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CATSA ACSTA

POSITION PAPER

CATSA'S Governance: The Choice of an Organizational Model

Canadian Air Transport Security Authority
Administration canadienne de la sûreté du transport aérien

Canada

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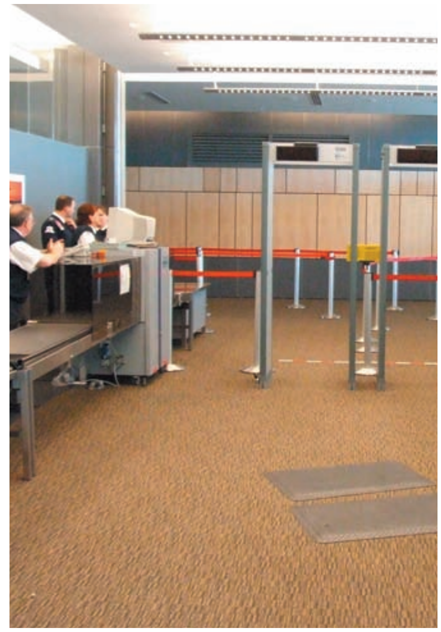


EXECUTIVE SUMMARY

This paper deals with one of the principal issues in the Five-Year Review: determining the optimal organizational model for CATSA as the entity grows beyond a start-up phase into 'steady-state' maturity. The paper begins with a brief review of the definitions, principles, questions and decision process that led up to choice of CATSA's current governance structure —the Crown corporation model. This is followed with comparative analysis of other possible "alternative service delivery" models. All are assessed and compared with the current model in terms of their relative strengths and weaknesses, with reference to CATSA's current mandate, and in relation to the requisites of good governance and effective security. Under present arrangements, as a Crown corporation, CATSA is highly accountable and transparent; meets public policy objectives; protects the public interest through citizen-centred service; and, ultimately, operates efficiently.

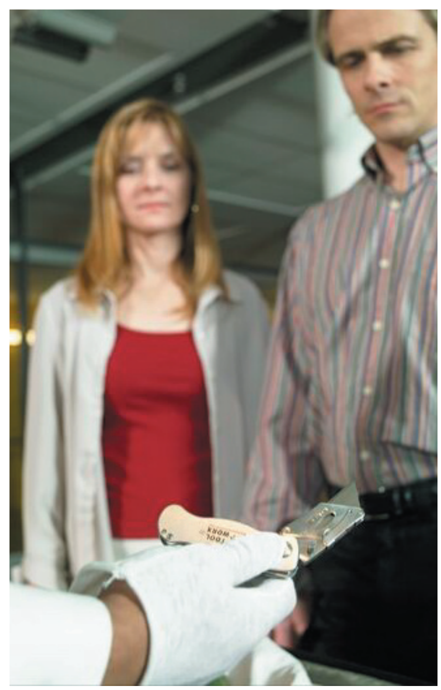
The pivotal issue is choosing an organizational model that achieves the right balance between two key requirements. On the one hand, there is need to ensure good governance, defined as meeting high standards of public accountability and compliance with public policy objectives, as well as the right degree of cost-efficiency and citizen-centred service. On the other hand, there is also need to ensure effective security; more specifically, that CATSA can conduct its activities with sufficient flexibility to address changing domestic and international realities and, thereby, maintain vigorous preventative security. Too stringent a model diminishes capacity to respond appropriately to emerging threats; while too flexible a model can hinder the public accountability and transparency needed for good governance in a democratic society.

The choice of CATSA's present model was appropriate and sound in the context of post-9/11. Through recourse to a public sector solution, rapid deployment and response were achieved while maintaining a high degree of accountability and public confidence. The Crown corporation framework enabled a vital system of "checks and balances" in which the monitoring and regulation of air transport security by Transport Canada remained far removed from CATSA, the organization responsible for overseeing the operational management and strategic oversight of air transport security in Canada.

Still, as CATSA continues to evolve from a start-up phase into 'steady-state' operations, significant enhancements in the parameters of governance now afforded CATSA are imperative if we are to maintain the right balance between good governance and effective security in the face of fast-evolving threats and terrorist tradecraft. Nonetheless, within the parameters of the Crown corporation model, CATSA can maintain this balance and achieve its objectives. Certain modifications to the model as applied to CATSA, which would enable operational and financial flexibilities afforded other Crown corporations, are recommended, but the Crown corporation remains the optimal organizational model for CATSA.

1.0 INTRODUCTION

One of the key areas of interest in this Five-Year Review is CATSA's governance model. Defining the right governance model enables the government to ensure appropriate accountability and compliance with public policy objectives, along with the right degree of efficiency and citizen-centred services. Operating under the right governance model enables the organization to conduct its activities effectively, with sufficient flexibility to adapt to changes in the external and internal environments. The question of balance is critical, particularly for an entity which, like CATSA, plays an essential role in national security. Too stringent a model prevents the entity from being able to respond to emerging threats, while too flexible a model could prevent transparency and hinder accountability.



In this paper we address the question of CATSA's governance and, more specifically, a subset of "governance": the choice of CATSA's organizational model. After discussing governance writ large, we describe the organizational models that exist in the realm of "alternative service delivery" and consider the differences among those models. We then look at the rationale for the model chosen for CATSA: the Crown corporation. Finally, we compare the current model to the other possible models and assess them in terms of the balance between stringency and flexibility described above.

