INTEGRALIntros

Intro to Social Enterprise

Which legal structure should we choose?

Thursday, March 23, 2023
1:00-2:00pm

IntegralOrg

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Land Acknowledgement

We acknowledge that what we call Alberta is the traditional and ancestral territory of many peoples, presently subject to Treaties 6, 7, and 8.

Namely: the Blackfoot Confederacy – Kainai, Piikani, and Siksika – the Cree, Dene, Saulteaux, Nakota Sioux, Stoney Nakoda, and the Tsuut'ina Nation and the Métis People of Alberta.

This includes the Métis Settlements and the Six Regions of the Métis Nation of Alberta within the historical Northwest Métis Homeland.

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Training Participation via Zoom

Mute your microphone when you are not speaking to help keep background noise to a minimum.

Use Raise Hand, Chat, and Reaction functions to engage with the facilitators and other participants.

Use of video is recommended for this interactive and participatory workshop.

This session will be recorded. All presentation slides and recordings will be made available to registrants

Respect Privacy & Confidentiality of other participants and organizations sharing their experiences.

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Your Facilitators for

Intro to Social Enterprise

Which legal structure should we choose?

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IntegralOrg

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Member of the Alberta and Ontario Bars

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Overview

- The most common nonprofit statutes for nonprofits and charities operating in Alberta
- Societies Act, Companies Act, Canada Not-for-Profit Corporations Act
- The most common CRA-related business rules for charities
- Social enterprise and the Income Tax Act

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What is Social Enterprise?

One *possible definition**

A social enterprise is an innovative business model, whether not-for-profit or for-profit, that pursues a social, cultural or environmental mission through the sale of goods and services, with the majority of net profits directed back to its mission.

Employment and Social Development Canada

***no official legal definition**

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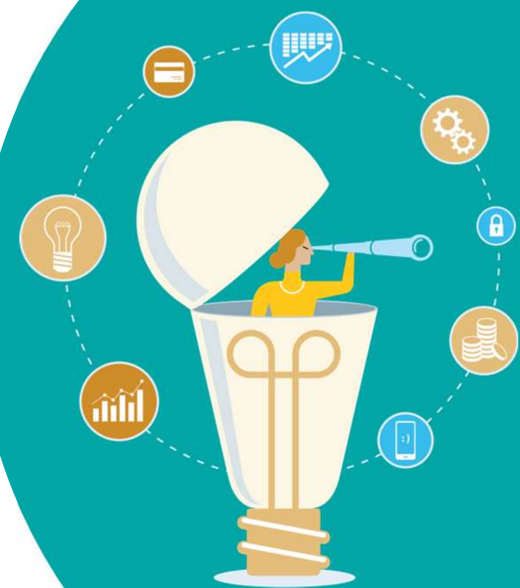
Select Nonprofit Legislation



Societies Act
Companies Act
Canada Not-for-Profit Corporations Act

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Societies Act

Societies may be incorporated for any
benevolent, philanthropic, charitable, provident, scientific, artistic, literary, social, educational, agricultural, sporting, or other useful purpose

- Cannot be incorporated *for the purpose of carrying on a trade or business*
- Cannot declare any dividends or distribute property among members

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Companies Act

Nonprofits incorporated under part 9 for the purpose of *promoting art, science, religion, charity or any other useful object*

- **Nothing prohibiting part 9 companies from engaging in commercial activities**
- The intention of these companies must be to apply any profits, or other income of the company, to promoting its objects
- Prohibits payment of any dividend to the members

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Canada Not-for-Profit Corporations Act

Nothing in this Act prohibiting engaging in commercial activities

- No part of a corporation's profits or property may be distributed to a member, **director or officer of the corporation except in furtherance of its activities** or otherwise permitted by the Act

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Poll

What legislation is your nonprofit incorporated under?

a) Societies Act
b) Companies Act
c) Canada Not-for-Profit Corporations Act
d) Not a registered nonprofit
e) I don't know

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Types of Registered Charities

- Private Foundations
- Public Foundations
- Charitable Organizations
- Other Qualified Donees

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Types of Registered Charities
Private Foundations

The *private foundation* designation is given if:

50% or more of the charity’s directors, trustees, or officers do not deal with each other at arm’s length

And/or

50% or more of its funding comes from a person or group that controls the charity

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Types of Registered Charities
Public Foundations

The *public foundation* designation is given to charities:

Typically give more than 50% of their income to other “qualified donees”

More than 50% of the charity’s directors, trustees, or officers deal with each other at arm’s length

Generally receives the majority of its funding from arm’s length
sources

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Types of Registered Charities
Charitable Organization

The *charitable organization* designation is given to charities:

Primarily carry out their own charitable activities

More than 50% of the charity's directors, trustees, or officers deal with each other at arm's length

Generally receives the majority of its funding from arm's length
sources

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What does this designation have to do with Social Enterprise?

