social Emerges: The Rise of Social Enterprise” (2013) 13:2 *Public Organization Rev* 207 at 213.

¹⁰⁷ See e.g. Carol Liao, “A Canadian Model of Corporate Governance: Director Duties, Stakeholder Interests, and Emerging Hybrid Legal Structures”, *Robert Bertram Doctoral Research Award Reports* (Toronto: Canadian Foundation for Governance

To justify its existence, the C3 model must demonstrate its relevance as an alternative organizational form. Establishing legitimacy is especially important for the C3 in its infancy, because doing so minimizes its risk of an early organizational death. Mark Suchman defines legitimacy as “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions”,¹⁰⁸ which enhances both the stability and comprehensibility of organizations’ activities. Organizations obtain legitimacy by persistently adhering to the expectations that have been set of them within the system in which they operate and amongst the stakeholders which they involve.¹⁰⁹ Legitimacy gained through adherence to “[p]erformance measures give a visibility to the resources, activities, and achievements”¹¹⁰ of the SE sector more broadly. As a result, C3s may enjoy additional benefits, including but not limited to increased status amongst a broad array of stakeholders,¹¹¹ access to institutional resources, and enhanced attractiveness to investors.

However, the enabling framework does not provide any normative benchmarks against which a C3 should be measured. Without any articulated indicia of performance, it will be difficult for C3s to either draw attention to their accomplishments or to counter criticisms of ineffectiveness and lack of impact. Although there are also problems associated with very precise and narrowly construed definitions and benchmarks, the lack of guidance in the formative phase of the C3’s development may lead to a number of negative consequences, from

Research, 2013) at 32–33, online: <<http://www.cfgr.ca>> [Liao, “Corporate Governance”] (discussing the US low-profit limited liability company and the BC community service co-operative).

¹⁰⁸ Mark C Suchman, “Managing Legitimacy: Strategic and Institutional Approaches” (1995) 20:3 *Academy of Management Rev* 571 at 574.

¹⁰⁹ See Ko, *supra* note 35 at 251.

¹¹⁰ Ciaran Connolly & Martin Kelly, “Understanding Accountability in Social Enterprise Organisations: A Framework” (2011) 7:3 *Social Enterprise J* 224 at 231.

¹¹¹ Investors, managers, creditors, policy makers, regulators, customers, and employees, to name a few.

appropriation of the model by interests other than community-minded ones, to abstention on the part of those the C3 was actually intended to serve.

The lack of clear terminology and expectations is a problem seemingly endemic to SE, but the C3 is especially ambiguous. The legislative definition of a C3's "community purpose" only serves to complicate rather than clarify, by introducing words like "beneficial" and "segment of society" that are themselves open to interpretation.¹¹² Quantifying and communicating intangible benefits is also notoriously challenging, particularly in the absence of any relevant timelines for evaluation. Other hybrid models fare comparatively better at addressing definitional difficulties: US benefit corporations measure benefit according to a third-party standard, and both the existence and robustness of this third-party standard have been found to "facilitate greater investment in benefit corporations and improve customer loyalty by enabling people to differentiate good deeds from merely good marketing."¹¹³ UK CICs must adhere to a "community interest test" which, though broad, is supplemented by the oversight of an independent Regulator.

According to the BC Ministry of Finance (the "Ministry"), "[SEs] can exist in many business areas and have many different objectives, including health, environmental, cultural, or educational."¹¹⁴ The Hansard record reflects the fact that, although Parliament was cognizant that a C3 could be adopted for nefarious purposes, the broad definition of "community purpose" was an intentional choice, so as not to prematurely curtail the availability of the model.¹¹⁵ The Ministry adds

¹¹² "Charity" is also defined broadly in Canada under common-law tests rather than a precise legislative definition, but charities must comply with certain legal requirements to receive and maintain registered charity status, and are overseen by the Charities Directorate, the primary federal regulator of charities.

¹¹³ Clark & Babson, *supra* note 71 at 845.

¹¹⁴ BC Ministry of Finance, "Community Contribution Companies", online: <<http://www.fin.gov.bc.ca>>.

¹¹⁵ See *Hansard* (25 April 2012), *supra* note 57 at 11119.

that the definition could be narrowed by regulation if C3s were put to inappropriate use, but no such regulations are currently being proposed,¹¹⁶ and as previously mentioned, no such regulative circumscription has occurred in the UK.

Unfortunately, in casting the net to be as inclusive as possible, the C3 may fail to appeal to social entrepreneurs. The Ministry indicates that its target audience is investors, emphasizing that the C3 “offers a simple framework that is legally and commercially recognized”, which should appeal to philanthropic investors who still expect some financial return.¹¹⁷ Although the growth in SE has been fuelled in large part by increased investor demand, investors and entrepreneurs have different stakes in SE, and different needs when it comes to organizational structure and design. Entrepreneurs weighing considerations of motivation, market, capital, and control¹¹⁸ may find that the C3 model aligns with their goals but proves suboptimal in the result, because features like the asset lock and annual reporting requirement may be perceived as too limiting and onerous.