1.1 Defining Governance

Experts on the matter define governance differently, but in its broadest sense, there is consensus that "governance" refers to the process by which organizations decide who should make decisions, undertake the decision-making process, and account for the outcomes of the process.[1] One author adds the aspects of coordination and collaboration: given the multitude of information and resources to consider, no single individual can, or should, have sole decision-making power. [2]

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In her November 2005 report, the Auditor General devotes a chapter to the governance of Crown corporations. She defines "corporate governance" as "the process and structure for overseeing the direction and management of a corporation so that it carries out its mandate and objectives effectively."[3] The Treasury Board Secretariat (TBS) adds that "good corporate governance can contribute to the Corporation's achievement of both its public policy and commercial objectives. The process and structure defining the division of responsibilities among the Crown, the board of directors, and management also establishes key accountability mechanisms."[4]

Finally, the Terms of Reference for CATSA's Five-Year Review indicate that the review will consider, inter alia, "governance and accountability, including the choice of the Crown corporation model and the responsibilities of the Minister, the Board of Directors, the Chairperson, and the Chief Executive Officer…"

Clearly, then, "governance" covers a broad range of considerations. CATSA is addressing governance in several papers for the Panel. A backgrounder entitled "Relevant and Effective: the CATSA Board of Directors" describes

1 For example, John Graham, Bruce Amos and Tim Plumptre, *Principles for Good Governance in the 21st Century.* Policy Brief no. 15, Institute on Governance, August 2003.

2 Gilles Paquet, *Qui a peur de la gouvernance décentralisée?* Article to be published in *Pour une décentralisation démocratique*, Québec, Presses de l'Université Laval, 2006.

3 Office of the Auditor General of Canada, *Report of the Auditor General of Canada.* November 2005, section 7.9.

4 TBS, *Corporate Governance in Crown corporations and other Public Enterprises – Guidelines*, June 1996.

the creation and composition of the Board, its role vis-à-vis the Minister of Transport and CATSA's senior management, and the Board's achievements. A position paper entitled, Strategy-Focussed and Accountable: CATSA's Integrated Planning, Measurement and Reporting Model describes CATSA's accountability mechanisms and performance measurement. A further paper considers the service delivery model that CATSA has chosen for screening at the designated airports. In this paper on governance, therefore, we address a subset of governance not already addressed in the aforementioned papers, namely the choice of CATSA's organizational model.

2.0 BACKGROUND TO CATSA'S GOVERNANCE

At the time of its creation in late 2001, the government of Canada was driven by the need to respond effectively and quickly to the potential threat of terrorist attacks in Canadian airspace (whether targeting Canada or the U.S.) or in Canada's air transport system. The confidence of Canadian citizens in Canada's security infrastructure had been shaken by the events of September 11, 2001, and decisive new measures were required to restore that confidence. Moreover, there was an expectation from the United States that Canada would take action to prevent any similar event from happening near or in the U.S.; otherwise, the U.S. itself could have taken more extreme measures to secure its own borders from terrorists. Enhanced measures such as the Canadian Air Carrier Protective Program (CACPP) and the national deployment of Explosive Detection Equipment for the screening of checked baggage were new features for air transport security in Canada. Given the variety of new and existing measures to be aggregated, it seemed reasonable to conceive of a new organizational model to house them.

2.1 Public Sector Management

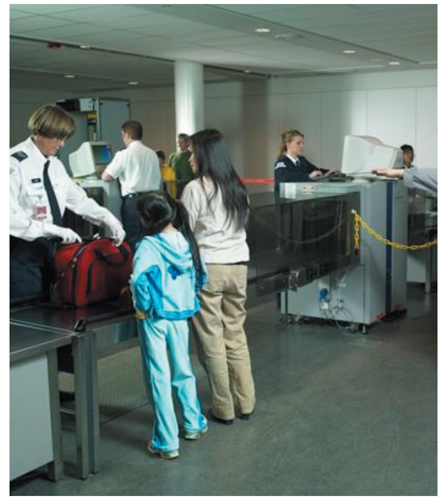
Different models were considered at the time CATSA was being designed in 2001, including having airports administer screening, creating a not-for-profit entity, creating a Crown corporation, or housing the functions in a government department. Airport authorities at the time made the case that they were the most appropriate organizations to take responsibility for screening, since the activity would occur in airports, and airports were responsible for other security matters. Such an approach was not deemed acceptable, since the gravity of the events of September 11th and the national security implications required a nationally consistent, decisive response with a single organization accountable for its success or failure. It was determined that the new functions needed to reside with an organization that would inspire Canadians' confidence in the government's response to national security threats, and that would be sufficiently responsible and accountable to manage and report on the use of some $1.94 billion in new funding. This need for a high degree of accountability and public confidence in the government swayed the decision in favour of a public sector solution. Moreover, national security was deemed a "public good", not a private interest, and thus it required public sector oversight and management.