- The Income Tax Act (ITA) prohibits **private foundations** from running *any* type of business
  - What is considered a *business?*
- **Public foundations** and **charitable organizations** are only permitted to operate *related businesses* inside the charity

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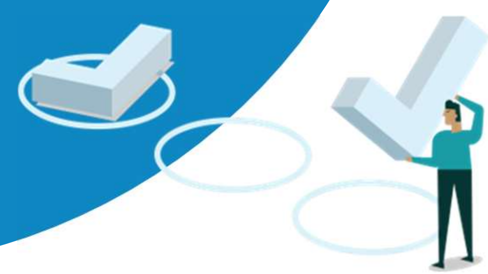
Poll

What type of registered charity is your organization?

a) Charitable organization
b) Public foundation
c) Private foundation
d) Not a registered charity
e) I don't know



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What the CRA considers to be a business

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Definition of *Business*

A business involves **commercial activity**

- deriving revenues from providing goods or services
- undertaken with the intention to earn a profit

CRA will consider:

- Intended course of action
- Potential to earn a profit
- Existence of profits in past years
- Expertise and experience of the person or organization that undertakes the activity

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Exceptions for Charities

Activities intended to earn a profit that the CRA does ***not initially*** consider as businesses:

- Soliciting donations
- Short-term fundraising
- Selling donated goods
- CED Businesses
- Investment activities
- Fees charged for charitable programs

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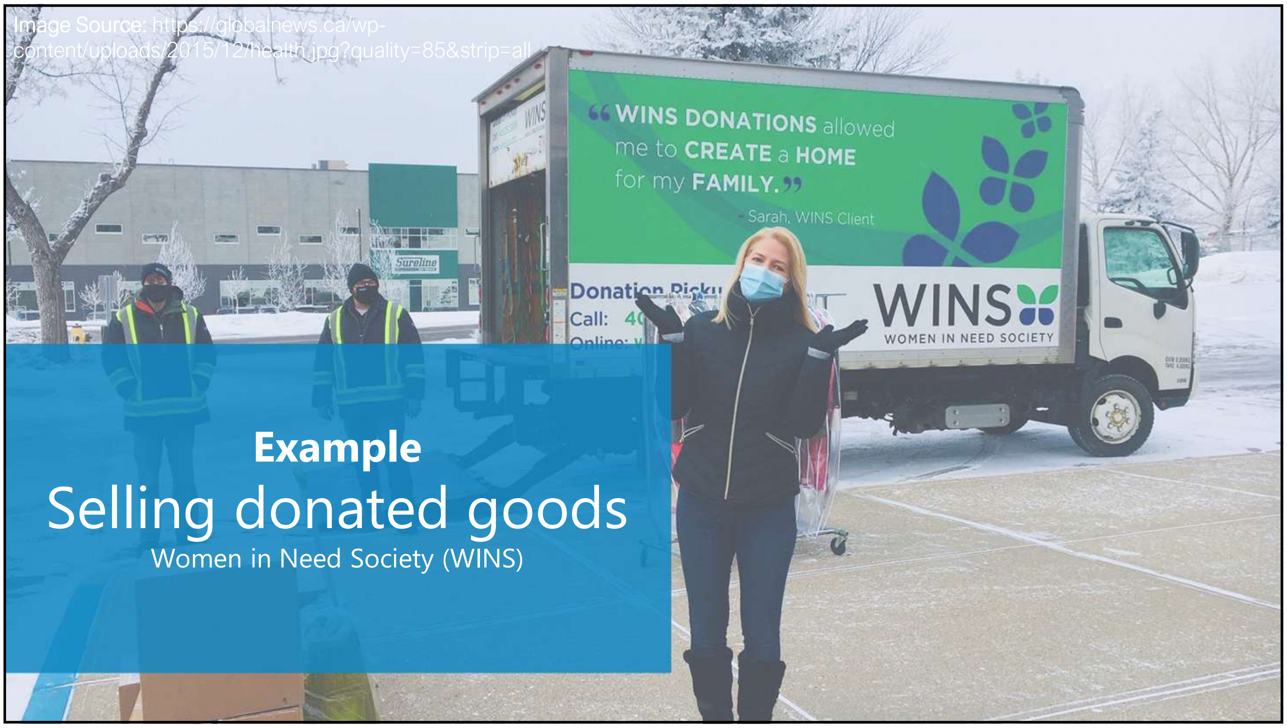

Example

Selling donated goods

Women in Need Society (WINS)

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What is a *Related Business?*

Two kinds of ***related businesses***

- Businesses that are run substantially by volunteers
- Businesses *linked* to a Charity’s purpose and *subordinate* to that purpose

Who can operate?