A desire to circumvent these restrictions as well as the questionable benefits offered by the C3 model may lead entrepreneurs to pursue their goals through other means. Legal structure is not necessarily determinative of missions and methods—small, privately held companies with well-defined articles can function well as vehicles for SE, and there are even examples of large, publically held companies that have successfully defined themselves as socially conscious enterprises.¹¹⁹ The commitment of both investors and entrepreneurs is necessary if C3s are to be taken up in any meaningful sense, but if entrepreneurs fail to see any value in adopting the C3 over an existing organizational model, then

¹¹⁶ See “Q&A”, *supra* note 43.

¹¹⁷ *Ibid.*

¹¹⁸ See generally Jim Fruchterman, “For Love or Lucre” (2011) 9:2 *Standard Social Innovation Rev* 42 at 44–45 (for a discussion on these four considerations).

¹¹⁹ Some examples include The Body Shop, Ben & Jerry’s, and Patagonia, as discussed in David Vogel, *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (Washington, DC: Brookings Institution Press, 2005).

the C3's potential to further the growth of SE by increasing investment opportunities is moot.

While clarity and comprehensiveness are important for establishing legitimacy, flexibility can also be a virtue. By setting community benefit production as a target but remaining silent as to how that benefit should be produced, C3s may allow entrepreneurs increased space in which to develop novel approaches to address a diverse array of social problems. Michael Porter and Claas van der Linde exalt the merits of flexible regulation, suggesting that the influence of market forces often produces innovative solutions that create a synergy between the business case, social welfare, and environmental considerations, therefore representing a welcome alternative to rigid (and often costly) forms of government intervention.¹²⁰ There are some contexts in which this is certainly true, but it is difficult to contend that profits and social and environmental welfare will be in sync in all or even most situations.

By nature, SEs are charged with pursuing multiple and often conflicting missions, and the C3 fails to address the dilemma that arises in those situations where profits and purpose find themselves at odds. The C3 model should ideally provide clear guidance as to whether profit maximization or public benefit has priority, and in what situations this priority must be given.¹²¹ Otherwise, any failure to meet double or triple bottom lines may be interpreted as a violation of a C3's legitimacy, resulting in unfavourable perception both by stakeholders and the public at large. Stephen Ko cautions that "negative consequences resulting from [lowered] stakeholder perception may include withdrawal of support from customers and investors"; worse, these impacts can overflow into the realm of SE as a whole, threatening the viability of the entire sector.¹²²

¹²⁰ See Michael E Porter & Claas van der Linde, "Green and Competitive: Ending the Stalemate" (1995) 73:5 *Harvard Bus Rev* 120.

¹²¹ See Dana Brakman Reiser, "Benefit Corporations—A Sustainable Form of Organization?" (2011) 46:3 *Wake Forest L Rev* 591 at 610.

¹²² Ko, *supra* note 35 at 252.

Categorically, hybrid models offer both potential and pitfalls, and the C3 is no different than other similar forms in this respect. However, the fact that the crux of the entire model is so vague greatly undermines the legitimacy of the C3. The C3 institutionalizes a social orientation in principle, but it is unclear what mechanisms should be installed to translate this goal into practice. By leaving some of its most critical aspects—namely, the purposes, priorities, and outcomes—loosely defined, the C3 model exhibits itself as seriously wanting in its ability to establish itself as a legitimate alternative to existing organizational forms.

For the C3 to be viable, it needs to have a distinct identity and establish a framework for decision making that instills sufficient predictability and consistency for all stakeholders. Accordingly, the C3 would be better served if policy makers were attentive to the need for clarity in shaping its parameters and defining the criteria against which it should be assessed. Otherwise, by pursuing a dual mandate under nebulous terms, the C3 runs the risk of denigrating not only its own legitimacy, but also the integrity of SE in general. This is not to say that definitional vagueness automatically acts as a bar to the successful execution of a hybrid enterprise. However, the C3 model must be cogent and convincing in order to legitimize and further the goals of SE, and strengthening the foundation on which the C3 rests is a natural starting point for improvement.

B. VOLUNTARY

The voluntary nature of SE highlights two further concerns with the C3 model. The first is that, despite its purported commitment to public purposes, the C3 is devoid of substantive commitments to the creation of public benefit and instead largely sanctions a business-as-usual approach to corporate behaviour. The C3 does not mandate the pursuit of public benefit *over and above* profit as a legally enforceable requirement. Even as the C3 model attempts to redistribute the fruits of commerce in an effort to rehabilitate the shareholder primacy model that characterizes investor capitalism, the pursuit of profit itself is not problematized.

Rather than representing a radical new form of entrepreneurship, the C3 could arguably be propping up the institutions that caused the very problems it aims to address. Some commentators indicate that so long as

the structure and functioning of the economic system remains unchanged, changing the values and practices of one sector will have limited effect.¹²³ By way of illustration, even as the number of CICs steadily rises, it would be inaccurate to say that public benefit in the UK has been increasing at a commensurate level. Mark Hayllar and Roger Wettenhall observe that it seems “temptingly easy” for SE to be exploited “as a mask to be donned and doffed at will either by or for the convenience of other sectors.”¹²⁴ Further, if SE continues to fill the gaps in providing goods and services in areas where the market and the state were unable or unwilling to do so, this could then justify inaction or otherwise excuse these sectors from their responsibilities to contribute to the resolution of social problems. Under this view, C3s represent, at best, a voluntary measure within a circumscribed sector that continues to yield to the central tenets of the dominant economic paradigm.