2.2 A Crown Corporation

Once it was decided that CATSA would need to be a government body, the next layer of decision involved the type of government body to be created. The government felt it important to maintain the separation between the regulation of air transport security (then conducted by Transport Canada) from the operations of air transport security (then conducted by a variety of organizations – airlines, for example were responsible for pre-board screening of passengers and their belongings). The new organization would be responsible for operations, while Transport Canada would retain regulatory responsibility – thus ensuring a system of "checks and balances" where regulation and monitoring were separate from the organization being regulated. This attitude was particularly critical given the national security context in 2001: Canadians could not be left to believe that the body responsible for safeguarding their lives was also creating its own rules and monitoring itself.

The government felt it important to maintain the separation between the regulation of air transport security from the operations of air transport security. CATSA would be responsible for operations, while Transport Canada would retain regulatory responsibility– thus ensuring a system of "checks and balances" where regulation and monitoring were separate from the organization being regulated.

There were other advantages to separating air transport security operations from the policy and regulatory functions of a government department. For example, the government recognized that there was significant expertise in the private



sector (particularly airlines and airport authorities) that could be harnessed into the governance of the new Authority. A board of directors composed in part of industry-recommended experts could, it was felt, create greater industry support for, and confidence in, the Authority.

Another consideration might have been the need to have CATSA launch quickly and fill key staff functions. Government planners at the time doubtless recognized that, given its important national security role, CATSA could not hire necessary staff quickly under the employment and staffing regime under which government departments and some agencies operate. The staffing autonomy afforded Crown corporations would have better suited CATSA's needs in 2002. A private sector solution modeled on NAV CANADA, moreover, would have required financing generated from bond or other markets, a process that would have taken too long to meet the requirement for a speedy launch of the new Authority.

Within the spectrum of public sector organizational models, even after determining that the new functions would not be undertaken by a government department, the government had some choices. Crown corporations, service agencies, special operating agencies, departmental service agencies, departmental corporations, delegated and collaborative arrangements, all form the gamut of alternative organizational models that could have been adopted for CATSA. The distinctions among these models are discussed in detail below, but suffice it to say that the government needed to balance numerous factors in its choice of model, as described in the table below.

Organizational Models Considered in 2001 for Air Transport Security

Consideration	Response	Possible Organizational Model(s)
Public confidence in the government’s response to national security threats	Organization regulated and managed by the government; legislation defining mandate and activities	Department, Crown corporation, agency
Industry input and trust in the new model	Board of directors or advisory committee with real decision-making authority	Crown corporation, agency
Relative” autonomy” to conduct operations free from partisan political pressures	Head of organization not a patronage appointee; organization able to award contracts without political interference	Crown corporation with “unique” governance rules
Checks and balances between operations and quality testing	Separation between regulator and operator	Crown corporation, agency
Tight controls on spending and fiscal accountability	Requirements for annual reports and corporate plans tabled to a Minister and/or Parliament	Department, Crown corporation, agency
Formal separation between operational management and strategic oversight of the entity	CEO not a member of board of directors	Crown corporation, agency
Need to launch, staff and set up operations quickly	Flexibility with regard to staffing, remuneration	Crown corporation

Ultimately, based on the foregoing considerations, the Crown corporation model was chosen for CATSA. Certain measures typical of Crown corporations were, however, modified for CATSA. For example:

1. For most Crown corporations, the Governor in Council appoints all board members, while in CATSA's case, four board members are suggested by industry stakeholder groups, to the Minister of Transport.[5] The Minister of Transport in turn can use these suggestions to make recommendations to the Governor in Council. The rationale for this deviation from the usual process was to enable the new Authority to benefit from industry expertise, and to secure greater support for the model from the industry.

2. CATSA's CEO is not nominated by the Governor in Council, but rather by the board of directors – which is not the case for most Crown corporations. The government reasoned that such an approach would strengthen the "relative" autonomy of the Authority vis-à-vis the government itself. [6]

3. Moreover, CATSA's CEO is not a member of the board. This separation of roles has become increasingly common after recent private sector scandals in which the CEO was a member of the board and abused his or her influence on the financial oversight of the corporations involved. At the time of the creation of CATSA, however, such a measure was somewhat farsighted in that it anticipated the types of problems that would soon emerge in the private sector.

4. Finally, in the case of most Crown corporations, the Governor in Council may issue directions to the board in the public interest, but only after tabling in both Houses of Parliament. The Minister of Transport can also issue directions to CATSA. In CATSA's case, the Governor in Council could issue binding directions to the board, but the directions would not be statutory instruments requiring tabling in Parliament. Such an expedited process enables the Governor in Council to respond in a timely fashion to emerging situations, a feature deemed necessary given CATSA's security mandate.

5 Also, no senior public servants sit on CATSA's board, contrary to some other Crown corporation boards.

6 Interestingly, Mr. Justice Gomery, in his recent report, recommends that "The Chief Executive Officer of a Crown corporation should be appointed, evaluated from time to time, and, if deemed advisable, dismissed by the Board of Directors of that corporation." See recommendation 18 from the phase 2 *Report of the Commission of Inquiry into the Sponsorship Program and Advertising Activities,* February 1, 2006.

