

# **Indigenous Business Toolkit Project**

## **Business Charters**

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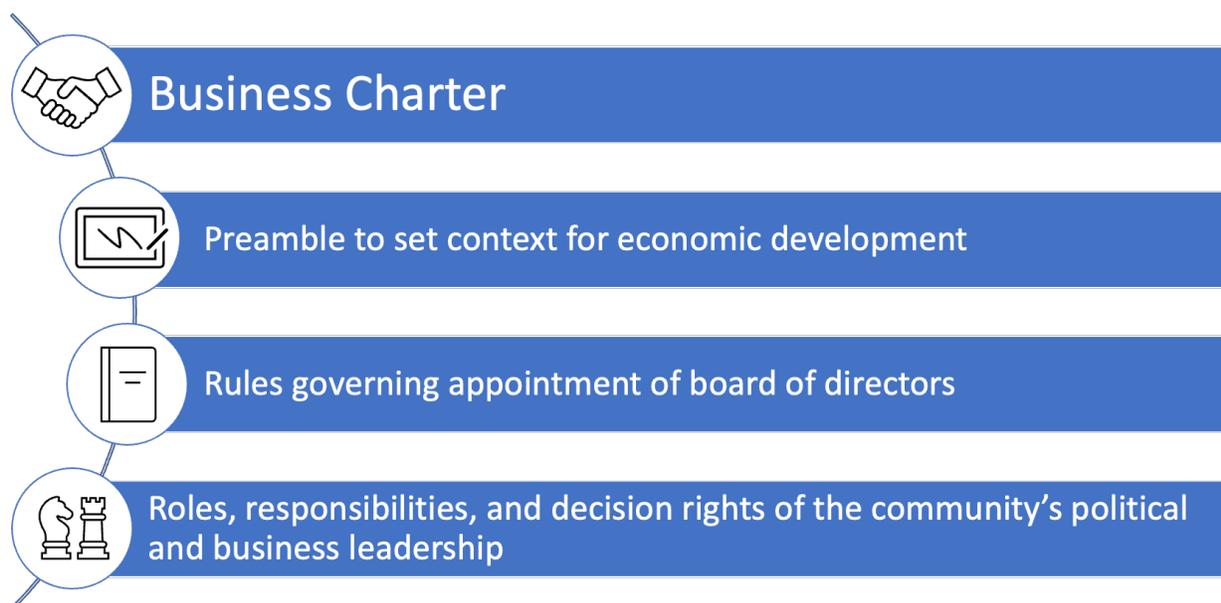
## Business Charters

### Summary

A business charter is a document used by an Indigenous community to delegate business authority to its business interests (typically through an Economic Development Corporation (EDC)). Although it is written in legal language, a business charter is largely a political document that outlines the relationship between a community and its business interest. A business charter is effectively a business constitution – an agreement the political leadership has with itself and the EDC on how both will act.

The components of a business charter include:

1. A preamble that sets the context for economic development and the EDC.
2. The rules governing the appointment of the board of directors.
3. The roles, responsibilities, and decision rights of the community's political and business leadership over such things as the strategic planning process, economic resources, dividends, board remuneration, dispute resolution, accountability and review, and the approval and amendment process.



## Why Are Business Charters Important?

A community's business interests are typically housed in an Economic Development Corporation (EDC). Since the EDC is a creation of the community and has been given access to community assets so it can operate, there is an expectation that it will be accountable to the community. At the same time, the community needs to understand the business needs of the EDC and to ensure these are met.

The purpose of the business charter is to bring clarity to the relationship between the political leadership and the EDC and to help each group better understand what they are expected to do and what they can expect the other group to do. In short, a business charter clearly and succinctly spells out the roles and responsibilities for both the EDC and the political leadership (e.g., Chief and Council).

Clarifying the roles, responsibilities, and reporting relationships between the EDC and the political leadership is important for a couple of reasons. First, as discussed in the *Separation of Politics and Business* module, having clear roles and responsibilities is critical to ensuring that the rules governing Indigenous business activity are stable and trustworthy; this stability, in turn, is an important part of generating strong business and community development.<sup>1</sup>

Second, a clear understanding of roles and responsibilities is important in shielding political leaders from legal liability if things go wrong in the business; this liability can emerge if the political leadership "reach over the shoulders of the board" and make the board's decisions.

Delegating authority can be a challenge for political leaders, since historically they have been responsible for everything in their community. Nevertheless, delegation is advantageous, since organizations function most effectively when people can specialize in the tasks in which they have expertise. This delegation, however, must be done with well-established rules, reporting mechanisms, and controls. The business charter establishes these rules, reporting mechanisms, and controls.

## What are the Components of a Business Charter?

While a business charter can take many forms, it generally includes the following elements.

### **Preamble**

The purpose of the preamble is to tell the story of the community and to put the EDC in the proper community context. The preamble of the business charter normally answers three questions:

4. Who are we? This can include a description of the community and some of the community's background and history. Most Indigenous communities have this type of material available from community plans.
5. What is the purpose of the economic development corporation?