It remains to be seen what impact the C3 will have on the continuing salience of traditional structural forms in BC—that is, whether it will simply serve to create a “ghetto” of socially responsible businesses, leaving the corporations that dominate the for-profit sector largely unaffected and unaccountable. Elson and Hall’s review of Canadian SEs in 2012 found that, despite the wide variety in purposes pursued, nearly all SEs surveyed were registered as non-profit organizations.¹²⁵ One inference that can be drawn from this finding is that there is little interest in SE within the private sector. Alternatively, it might simply be that the defining features of traditional for-profit models are ill-suited for the purposes of SE. If the latter is the case, the compromise position between profit and purpose taken by the C3 may indeed have the potential to appeal to those who are currently situated within the private sector, but also desire the pursuit of more socially oriented mandates.

¹²³ See e.g. Alexander Schieffer & Ronnie Lessem, “Beyond Social and Private Enterprise: Towards the Integrated Enterprise” (2009) 15:4 *Transit Studies Rev* 713 at 718.

¹²⁴ Hayllar & Wettenhall, *supra* note 106 at 216.

¹²⁵ Elson & Hall, *supra* note 40 at 225.

However, the limited financial, organizational, and branding advantages offered by the C3 in its current state are insufficient to encourage a transition by those not already on board. The C3 offers no special tax treatment and no support in securing financing; existing sectors remain largely siloed. Although a C3 may more readily attract investment by clearly distinguishing itself as a socially responsible business, it is not clear whether this will be a significant consideration for socially minded investors in BC. Similar criticisms have been levied against US benefit corporations: Steven Munch argues that the basic framework “may not do enough to encourage mission fulfillment, to guide directors and officers, or to assist prospective investors.”¹²⁶ With no mechanisms in place to incentivize or facilitate the transition to the C3 model, its popularity and effectiveness may be limited to the self-selected.

Put differently, the C3 does not encourage a convergence towards more socially responsible behaviour across all sectors. Instead, it merely establishes a corporate vehicle by which to pursue SE for those organizations and entrepreneurs that *already* would have assumed similar identities through independent effort. As David Vogel points out, “most firms that have successfully marketed their ‘values’ [as a core part of their business model] are small companies operating in niche markets.”¹²⁷ This indicates that, in determining the activities and impacts of SE, the market and the context in which a company functions may be just as influential as its organizational form and legal structure.¹²⁸ Consequently, *sui generis* factors of the jurisdiction in question should be an important consideration in designing and deploying hybrid models—for example, the greater access to credit unions in BC represents a uniquely amenable financing stream for local SEs.¹²⁹ Building on what already exists and

¹²⁶ Steven Munch, “Improving the Benefit Corporation: How Traditional Governance Mechanisms Can Enhance the Innovative New Business Form” (2012) 7:1 Nw J L & Social Policy 170 at 188.

¹²⁷ Vogel, *supra* note 119 at 50.

¹²⁸ See Elson & Hall, *supra* note 40 at 229.

¹²⁹ See *ibid* at 227–28.

targeting services and infrastructure to particular needs can accelerate the pace at which SE develops, culminating in the sector moving out of a niche and into the mainstream.

The second concern related to voluntariness is that the effectiveness of the C3 in generating community benefit and thereby effecting social change is significantly curtailed by the fact that underlying systemic problems are not being addressed. The limited incentives provided by the C3 are dependent on the capacity to act on them, which itself is exiguous. Furthermore, the incremental, institutionalized approach to change represented by the C3 may actually be hindering a substantial paradigm shift of the kind that is necessary to correct deep-seated problems.

There are numerous systemic barriers to changing corporate behaviour and surmounting the constraints of sectoral boundaries. The *BC Social Enterprise Study* reports that among the variety of structures and endeavours of the businesses surveyed, “common and repeated patterns of successes and challenges” readily emerged.¹³⁰ For example, several of the organizations expressed that marketing assistance would be beneficial in order to promote the unique social aspects of their services and distinguish them from their competitors.¹³¹ Another major challenge faced by many of the organizations was securing staff with the appropriate skill set to manage both the business aspects and social missions of the enterprise.¹³²

Many of these difficulties arise because SE is similar to but different from commercial entrepreneurship across a number of major variables, including mission, resource mobilization, and performance measurement.¹³³ The resulting struggle to reconcile similarities and differences means that SEs face a number of distinct social-business

¹³⁰ BC Social Enterprise Study, *supra* note 36 at 7.

¹³¹ *Ibid* at 31.

¹³² *Ibid* at 32.

¹³³ See James Austin, Howard Stevenson & Jane Wei-Skillern, “Social and Commercial Entrepreneurship: Same, Different, or Both?” (2006) 30:1 Entrepreneurship Theory & Practice 1.

tensions in the areas of performing, organizing, belonging, and learning, all of which present critical challenges.¹³⁴ The C3 as a corporate form can only go so far to blend the two distinctly separate worlds of commerce and conscience.