2.3 The Funding Model

The government considered a number of approaches to finance the new entity and the nearly $2 billion it would require over the next five years to undertake its mandate. It was clear to government planners in late 2001 that new funding would be required, generated through some form of tax. They considered three possibilities: funding via a user charge (where all of the funds generated would go directly to CATSA), operations funding via a Parliamentary appropriation funded through a tax, or operations funding via tax collected by CATSA itself. Based on our review of documentation drafted in late 2001, it was clear that the government did not intend for CATSA to become a self-financing entity. Thus, the second option: the creation of a new service charge that would enter the government's Consolidated Revenue Fund (CRF) and funding to the new entity from the CRF. Moreover, CATSA does not have the authority to borrow money, issue debt obligations or securities, or acquire or dispose of real property.

3.0 ALTERNATIVE SERVICE DELIVERY MODELS

CATSA's Crown corporation model falls within the rubric of "alternative service delivery" models, i.e. ways of delivering public services or programs without relying on direct delivery by a government department. According to TBS, innovation in program or service delivery – both within departments and in alternative organizational models - can help improve government's performance and cost-effectiveness, and the quality of service to Canadians.[7]

Myriad organizational models exist in the Canadian government for the delivery of programs and services, and the OAG observed in 1999 that the government did not know the extent of such models. At the time, there were over 75 delegated or collaborative arrangements set up by 51 departments and agencies.

The models can be categorized as follows: [8]

7 TBS, *Policy on Alternative Service Delivery*, April 1, 2002.

8 Based on a list provided in the November 1999 *Report of the Auditor General*, chapter 23.

1) Crown corporations
2) Special operating agencies
3) Legislated service agencies
4) Departmental service organizations
5) Collaborative arrangements
6) Delegated arrangements
7) "Borderline" arrangements

Crown corporations operate with a degree of autonomy from government, operating at arm's length but nonetheless pursuing public policy objectives and accounting for their activities to government.

Each of these models is described briefly below and summarized in a table.

3.1 Crown Corporations

According to TBS, "Crown corporations are distinct entities wholly owned, either directly or indirectly, by the Crown and managed by their respective boards of directors. The enabling legislation for each parent Crown corporation sets out the corporation's mandate, powers and objectives. The majority of Crown corporations must have their corporate plans and budgets approved annually by the government. Each parent Crown corporation reports to Parliament through the minister responsible for the corporation. These reports include the corporation's annual report."[9]

TBS adds that Crown corporations operate with a degree of autonomy from government, operating at arm's length but nonetheless pursuing public policy objectives and accounting for their activities to government.[10] Autonomy, through the corporation's structure and financing, occurs in two ways:

- in terms of independence and credibility as non-partisan, non-political providers of services
- in terms of day-to-day operations (including the management of financial, human, and physical assets), thereby enabling the organization to respond directly to customer demands in a business environment where private sector companies would not be viable because of market size or the level of risk.[11]

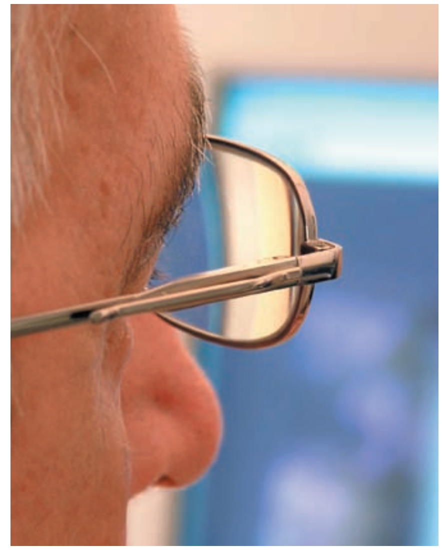
9 TBS, *Policy on Alternative Service Delivery*.

10 Indeed, recent assessments of government activities have underlined the need for government to report separately on votes assigned to key program initiatives, rather than "burying" these votes in the appropriation accorded to an entire department. See Peter Dobell and Martin Ulrich, *Parliament and Financial Accountability*, research study prepared for the Commission of Inquiry into the Sponsorship Program and Advertising Activities, November 1, 2005.

11 TBS, *Review of the Governance Framework for Canada's Crown corporations - Meeting the Expectations of Canadians*, February 17, 2005.

The financial aspects of Crown corporations are addressed in Part X of the *Financial Administration Act (FAA)*. Apart from the provisions in Division II relating to the board of directors (discussed in a backgrounder on the board of directors), some key provisions of the *FAA* that relate to Crown corporations are as follows:

- the corporation's accountability to Parliament
- the power of direction of the Governor in Council to the appropriate minister, pending consultation between the minister and the corporation's board of directors
- a prohibition on any person to dispose of or acquire shares of a Crown corporation, dissolve or amalgamate it unless allowed to do so under an act of Parliament; or to sell or otherwise dispose of its assets
- a prohibition on the corporation carrying out activities that are not consistent with its mandate or objectives
- a prohibition on borrowing money from any entity other than the Crown unless empowered to do so by an act of Parliament
- a requirement for the Crown corporation to submit an annual corporate plan which addresses all of the corporation's activities and businesses
- a requirement to seek prior approval from the appropriate minister if the corporation wishes to deviate from the activities set out in its corporate plan
- a requirement to seek prior Treasury Board approval for a budget amendment, should the corporation anticipate any significant variation in its expenditures or commitments for a given activity