6. Why are we preparing a business charter? What is its purpose and why is it important to have a business charter?

### ***Board of Directors***

Good governance begins with a strong and effective board of directors that oversees the EDC. Establishing a board requires addressing the following questions:

1. What is the composition of the board – e.g., How many board members? How many from the political leadership? How many community members at large? How many independent members? How many observers (if any)?
2. What are the qualifications for serving on the board? Although specific qualifications are often not included in the charter, but are left to EDC policy, there is usually a commitment that, except for malfeasance, board members cannot be replaced during their terms. The charter would also include language as to whether director terms can be renewed, as well as language related to conflict of interest.
3. What are the directors' terms – e.g., What is the length of a board member's term? Are the terms staggered? Is there a maximum to the number of terms that an individual can serve?

### ***Roles, Responsibilities, and Decision Rights***

#### ***Decision Rights***

One of the purposes of the business charter is to make it clear that the political leadership has the legal duty to act in the best interests of the community while the EDC's board of directors has the legal duty to act in the best interests of the business. This recognition of different duties is important because while the community and the EDC often have overlapping interests, there are times when these interests can differ.

When these interests differ, it is important to know who gets to decide. The business charter lays out the expectations as to how decisions will be made in such situations.

The key to determining who makes what decisions is to understand the organizational structure of an EDC. EDCs are created by a community, with ownership held by the community as a whole and not by individual community members. As owners – i.e., the sole shareholder of the EDC – the community is represented by its political leadership – e.g., Chief and Council – who have been elected by the community members.

The EDC has the legal responsibility and authority to make business decisions. They are a deciding body, not a recommending body. As a result, the political leadership does not have the authority to overturn the decisions of the EDC. At the same time, the political leaders – as representatives of the community/shareholder – have both the right and the responsibility to

appoint the board of directors and receive business reports. The political leadership must also ensure that the business has sufficient resources, especially in the start-up phase, to be able to perform its duties.

If the political leadership is unhappy with the board, their recourse is to go through the proper process and replace board members. Boards often have staggered terms to avoid the lack of continuity if a whole board were to be replaced at one time. The political leadership can also provide limits to the authority of the board on fundamental matters like investments and divestitures as a control mechanism.

### *Strategic Planning*

It is the responsibility of the board of directors to approve the strategic plan for the business. The CEO directly oversees the development of this plan and generally the board is involved in its development.

### *Resources*

An EDC needs resources to operate – e.g., the money to cover the overhead and operating costs, as well as the capital for business investments. The start-up period is the most challenging for any business, since it is extremely difficult, if not impossible, for an EDC to become successful with no initial resources. In addition, these resources may be required for a considerable length of time – e.g., it can often take five years or more for an EDC to be self-sustaining.

The resources for the EDC, particularly at start-up, are provided by the shareholder/community – indeed, it is the job of the shareholder to ensure that the business has adequate resources. Resources may be tangible assets – e.g., money or equipment – or intangible assets – e.g., access to opportunities based on Indigenous rights and recognition. In determining the resources to provide, the first question the shareholder/community must ask is not “When do we get our first dividends?” but “How do we ensure that the EDC is properly resourced so it can become successful?”

The business charter lays out the expectations that the community and the EDC have with respect to resource provision and availability. While the specifics of the resources required and how they are to be made available can and should be the subject of the strategic planning process and/or other discussions, the overall principles around resource provision are established in the business charter.

### *Limits of Authority*

The business charter can also spell out the limits of authority between the shareholder – i.e., the community – and the EDC. The shareholder may wish to limit the types of businesses that the EDC may enter and/or place limits on the divestiture of operating businesses. It may also wish to set the maximum investment the board is able to make without shareholder approval.

While the specifics of these limits are usually spelled out in the founding legal agreements, the principles around the limits should be included in the business charter.

### *Dividends*

The business charter also may include references to a dividend policy. Although it is the responsibility of the EDC's board to set the EDC's dividend policy, the shareholder may inform the process by outlining its expectations in the business charter. While the board is not legally bound to follow the shareholder's expectations (e.g., the expectations may be unreasonable given the EDC's earnings), the existence of well-defined expectations helps to avoid misunderstandings and conflicts between the community and the EDC.

### *Board Remuneration*

The business charter will often include language on board remuneration. Normally, the shareholder would approve the board of director remuneration as it would be a conflict for the board to approve its own remuneration. However, the board may undertake market research to help inform the board remuneration decisions made by the shareholder.

### *Accountability*

The creation of an EDC involves the delegation of authority from the political leadership to the EDC. However, the EDC is accountable to the political leadership as the shareholder's representative. This accountability follows the chain of authority – the CEO advises and reports to the EDC's board of directors, which then, via the board chair or the board chair and CEO, report to the political leadership. Finally, the political leadership, often with the board chair and the CEO, reports to the community members.