Jeff Wexler emphasizes the need for a “rigorous re-assessment of the link between system dynamics and social institutions.”¹³⁵ A lot of the challenges that SEs struggle with stem from the absence of a robust and supportive ecosystem for the sector, which all organizations require in order to function well. As a result, SEs are relegated to relying on the existing and often inelastic infrastructure of the more entrenched sectors, which often “requires them to compromise their objectives, complicate their organizational structures, and invent circuitous processes that distract their focus and deplete resources.”¹³⁶ Although legal and market supports have begun to develop for SE, the efforts are unfolding in a sharply fragmented environment due to the interoperable nature of institutional structures, further stunting the ability of SE to mature and scale.¹³⁷

To this end, reformation of existing organizational models may not be enough to create substantive change. Some critics maintain that linking profit to purpose may not actually be an effective or appropriate way to generate public benefit, stressing instead the need for a radical shift in values.¹³⁸ A critical re-evaluation of the roles and responsibilities

¹³⁴ Wendy K Smith, Michael Gonin & Marya L Besharov, “Managing Social-Business Tensions: A Review and Research Agenda for Social Enterprise” (2013) 23:3 *Business Ethics Quarterly* 407 at 410.

¹³⁵ Jeff Trexler, “Social Entrepreneurship as an Algorithm: Is Social Enterprise Sustainable?” (2008) 10:3 *Emergence: Complexity & Organization* 65 at 66.

¹³⁶ *The Emerging Fourth Sector*, *supra* note 5 at 3.

¹³⁷ *Ibid* at 7.

¹³⁸ See e.g. Karin Berglund & Caroline Wigren, “Soci(er)al Entrepreneurship: The Shaping of a Different Story of Entrepreneurship” (2012) 10:1 *Tamara Journal for Critical Organization Inquiry* 9; Angela M Eikenberry & Jodie D Kluver, “The Marketization of the Nonprofit Sector: Civil Society at Risk?” (2004) 64:2 *Pub Admin Rev* 132; Pascal Dey & Chris Steyaert, “The Politics of Narrating Social

of corporations and other organizations that function as the building blocks of civic society may be an essential part of this metamorphosis. Hutchinson suggests that “[i]f we want ‘good corporate citizens,’ we must seek a sea change in how we think about corporations, how we constitute them, how we regulate them, and what we expect of them.”¹³⁹ In terms of how to do this, Bakan views the barriers as insurmountable by market-based solutions, claiming that only the force of regulation can combine “authority, capacity, and democratic legitimacy to protect citizens from corporate misdeeds.”¹⁴⁰

While government intervention may be effective, it is not the only solution, and may even be a second-best option. Regulation is often slow, expensive, and not necessarily democratic. If shifts in legal structures, dominant models, and human behaviour can occur organically, these shifts may establish a more permanent transition towards a paradigm that is in all manners consistent with ensuring the long-term welfare of ecological, economic, and social systems. Hybrid models are underpinned by “processes of positive meaning-making and relationships, and [are] enabled by sustainability-based organizational values, long-time horizons for slower growth, and positive leadership.”¹⁴¹ These values are commendable, but must be extrapolated from the discrete notion of hybridity and SE and infused into all sectors. Ultimately, the C3 should not be construed as the end point, but merely the beginning of a more holistic transformation.

C. VOID

Governance is not a novel issue on its own, and it is well established that performance is dependent in large part on the framework through which

Entrepreneurship” (2010) 4:1 *Journal of Enterprising Communities, People & Places in the Global Economy* 85.

¹³⁹ Hutchinson, *supra* note 18 at 2–3.

¹⁴⁰ See Bakan, *supra* note 12 at 149.

¹⁴¹ Nardia Haigh & Andrew J Hoffman, “Hybrid Organizations: The Next Chapter of Sustainable Business” (2012) 41:2 *Organizational Dynamics* 126 at 127.

an organization's affairs are directed and controlled.¹⁴² Governance models hinge on an organization's stakeholders, purposes, and sources of income, but the dual mission dilemma faced by C3s muddies all of these factors, as well the relationships between them.¹⁴³ As vanguards, hybrid models have the ability to draw on attributes and strategies across existing governance models to transcend the usual sectoral boundaries and converge as a new class of organization with the potential for generating immense economic, social, and environmental benefits. However, realizing this potential is by no means an easy task.

Traditional governance models are themselves facing unprecedented pressures as they struggle to adjust to the "driving forces of rapid societal change".¹⁴⁴ Heerad Sabeti observes that in current times, there is growing recognition that many complex systemic problems such as "short-termism, corruption, and greed" are "rooted in structural failures at the organizational level."¹⁴⁵ Meanwhile, the complicated interplay between the pursuit of profits and purpose in a hybrid model requires a careful, context-driven balancing in developing appropriate models for governance, underpinned by the continuous need to successfully engage and transact with all of the relevant stakeholders. As Susan Manwaring and Andrew Valentine put it, "[i]t is vital that individuals and organizations engaging in [SE] decide upon a structure based on [a consideration of goals and priorities], rather than allowing the structure to dictate the path that the enterprise takes."¹⁴⁶ Thus, incorporating as a C3 is only the first step in determining how to actually embed the aspirations of sustainability, inclusivity, and public benefit production into the governance model and its features.

¹⁴² See Nick A Shepherd, *Governance, Accountability, and Sustainable Development: A New Agenda for the 21st Century* (Toronto: Thomson Carswell, 2005) at 11.

¹⁴³ See Linda O Smiddy "Corporate Creativity: The Vermont L3C & Other Developments in Social Entrepreneurship" (2010) 35:1 Vt L Rev 3 at 7–8.