- a prohibition on borrowing money without approval from the Minister of Finance
- the designation of the auditor is to be done by the Governor in Council, pending the appropriate Minister's consultation with the board of directors of the corporation
- the designation by the Governor in Council of the Auditor General of Canada as the corporation's auditor, unless the Auditor General waives this requirement
- the requirement to submit to a special examination at least once every five years and whenever the Governor in Council, the appropriate Minister or the board of directors of the corporation requires
- the requirement for the corporation to provide to TBS or the appropriate Minister any "accounts, budgets, returns, statements, documents, records, books, reports or other information as the Board or appropriate Minister may require"
- the requirement for the corporation to submit an annual report to the appropriate Minister, who in turns submits it to Parliament within three months after the end of the fiscal year

All of these requirements apply to CATSA except, as discussed in section 2.2 above, for a slight amendment to the power of direction of the Governor in Council. Indeed, it is worth noting that many Crown corporations enjoy exemptions from sections of the *FAA*, depending on the activities undertaken by these corporations. As well, enabling legislation for Crown corporations may confer upon them additional authorities (such as revenue generation).

3.2 Special Operating Agencies

According to TBS, special operating agencies (SOAs) are not independent legal entities; they remain part of their departmental organization, their employees are public servants and union members, and they are accountable to their home department for results.[12] Their relationship with their home department is governed by a framework agreement and a business plan setting out results, expected service levels, flexibilities and resources available to do their job (which generally involves the delivery of services, rather than policy formulation). The OAG adds that SOAs report to a deputy minister, in contrast to Crown corporations, which report to Parliament through a Minister.[13] SOAs might have a revenue collection function (such as the Passport Office), but others do not. Those that do generate revenue may operate financially through a "revolving fund," a non-lapsing appropriation that allows the SOA to make expenditures and receive revenues in support of operations.

Special operating agencies are not independent legal entities; they remain part of their departmental organization, their employees are public servants, and they are accountable to their home department for results.

Unlike CATSA, most SOAs were once operating units within a government department. The best candidates for a SOA model share a set of common characteristics: [14]

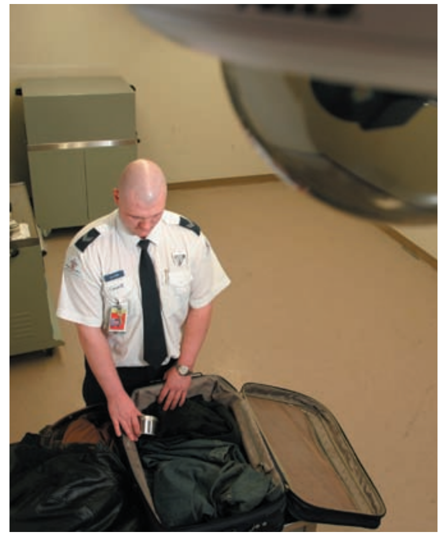
- They are mainly involved in service delivery, not policy advice
- They operate under a stable policy framework with a clear, ongoing mandate;
- They are held independently accountable within the parent department;
- They are amenable to the development of clear performance standards;
- They represent a discrete unit of sufficient size to justify special consideration;
- They require no significant ongoing ministerial involvement.

For organizations that exhibit these general characteristics, TBS indicates that the preferred alternative delivery mechanism is a legislated Service Agency (described below). However, a SOA could be considered under the following types of circumstances:

12 TBS, *Policy on Alternative Service Delivery*.

13 *Report of the Auditor General of Canada*, November 1999, chapter 23.

14 Most of this discussion is taken from TBS, *Becoming a Special Operating Agency*, 1998, revised March 2004.



- the program has such a significant or sensitive public policy purpose that the higher degree of autonomy found in the Service Agency may not be appropriate
- legislation would be inappropriate or impractical
- in some cases, the SOA may be intended at the outset to be of finite duration
- the program is too small to justify separate organizational and legal status

If we applied the foregoing considerations to CATSA, then, a SOA model might be applicable, in that CATSA is involved in service delivery and is highly accountable, operating under a particular policy regime. Moreover, the non-lapsing spending authority granted some SOAs would be of interest to CATSA as the Authority seeks financial flexibility to be able to fund capital projects such as airport expansions that tend to take several years and do not lend themselves to annualized budgets. On the other hand, the SOA model does involve some level of departmental oversight (reporting to a deputy minister, for example), which might be perceived as a lesser authority than Parliament in the case of national security matters.

3.3 Legislated Service Agencies

Legislated service agencies (LSAs) are established under constituent legislation to manage the delivery of public services.[15] Some examples include the Canadian Food Inspection Agency and the Parks Canada Agency. LSAs are similar to CATSA in the following respects:

- They are subject to a power of ministerial direction
- They are audited by the Auditor General
- They are managed on the basis of a corporate business plan

15 TBS includes "departmental corporations" such as the Atomic Energy Control Board or the National Research Council in its description of LSAs. See the TBS *Policy on Alternative Service Delivery*, 1999, and the TBS *Framework for Alternative Service Delivery*, 1995.