The content of the reports, especially the one to the community, is subject to discussion and debate. While there is a need for transparency and disclosure, care must also be taken to not overreport. The EDC usually operates in competitive environments and confidentiality is important – if business information is disclosed to the public, the EDC may lose its competitive advantage. Many EDCs prepare annual reports that are distributed to community members. These reports typically include high-level non-confidential financial information based on audited financial statements, employment numbers, and donation information.

The business charter can be used to lay out expectations about the reports to be created, the information they will contain, and the way they will be presented. While the details will be decided by the board and the political leadership, it is important to establish expectations to minimize misunderstandings and foster trust.

### *Review Process*

While the delegation of authority is important, it cannot be open ended. The political leadership and the EDC must spend time every year to review the EDC's performance and to discuss what is going well and whether there are any irritants. Dealing with issues before they

become major is critical if the partnership between the community and the EDC is to be sustainable.

#### *Dispute Resolution Process*

Business charters may also reference what is expected to happen if there are major differences and conflicts between the political leadership and the EDC. While having a dispute resolution process in place may not work especially well if things deteriorate seriously, it may nevertheless be helpful to have set out expectations in advance.

#### *Charter Approval and Amendment Process*

The business charter should also include a discussion of how the charter will be approved and amended. For instance, is unanimity of the political leadership required for approval and amendment or is a super majority (or even a simple majority) required? While unanimity ensures that everyone's voice is given weight, it also means that a small group can block desirable changes. At the same time, the requirement for a simple majority may result in too much change – for instance, people can often demand immediate changes due to anger and frustration. As with all aspects of the business charter, the goal is to create a set of expectations and norms that result in a business environment that is stable and trustworthy.

#### *Signatories*

The political leadership and the EDC's board of directors are the usual signatories to the business charter.

#### *Commemoration and Communication*

Communities often use public signing ceremonies for the business charter as way of communicating to themselves and the outside world that the community is business ready. Outside businesses have often been unwilling to do business with Indigenous communities because of a lack of confidence and certainty about how the community and its leaders will behave. A formal signing of the business charter can provide a strong message that the community has stable, robust, and trustworthy business processes in place. Some communities even hang framed copies or commemorations of the business charter in their administrative offices to remind people of its importance and significance.

#### *Business Culture*

One final word. A business charter is a rules-based approach to describe the relationship between the political leadership of a community and the community's EDC. For a business charter to be effective, the political and business leadership must invest time and effort in its development. Business charters should not be created by "filling in the blanks" of a basic template. Instead, it is the process of developing the business charter that is critical in building the business culture, since it is in the process of sorting out the various elements of the charter that the political and business leaders come to better understand the issues and the challenges that each party faces.

While some communities can operate as if they have a business charter, even if they do not, this is only possible if there is a strong business culture in the community. When this culture is not readily apparent, the creation of a business culture takes on added importance.

At the same time, if there is an underlying lack of respect between the political leadership and the business leadership, the creation of a business charter is unlikely to change things. Indeed, in such situations, the creation of a business charter is likely to be extremely difficult. Thus, a good litmus test for whether a community is positioned to support business development is the extent to which it can effectively engage in the process of developing a business charter.

## References

Bachiu, V., M.E. Fulton, and K. Jackson. 2024. *Separation of Politics and Business*. Indigenous Business Toolkit Project. Johnson Shoyama Graduate School of Public Policy, University of Saskatchewan. <https://www.schoolofpublicpolicy.sk.ca/research-ideas/projects-and-labs/indigenous-leadership-governance-and-development-project.php>.

## Endnotes

<sup>1</sup> Bachiu, Fulton, and Jackson (2023).

## **Indigenous Business Toolkit Project**

The Indigenous Business Toolkit Project is designed to provide Indigenous communities and individuals with the practical tools they and their advisors can use to undertake successful economic development. Indigenous economic development is more successful when everyone – community members, community leaders, consultants, business professionals, employees, and/or potential partners – understands its many aspects.

The Toolkit provides step-by-step instructions on selected aspects of economic development based on the best practices of leaders in the field. The modules in the Toolkit cover everything from the role of economic development in nation building, to the importance of business charters, to the various legal forms that can be used to pursue economic development, to the steps needed to identify and negotiate beneficial partnerships, to the governance challenges that economic development must address.

The modules are available for free and for use by anyone. The full set of Toolkit modules can be found at: <https://www.schoolofpublicpolicy.sk.ca/research-ideas/projects-and-labs/indigenous-leadership-governance-and-development-project.php>.

The Indigenous Business Toolkit Project is part of the larger Indigenous Leadership: Governance and Development project designed to support long-term Indigenous economic development. In addition to the toolkit, the larger project involves capturing the economic development experience of Saskatchewan Indigenous communities through a series of case studies. The case studies, along with a description of the larger project, can be found at the website listed above.

### **Disclaimer**

The information contained in this document is designed to provide an overview of a particular topic and should not replace legal and other expert advice. Groups wishing to use the concepts discussed should receive the appropriate professional advice necessary to ensure their specific goals and circumstances are considered and recognized.

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