¹⁴⁴ See Shepherd, *supra* note 142 at 16; *The Emerging Fourth Sector*, *supra* note 5 at 1.

¹⁴⁵ *The Emerging Fourth Sector*, *supra* note 5 at 1.

¹⁴⁶ Manwaring & Valentine, *supra* note 9 at 4.

C3s and other hybrid models ostensibly enable profit-conscious businesses to integrate a wider array of stakeholder interests and principles of sustainability into their business practices well beyond what is tolerable under conventional for-profit models. In US benefit corporation legislation, the requirement that directors consider stakeholder interests in their decision making is a significant one, especially when combined with the requirement that directors manage corporations in the “best interests of the corporation” and the US case law’s interpretation of what this means.¹⁴⁷ In essence, directors of benefit corporations are freed from the duties to shareholders that often shackle them to the primary goal of maximizing shareholder value. However, as Carol Liao notes, this same gap is not available to be filled in Canadian corporate law, where considerations of stakeholder interests and considerations of how to improve long-term corporate performance (and thereby maximize shareholder value) have already begun to converge.¹⁴⁸

Moreover, under the widely accepted business judgment rule, courts tend to defer to directorial decision making as long as the decision was within a range of reasonable alternatives.¹⁴⁹ In other words, the stakeholder requirements of the C3 model do not necessarily contribute much in terms of guaranteeing the fulfillment of a C3’s public purpose, as Canadian courts would likely defer towards directorial decisions that benefit the corporation in a number of ways, including through

¹⁴⁷ See Liao, “Corporate Governance”, *supra* note 107 at 35–36.

¹⁴⁸ Carol Liao, “The Next Stage of CSR for Canada: Transformational Corporate Governance, Hybrid Legal Structures, and the Growth of Social Enterprise” (2013) 9:1 JSDLP 53 at 83–84 [Liao, “CSR”].

¹⁴⁹ See *BCE*, *supra* note 32 at para 40 (“The ‘business judgment rule’ accords deference to a business decision, so long as it lies within a range of reasonable alternatives [citation omitted]. It reflects the reality that directors . . . are often better suited to determine what is in the best interests of the corporation. This applies to decisions on stakeholders’ interests, as much as other directorial decisions.”). See also Liao, “Corporate Governance”, *supra* note 107 at 24 (“If the boards have followed proper process, avoided conflicts, and obtained enough information to make an informed decision, Canadian courts have proven that they are very reluctant to change it.”).

increased profitability.¹⁵⁰ Additionally, Liao cautions that the C3 model may serve to confuse or misrepresent the current state of Canadian corporate law, because if hybrids are conceptualized as clear alternatives, entrepreneurs may erroneously think there is a legal risk to pursuing both social and economic value within traditional forms.¹⁵¹

In any event, the C3 has no real teeth in terms of enforcement mechanisms, rendering it largely void in the absence of mechanisms by which to hold directors accountable for failures to meet double or triple bottom lines. Unlike with UK CICs, there is no regulator appointed to oversee C3s, and no such role is proposed in BC. The BC Centre for Social Enterprise assists groups in setting up C3s, and offers information more generally on legal structures for SE,¹⁵² but it has no authority to exercise any regulatory or enforcement role. Also troublesome is the fact that at law, directors of C3s remain directly accountable only to shareholders. In combination with broad directorial discretion and the business judgment rule, the absence of third-party stakeholder rights is a considerable gap, leading to a situation in which there is little to no means of enforcing the public purpose half of the dual mission. Shareholders do exert some influence in C3s—for example, on application of one or more shareholders holding at least one-fifth shares, C3s are subject to investigation if they are accused of acting in a manner contrary to their community purposes¹⁵³—but little of this power extends over and above rights shareholders are afforded under general company law. Without any concrete metrics by which to measure directors' compliance to articulated public purposes, shareholders have a weakened ability to enforce observance of such goals; worse still, the possibility of financial gain (though limited by the dividend cap) may create a perverse incentive for shareholders not to challenge directorial

¹⁵⁰ Sustainable Prosperity, "Beneficial Corporations", Issue Summary (Ottawa: University of Ottawa, 2012) at 4, online: <<http://www.sustainableprosperity.ca>>.

¹⁵¹ Liao, "Corporate Governance", *supra* note 107 at 39.

¹⁵² BC Centre for Social Enterprise, "Community Contribution Companies: Now Available in British Columbia", online: <<http://centreforsocialenterprise.com>>.

¹⁵³ *BCA*, *supra* note 1, ss 248–55. See especially s 248(3)(e).

decisions tilting towards profit maximization rather than public benefit production, even as this is clearly in contravention of the dual mission mandate.¹⁵⁴

Profit maximization does not necessitate harm to the public interest, but some social values, as well as the notion of sustainability, are fundamentally at odds with the ideal of relentless growth so lionized by the business world.¹⁵⁵ Market norms and social norms have significantly different influences on human behaviour, and mixing the two can create unintended consequences. People are much more apt to be selfish and unfair in economic exchanges than in social ones,¹⁵⁶ and introducing price as part of the equation fundamentally skews behaviour towards self-interest. Regrettably, once a social norm is trumped by a market norm, the social norm is difficult to reinstitute, and over time, collective social norms erode, with corrosive behaviours like profit maximization becoming institutionally embedded.¹⁵⁷ Indeed, recent research on CSR and philanthropy demonstrates that there is a counterintuitive correlation between voluntary initiatives and corporate social *irresponsibility*, as the accumulation of “moral credit” through responsible actions increases the likelihood that CEOs and companies will become more lax in maintaining the standards of their business practices.¹⁵⁸ The possibility that the pursuit of financial gains will pollute the integrity of the public purposes that hybrid models are intended to pursue is a real one, and the weak standards and loose definitions of the C3’s enabling legislation exacerbates the concern.