- They are headed by a CEO (although the LSA's CEO reports to a Minister, while CATSA's CEO reports to a board of directors)
- They are considered to be a separate employer under the *Public Service Staff Relations Act*
- They must comply with the *Official Languages Act*, the *Access to Information Act*, and the *Privacy Act*, as well as the federal identity program

Despite these similarities, LSAs can have greater flexibilities than Crown corporations like CATSA, in the following respects:

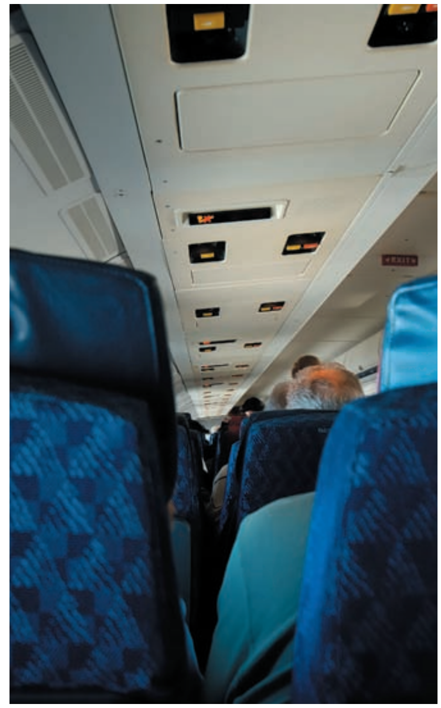
- They have particular financial and administrative authorities to improve performance and service delivery, such as the ability to enter into partnering arrangements (including with the provinces), non-lapsing spending authority, and revenue retention
- They may create regulations in certain areas [16]

The financial flexibilities would be attractive to CATSA, in that the Authority could respond to emerging security threats and direct its funds accordingly, without being bound tightly to commitments made in an annual corporate plan which provide a 5-year forecast. Being more closely linked to a government department might facilitate CATSA's access to information (depending on the department involved). However, CATSA as a Crown corporation benefits from other features not typical of LSAs, such as a board of directors with industry representation, and board authority to name the CEO.

16 An example is the Canadian Food Inspection Agency.

3.4 Departmental Service Organizations

These organizations are quite rare in the Canadian government: only one organization of this type, the Meteorological Service of Canada, exists. Departmental Service Organizations (DSOs) do not require separate legislation and report to a deputy minister. They are typically responsible for the delivery of services to the department's clients.[17] Given the rarity of such organizations, it does not seem realistic to consider their relevance to CATSA.



3.5 Collaborative Arrangements

Partnerships and collaborative arrangements involve arrangements "between a government institution and one or more parties (inside or outside government) where there is an explicit agreement to work cooperatively to achieve public policy objectives and where there is: a joint investment of resources (such as time, funding, expertise), an allocation of risk among partners, and mutual or complementary benefits.[18] Governance arrangements, specific administrative arrangements and funding mechanisms will vary depending on the type of program or service being delivered and other factors. TBS classifies these arrangements into several sub-categories, as follows:

Between federal departments without transfer of funds

- Generally speaking, these arrangements do not require enabling legislation, but are operated within the legislative mandates of the departments involved. If, for example, CATSA were funded through more than one department, such as both Transport Canada and Public Safety and Emergency Preparedness Canada, then this type of arrangement might be contemplated. This would not provide CATSA with more operational or financial flexibility per se, unless legislation and regulations were amended to provide CATSA with those flexibilities.

17 TBS, *Policy on Alternative Service Delivery*.

18 TBS, *Managing Collaborative Arrangements: A Guide for Regional Managers*, 2003.

Between federal departments with pooling of operating or capital funds

- Sometimes, there may be a delegation or actual transfer of legislated authority from one department to an administering department. Funding may involve transfers via the supplementary estimates, interdepartmental settlements, or government department suspense accounts. If, for example, responsibility for CATSA were to move from Transport Canada's oversight to another department, but Transport Canada continued to have authorities related to CATSA, then this type of arrangement might occur. As with the approach described immediately above, this would likely not provide CATSA with more operational or financial flexibility unless legislation and regulations relating to CATSA were amended.

Between federal departments in the delivery of contributions programs

- TBS would approve the programs for each participating department, or could approve an umbrella set of terms and conditions for the entire program. No legislative authority is required, and funding arrangements can occur as above. This type of arrangement does not seem likely to be relevant to any future possibilities for CATSA.

With non-federal partners that contribute funding

- Similar to the above arrangements, but involving not-for-profit organizations, municipal or provincial governments, or other non-federal organizations. If funds are to be administered by a federal government department from a non-federal source, however, special arrangements need to be made to designate such funds, usually via a specified purpose account. If, for example, CATSA were a not-for-profit corporation that derived funding from both Transport Canada and the private sector (airport authorities, airlines, etc.), then this type of arrangement might be relevant.

With non-federal partners, with federal financial participation

- Typically, these arrangements are governed by Transfer Agreements (if the government is transferring responsibility for a program or service) or contribution agreements (if the government is providing funding for the delivery of a program or service). These arrangements carry some risks for the federal partner, which could be in violation of the *FAA*, if the government is held liable for amounts exceeding approved parliamentary appropriations. This risk can be reduced by ensuring that agreements explicitly document the mechanisms and conditions under which losses would be shared or guaranteed, and by capping maximum federal exposure in line with approved program/project authorities. If, for example, CATSA were no longer a public sector organization, but it ran screening operations on behalf of the government, then this type of arrangement might be considered.

Given the range of collaborative arrangements, it is possible that some such arrangement could provide CATSA the balance between accountability and public sector oversight on the one hand, and operational and financial flexibility on the other.