- Charitable Organizations
- Public Foundations

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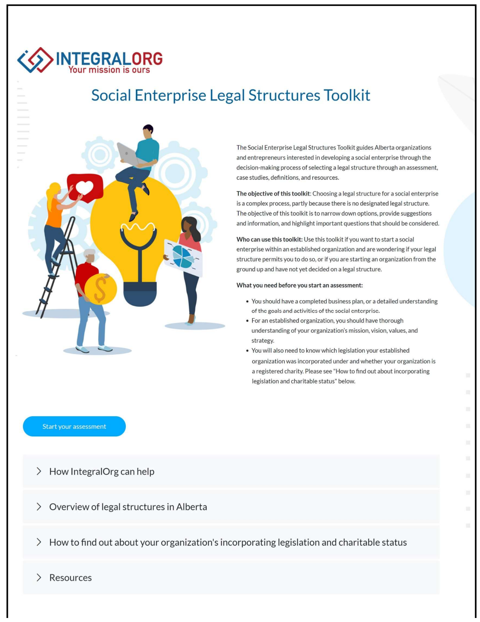
Social Enterprise Legal Structures Toolkit

Available now! toolkits.integralorg.ca



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Social Enterprise Legal Structures Toolkit

The Social Enterprise Legal Structures Toolkit guides Alberta organizations and entrepreneurs interested in developing a social enterprise through the decision-making process of selecting a legal structure through an assessment, case studies, definitions, and resources.

The objective of this toolkit: Choosing a legal structure for a social enterprise is a complex process, partly because there is no designated legal structure. The objective of this toolkit is to narrow down options, provide suggestions and information, and highlight important questions that should be considered.

Who can use this toolkit: Use this toolkit if you want to start a social enterprise within an established organization and are wondering if your legal structure permits you to do so, or if you are starting an organization from the ground up and have not yet decided on a legal structure.

What you need before you start an assessment:

- You should have a completed business plan, or a detailed understanding of the goals and activities of the social enterprise.
- For an established organization, you should have thorough understanding of your organization's mission, vision, values, and strategy.
- You will also need to know which legislation your established organization was incorporated under and whether your organization is a registered charity. Please see "How to find out about incorporating legislation and charitable status" below.

Start your assessment

- How IntegralOrg can help
- Overview of legal structures in Alberta
- How to find out about your organization's incorporating legislation and charitable status
- Resources

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https://youtu.be/hNVfHE6R35w

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Income Tax Act sections relevant to nonprofit organizations that are NOT registered charities

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Section 149(1)(I)

In order to be **exempted from having to pay income tax under this section, nonprofits** must be:

...organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for <u>any other purpose except profit.</u>

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CRA's Position on Commercial Activities

Generally, the carrying on of a trade or business directly attributable to, or connected with, pursuing the nonprofit goals and activities of an association will not cause it to be considered to be operated for **profit purposes**.

Source: Canada Revenue Agency, ARCHIVED – Non-Profit Organizations, Guidance NO: IT-496R, August 2, 2001

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What is a *profit* purpose?

- An organization claiming a tax exemption under s. 149(1)(l) cannot have a profit purpose, either *stated* or *unstated*.
- An *unstated* profit purpose may be found when:
  - The organization is operated on a profit basis rather than a cost-recovery basis
  - Excess income accumulates year after year in an amount greater than the organization's reasonable needs to carry out its nonprofit activities
  - The organization maintains unreasonable reserves

Source: *BBM Canada v Minister of National Revenue*, 2008 TCC 341

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Can tax-exempt nonprofits run social enterprises?

Generally, yes

As long as:

- The commercial activity is connected with pursuing the nonprofit objectives of the organization
- The income brought in by the social enterprise is accounted for as part of the organization's larger cost-recovery budget
- Any surplus earned is unanticipated

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“ An organization claiming an exemption under paragraph 149(1)(l) of the Act must be **organized** and **operated exclusively** for any purpose **other than profit**.

Generally, an organization claiming the exemption can earn a profit, as long as the profit is i**ncidental** and arises from activities **directly connected** to its not-for-profit objectives.

In addition to operating without a profit purpose, an organization cannot make its income available for the **personal benefit** of its members.

As always, it is a question of fact whether any organization is exempt from tax pursuant to paragraph 149(1)(l). ”

Wording used in CRA rulings and education letters to organizations claiming a S. 149(1)(l) exception

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Questions?

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Thank you for attending!

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Please complete our evaluation survey!

Your feedback will inform the delivery of our future training opportunities!

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When you have questions, IntegralOrg has services to help

A virtual or phone conversation

or

A clinic, a 1-hour problem-solving session between IntegralOrg subject matter experts and your team.

You might have questions about

- Attaining charitable status
- Strategic planning
- Policies & bylaws (writing and review)
- Social enterprise legal structures
- Governance and board development

These services are free of charge!
Find out more at *integralorg.ca/who-we-work-with/clinics/*

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