¹⁵⁴ See Brakman Reiser, *supra* note 121 at 613.

¹⁵⁵ Naomi Klein, “How Science Is Telling Us All to Revolt”, *New Statesman* (29 October 2013), online: <<http://www.newstatesman.com>>.

¹⁵⁶ See Dan Ariely, *Predictably Irrational: The Hidden Forces That Shape Our Decisions*, revised ed (New York: Harper Perennial, 2009) ch 5.

¹⁵⁷ *Ibid* at 76.

¹⁵⁸ See Margaret E Ormiston & Elaine M Wong, “License to Ill: The Effects of Corporate Social Responsibility and CEO Moral Identity on Corporate Social Irresponsibility” (2013) 66:4 *Personnel Psychology* 861.

The fact that the C3 model retains a profit component is not itself damning, but the C3 as it is currently formulated neither properly acknowledges nor successfully resolves the inherent tension between profits and purpose. Strong accountability measures are an essential part of addressing this tension, because the incentives provided by the market often contradict the incentives to act responsibly, and the profit maximization impulse can be difficult to constrain. In reference to the US benefit corporation, Dana Brakman Reiser emphasizes that the lack of robust mechanisms to enforce a dual mission “will ultimately undermine [the benefit corporation’s] ability to expand funding streams and create a strong brand for social enterprise as sustainable organizations.”¹⁵⁹ Notwithstanding the best intentions of passionate and dedicated entrepreneurs, investors, and directors, many C3s may still find themselves kneeling at the altar of the market.

The C3 model relies predominantly on heightened levels of transparency, disclosure, and availability of information to facilitate accountability, but increased transparency does not augment the enforcement of standards, especially when those that are intended to monitor performance are not provided with any performance metrics. While rigorous enforcement mechanisms might make up for lax accountability standards or vice versa, the C3 model exhibits an unsatisfactory paucity in both areas. The reliance on shareholders as enforcers is especially problematic in this context because of the obvious potential for a conflict of interest between shareholders’ interest in profit and the creation of a community benefit.

The combined effect of the lack of regulatory backstop and the significant flexibility underlying the C3 model makes it apparent that the pursuit of profits could easily overwhelm the community purpose. Taco Brandsen and Philip Karre comment that although the theoretical financial, cultural, and political risks faced by hybrid enterprises may be overstated, safeguards such as active regulators are undoubtedly

¹⁵⁹ Brakman Reiser, *supra* note 121 at 592–93.

necessary to ensure that they maintain their integrity.¹⁶⁰ However, active regulation does not necessarily have to be formal or external. Various associations and public interest groups have cropped up to support the growth and development of SE. In the UK, the CIC Association, launched in 2009 and including over 3,200 members as at January 2014,¹⁶¹ plays a non-trivial role in representing the CIC community's interests. The support of such organizations in BC, as well as stronger internal controls and evaluation metrics, are entirely feasible ways in which the C3 model could be improved.

IV. THE FUTURE OF THE C3

The newness of the C3 means that judgment about both its short- and long-term success must necessarily be reserved; however, the future of the C3 does not look especially promising at first blush. There is a lacuna in the enabling framework of the C3 as currently structured in terms of setting meaningful standards, incentivizing the adoption of the model, establishing strong investigatory and monitoring tools, and creating credible sanctions for non-compliance. These flaws weaken the effectiveness of the C3 as a vehicle for SE, and it is doubtful whether the C3 will gain any traction with those currently situated in the for-profit sector.

Additionally, the C3 was unveiled with limited fanfare, and there has been scant mention of it in the news since its inception. Without an officer like the UK Regulator to inform the public about the C3 and continue to actively promote it, there is a disappointing vacuum in the fulfillment of these vital functions. A key part of the UK Regulator's role is to ensure that the CIC model "remains relevant, fit for purpose and able to deliver continued benefit in a changing world".¹⁶² The recent amendments to the CIC's dividend and interest caps in response to continued concerns about access to investment indicates that an adaptive

¹⁶⁰ Taco Brandsen & Philip Marcel Karre, "Hybrid Organizations: No Cause for Concern?" (2011) 34:13 Intl J Public Administration 827 at 834.

¹⁶¹ CIC Association, "What Is a CIC?", online: <<http://www.cicassociation.org.uk>>.

¹⁶² Department for Business Innovation & Skills, *supra* note 90 at 3.

approach to new hybrid models is both helpful and necessary. The C3 is capable of evolving, but as it currently stands, it is unclear how to get the C3 from where it is to where it needs to be.