3.6 Delegated Arrangements

These arrangements are defined by the OAG as "arrangements where the federal government confers discretionary authority and responsibility over program design, planning, management and delivery of federal functions to independent outside bodies, usually corporate boards of directors, within a broad strategic policy framework provided by government."[19] The government may appoint some directors, but usually not a majority, and it has no power to remove directors it did not appoint. Nor does it usually have the authority to review and approve corporate plans, as it does with Crown corporations.

The difference between collaborative arrangements and delegated arrangements thus appears to be the degree to which the federal government relies on the

19 *Report of the Auditor General of Canada*, November 1999, chapter 23.

service delivery organization to define program policy, program design and management: the federal government plays a more prominent role in these areas with collaborative arrangements than with delegated arrangements. Nonetheless, the OAG has indicated that "the classification of arrangements into collaborative and delegated … [is] … not always apparent….The key distinction … [is]… whether the government has delegated to non-federal party significant management discretion in the delivery of federal public objectives."[20]

Delegated arrangements could be of interest to CATSA, since they incorporate some of the positive features of Crown corporations (such as governance via a board of directors) with financial and operational flexibilities enjoyed by non-governmental organizations. CATSA would, however, have to become an "independent outside body", likely a not-for-profit corporation without share capital. Funding for CATSA's operations could then come from a combination of revenue-generating activities and contributions from federal departments (similar to the Canadian Television Fund), or from financing generated through debt markets (similar to the St. Lawrence Seaway Management Corporation, or Nav Canada, as described below).

3.7 "Borderline" Arrangements

Following the OAG's 1999 report, "borderline" arrangements may be collaborative or delegated arrangements, but with additional features. Indeed, TBS does not refer to "borderline" arrangements at all. According to the OAG, such arrangements exist "where the federal government has promoted and sponsored an entity to effectively take over federal responsibilities but where there are no federal moneys, direct involvement or currently owned assets, even though the federal government retains a degree of legal, constitutional or political interest."[21]

Interestingly, the OAG considers Nav Canada to represent a "borderline" arrangement. A corporation without share capital, it operates as an economically

20 *Ibid.*
21 *Ibid.*

self-regulating entity financed through the debt markets, with over $2 billion in long-term debt traded on public markets. A profile of the corporation is provided below.

A Profile of Nav Canada

NAV CANADA is a private, non-share capital corporation whose business is to own, manage and operate Canada's civil air navigation system (the "ANS"). Transport Canada regulates the Company in respect of safety. [22]

Company Formation

NAV CANADA was formed as the result of a broad consensus amongst all the key stakeholders in the ANS - the Government of Canada, users of the ANS (private, business, and commercial operators and carriers) and employees of the ANS represented by the bargaining agents. These stakeholders felt that the ANS could be provided more efficiently by a private commercial entity than it had been by the Government of Canada. NAV CANADA acquired the ANS from the Government of Canada for a purchase price of $1.5 billion, and began operating the system on November 1, 1996.

The reasons behind the decision to devolve the ANS from Transport Canada were to separate the regulator (Transport Canada) from the operator of the ANS, thus creating checks and balances within the system; to improve customer service; to enable investments where they were necessary; and "to escape the burden of across-the-board government fiscal restraints and personnel policies." [23]

No Profit Motive

NAV CANADA's corporate structure is specifically designed as an economically self-regulating entity, with a system of checks and balances to ensure that all elements of a safe, cost-effective and efficient ANS are assured. The Company is financed through the debt markets, with $2.175 billion in long-term bonds available for trade every day.

NAV CANADA also charges airlines and other owners and operators of aircraft for the services it provides, with charges in general based on aircraft weight and distance, but also including annual, quarterly and daily charges.

Disclosure

NAV CANADA must operate in an open and transparent manner with full and complete information disclosure to all stakeholders. The Company is also subject to the various securities laws in effect across Canada.

Conclusion

NAV CANADA has established a strong record of transparency and sound corporate governance as owner and operator of the ANS since 1996. This has seen the Company though the challenges related to the financial crisis in the aviation industry. Our model has been an important factor in the Company's ability to develop and implement a balanced action plan to deal with a significant revenue shortfall attributable to the industry downturn. The balance inherent in our approach is drawn from the accountability and transparency that is at the heart of our governance model.

22 Most of this discussion is taken from Nav Canada's backgrounders, "Corporate Governance" and "Additional Details on Service Charges."

23 Nav Canada, *Eyes on the Skies*, August 2002.

The Nav Canada model presents some interesting features for CATSA, in terms of governance, financial and operational flexibility. CATSA would be relieved of the requirement to seek Parliamentary approval of its plans and reports, and could direct funds to evolving priority areas more easily. As new air transport security techniques emerge, CATSA might have the ability to pilot or implement them – depending on the regulatory regime in place.