Yet the C3's deficiencies are not insurmountable, and there is a manifest willingness on the part of a group of investors, entrepreneurs, and consumers to supplement this legislative response with their own continued efforts. Recognizing the contradiction that inheres in hybrid models is crucial to better addressing the challenges that result. This recognition, combined with new information about how hybrid models function in practice, can lead to reforms that bolster the C3's appeal and improve its effectiveness. As Liao points out, Canada also benefits from a "latecomer advantage",¹⁶³ as existing hybrid models have been critiqued in their various stages of development elsewhere in the literature.¹⁶⁴ However, it is important to keep in mind that SE is a nebulous and context-driven phenomenon, and any reform of the C3 should reflect a "made in Canada" solution.¹⁶⁵

SE can be furthered through a number of different channels, and formalizing hybrid models in the law is only one example. The UK's impending introduction of tax relief for SE illustrates another potential avenue. Robert Katz and Antony Page note that favourable tax treatment for non-profit enterprises has encouraged more profound changes, which, in turn, have genuinely advanced the concept and causes of SE.¹⁶⁶ Building on existing recommendations with respect to hybrid models at

¹⁶³ Liao, "CSR", *supra* note 148 at 85.

¹⁶⁴ See e.g. Munch, *supra* note 126; Briana Cummings, "Benefit Corporations: How to Enforce a Mandate to Promote the Public Interest" (2012) 112 *Columbia L Rev* 578; Michael R. Deskins, "Benefit Corporation Legislation, Version 1.0—A Breakthrough in Stakeholder Rights?" (2011) 15:4 *Lewis & Clark L Rev* 1047.

¹⁶⁵ See Sean Markey et al, "Social Enterprise Legal Structure: Options and Prospects for a 'Made in Canada' Solution" (2011) SFU Centre for Sustainable Community Development with the BC Centre for Social Enterprise, online: Mount Royal University <<http://www.mtroyal.ca>>.

¹⁶⁶ See Robert A Katz & Antony Page, "The Role of Social Enterprise" (2010) 35 *Vt L Rev* 59 at 83.

large and to the development of SE in BC specifically, the C3 can remake itself as a more appropriate and effective corporate form.

Absent more aggressive government intervention or drastic changes reflected in markets, the increasing formalization of hybrid models in the law may mark an inflection point rather than an impasse in the evolution of the “fourth sector”.¹⁶⁷ The exponential growth seen in SE within the past decade may well plateau in coming years, as the low-hanging fruit are rapidly harvested. Nevertheless, the development of SE represents a meaningful step towards addressing pressing societal problems, and warrants serious consideration as to how best to capitalize on the gains that have recently been made. The gradual reform signalled by the passing of C3 legislation in BC and analogous developments elsewhere is an indication that there may be further change on the horizon.

Defending Bill 23 in the legislature, the Honourable Kevin Falcon conceded that the C3 model was an “untested vehicle”, but added that “as the first jurisdiction in the country to move forward with this, we do it with a belief that this may open up an opportunity for new forms of investment into vehicles . . . that will help us achieve broader social purposes.”¹⁶⁸ One encouraging indication is that Nova Scotia has also recently passed legislation allowing for companies to be designated as UK-style CICs.¹⁶⁹ Additionally, Quebec passed a *Social Economy Act*¹⁷⁰ in October 2013, with the object of recognizing the specific contributions of the social economy to Quebec and supporting its further development. Thus, the real accomplishment of the C3 may be what it represents: the potential to spark dialogue and new opportunities to create a better, more socially responsible economy. In this sense, a dose

¹⁶⁷ *The Emerging Fourth Sector*, *supra* note 5 at 7.

¹⁶⁸ *Hansard* (25 April 2012), *supra* note 57 at 1450.

¹⁶⁹ Nova Scotia Bill 153, *An Act Respecting Community Interest Companies*, 4th Sess, 61st Gen Assembly, 2012 (assented to 6 December 2012), SNS 2012, c 38. The Act is awaiting the development of further regulations and is not yet in force at the time of writing.

¹⁷⁰ Quebec Bill 27, *Social Economy Act*, 1st Sess, 40th Leg, 2013 (assented to 10 October 2013), SQ 2013, c 22.

of cautious optimism may be warranted, in addition to the healthy dose of skepticism provided in this article.

V. GETTING OUT: FROM COMPETITION TO COOPERATION

The hybrid ideal envisions an organizational model that seamlessly integrates the production of social value and commercial revenue, thereby creating a win-win situation.¹⁷¹ However, taking account of both the problems that inhere in hybrid models generally and those that are unique to the C3 challenges the notion that it is possible to both have the cake and eat it too. Perhaps, in conceptualizing alternative solutions to the problems posed by corporatism, the question is whether we need the cake at all. Rather than focusing on outcomes, it may be time to focus on the operative assumptions.

It is obvious that the current system is not working. As corporations increase in number and scope, so too do social inequities, and the threat of resource scarcity looms large on the horizon. Adam Smith, hailed as the pioneer of the free market, clearly did not envisage an economic system that reduced public good to a pricing mechanism. Indeed, he expressed in *The Theory of Moral Sentiments* that “he is certainly not a good citizen who does not wish to promote, by every means in his power, the welfare of the whole society of his fellow-citizens.”¹⁷² Yet under the current system, public interest rationales do not operate at commensurate levels of theory and application as economic ones. Barry Bozeman posits that in a situation of public-value failure, pinning policy solutions on the chimera of utilitarianism and efficiency that economic rationales are contingent on does not represent an adequate solution.¹⁷³

In a world where corporations masquerade as citizens, the question of who is promoting what welfare for whom has become seriously warped.

¹⁷¹ See Battilana et al, *supra* note 6 at 52.

¹⁷² Adam Smith, *The Theory of Moral Sentiments* (Norderstedt, Germany: GRIN Verlag, 2009) at 181.

¹⁷³ Barry Bozeman, “Public-Value Failure: When Efficient Markets May Not Do” (2002) 62:2 Pub Admin Rev 145.

Hutchinson suggests that “[a]s presently conceived, the whole rhetoric and promise of corporate citizenship is entirely ill-founded Corporations are simply not citizens in the way that people are.”¹⁷⁴ Certainly, the notion of citizenship, with all of its accompanying rights and responsibilities, has a distinctly human dimension. If an economic system is to result in benefit to the society as a whole, whether through corporations driven by self-interested competition in the free market or otherwise, it must be able to recognize that citizens benefit from public services as well as goods, that efficiency is not the only measure of value, and that human welfare remains contingent on more than just wealth.

Although corporations themselves are part of the problem, the underlying orthodoxy is much more insidious. Experiments in behavioural economics demonstrate that humans are caring social animals, but that profit motives can mute these tendencies.¹⁷⁵ In this vein, Rushkoff believes that the landscape we have created—essentially, one dominated by profit motives—has skewed our behaviours and decision-making processes towards short-term advantages and competition, causing us to behave more like corporations than people.¹⁷⁶ Corporatism has distorted our view of human nature, causing us not only to celebrate competition and greed, but to justify these behaviours as the inevitable result of our biological and evolutionary wiring. However, this brutal “survival of the fittest” model paints neither a complete nor an accurate portrayal of human nature. Cooperation plays as much a part in the natural world as competition, and just as necessity has driven innovation and commerce, so too has it driven the emergence and growth of SE.

Increased democracy and collaboration are often cited as essential ingredients if we are to address the most pressing social problems in a meaningful way.¹⁷⁷ This means that actors across all sectors are as much a

¹⁷⁴ Hutchinson, *supra* note 18 at 105–06.

¹⁷⁵ See Ariely, *supra* note 156, ch 5.

¹⁷⁶ Rushkoff, *supra* note 17 at xxv.

¹⁷⁷ See e.g. Smiddy, *supra* note 143 at 9.

part of the solution as they are a part of the problem, and coming together to figure out how we got here and how to get out is a necessary first step in dismantling the current system and replacing it with something more sustainable.¹⁷⁸ If this transformation is to come through SE, there needs to be a concomitant development of a supportive ecosystem within which SEs can thrive. Leveraging existing resources and deploying new approaches are both essential to building capacity. Although it will necessarily be an incremental effort, harmonization and collaboration across all sectors can advance unified action towards a common vision.

Realigning our economic system to better reflect our social values will be a tremendous challenge, but there are glimmers of hope on the fringes that indicate that now more than ever is the time to try.¹⁷⁹ Effective government regulation is still a relevant tool in many respects, but it is not good enough on its own. In addition to top-down evolution, there needs to be a bottom-up revolution. To improve governance, there needs to be an improvement in democracy; to improve democracy, there needs to be an informed and engaged public who not only cares about public welfare, but cares enough to take the action necessary to transition from consumers back to citizens, from competitive models back to cooperative ones, and from short-term to longer-term measures of success. There is no one-size-fits-all solution to these kinds of problems, and even when a solution is the right one, it may be difficult to execute in practice—but difficulty does not justify complacency. To succeed singularly at narrowly pursuing a short-sighted goal is to be a corporation—to be human is to err, fail, learn, adapt, and above all, be willing to participate in creating a better world.

¹⁷⁸ Rushkoff, *supra* note 17 at xxv.

¹⁷⁹ See Celia R Taylor, “Carpe Crisis: Capitalizing on the Breakdown of Capitalism to Consider the Creation of Social Business” (2009/10) 54:3 NY L Sch L Rev 743 at 745.

VI. CONCLUSION

While the C3 permits a different process for corporate decision making, there remains a serious question as to whether, in light of the shortcomings identified, this will lead to a more socially responsible result. Tackling the social problems that threaten the security of economic systems and the viability of civic institutions requires more than just presenting an alternative to the dominant organizational forms—it requires challenging conventional thinking and acting in order to develop unconventional solutions that imagine new instruments, institutions, and understandings. These solutions may include some of the measures discussed earlier, such as favourable tax treatment, meaningful benchmarks, and independent regulators, either working alone or in creative combinations.

Such fundamental changes will inevitably require a considerable amount of time and effort, but it is apparent that voluntary action is no longer enough. Every enterprise must come to be conceived of as a “social” enterprise,¹⁸⁰ insofar as SEs are organizations with explicit commitments to taking a more holistic view of what constitutes “benefit”. The urgency of the problems society faces means that—regardless of the success or failure of the C3 as a hybrid model—there is a compelling case that the values that hybrid models strive towards should be realized, by legislators, businesses, and the public as a whole.

¹⁸⁰ See Trexler, *supra* note 135 at 67.