If CATSA were to opt for a Nav Canada-inspired organizational model, then, there would however be some effort required to create the new entity. Although Nav Canada began operations in its current structure in late 1996, it was incorporated in May 1995, and the devolution process began earlier than that. Such a two-year process to devolve national security matters from the federal government to a new private sector entity might be perceived to weaken air transport security. Indeed, although there are precedents for such devolution in the transport sector, there do not appear to be such precedents in the national security sector. As well, if CATSA were required to seek financing in the marketplace (by issuing debt, like Nav Canada), it could be perceived that marketplace financing considerations and efforts could take up more of the Authority's attention than core security functions. If CATSA were also responsible for setting and collecting the ATSC, then additional administrative overhead would be required at CATSA. Finally, the operational flexibilities that CATSA is ultimately seeking relate to the regulatory regime imposed by Transport Canada. Even a private corporation like Nav Canada or an airport authority operates according to regulation, and there is no guarantee that CATSA, as a private corporation, would have a more streamlined or risk-based regulatory regime than the current one.

The various service delivery models are summarized in the table below.

Federal Approaches to Program and Service Delivery

Organizational Model	Key Features	Funding Source(s)	Examples
Traditional Ministerial Accountability Arrangements			
Departments and Agencies	Federal entities reporting directly to a minister and subject to the administrative rules and regulations of Treasury Board and the Public Service Commission.	Generally governed by *FAA*: Parliamentary appropriation; may collect user fees from programs; may have revolving funds	• Transport Canada • Public Safety and Emergency Preparedness Canada • Canadian Transport Emergency Centre
Crown corporations	Federal entities that have a board of directors are involved in a federal public policy purpose and report through a minister to Parliament.	Generally governed by Schedule III of Part X of the *FAA*: Parliamentary appropriation, revenue generating possibilities depending on enabling legislation	• CATSA • Canada Post Corporation • Canadian Broadcasting Corporation
New Arrangements Under Direct Ministerial Accountability			
Special Operating Agencies	Remains part of a federal department, reporting to a deputy minister.	Parliamentary appropriation via reporting department; may generate revenue; may have a revolving fund	• Passport Office • Consulting and Audit Canada • Defence Research and Development Canada
Legislated Service Agencies	A federal entity with its own CEO reporting to a minister but with greater administrative autonomy than a department.	Similar to departments.	• Canadian Food Inspection Agency • Parks Canada Agency • Canadian Space Agency

Federal Approaches to Program and Service Delivery

Organizational Model	Key Features	Funding Source(s)	Examples
Departmental Service Organizations	Operational units or clusters of units within a department that are specifically organized and responsible for delivering services to the department's clients. Management framework approved by the deputy minister and TBS. No separate legislation is required.	Funded via government department's appropriation.	• Meteorological Service of Canada
Collaborative and Delegated Arrangements			
Collaborative Arrangements	Partnering arrangements with other levels of government, the private and/or the voluntary sectors, where policy and operational decision-making and risk are shared among partners. Accountable to Parliament or minister(s).	Varies depending on negotiated arrangement: partners may generate revenues, raise financing, or receive government grants or contributions.	• Labour Market Development Agreements • Canada's Model Forest Program

Federal Approaches to Program and Service Delivery

Organizational Model	Key Features	Funding Source(s)	Examples
Delegated Arrangements	Arrangements where the federal government confers discretionary authority and responsibility over program design, planning, management and delivery of federal functions to independent outside bodies, usually corporate boards of directors, within a broad strategic policy framework provided by the government.	Varies depending on negotiated arrangements: may generate revenues, raise financing in private markets, or receive government grants or contributions.	• Canadian Airports Authorities • Canada Port Authorities • The St. Lawrence Seaway Management Corporation
Borderline Arrangements	Federal government promotes and sponsors an entity to effectively take over federal responsibilities, but not federal monies, direct involvement, or currently owned assets. Federal government retains some measure of legal, constitutional or political interest	Varies depending on negotiated arrangement: may raise private equity or debt; may generate revenues; may receive government grants or contributions.	• Nav Canada • Strait Crossing Bridge Ltd.

Sources: OAG, *Report of the Auditor General of Canada*, November 1999, chapter 23.

TBS, *Policy on Alternative Service Delivery*, April 1, 2002.

TBS, *Framework for Alternative Service Delivery*, 1995.

John Dingwall, *Special Operating Agencies: Financial Issues*. Canadian Centre for Management Development and Consulting and Audit Canada, 1999.

In theory, the different models could be distinguished in terms of their governance models, administrative structures, responsibilities and funding arrangements. In practice, however, a special operating agency may appear close to, say, a Crown corporation, while the types of shared governance corporations can be extremely varied.

4.0 CONSIDERATIONS WITH RESPECT TO CATSA'S ORGANIZATIONAL MODEL

In other position papers, CATSA has highlighted its numerous achievements since its creation, as well as the challenges that the current organizational model presents. If we consider the attributes of ideal alternative service delivery arrangements identified at the start of this paper, it becomes clear that CATSA fulfils these attributes, and would do so even in a different organizational model. For example:

4.1 CATSA is accountable and transparent

CATSA submits its annual report to Parliament and makes it available to the public. CATSA's corporate plan is also submitted for approval by Parliament. Performance measures, balanced scorecards, and business intelligence systems are based on effective tools from the public and private sectors. And CATSA has developed measures and reports on outcomes in terms of efficiency, effectiveness, consistency and customer confidence.

4.2 CATSA meets public policy objectives

Whatever its organizational model or governance structure, CATSA must support the government's national security and air transport policies. Currently this is accomplished through legislation specific to CATSA (the CATSA Act), legislation applicable to all government organizations (regarding official languages, financial administration, etc.), and regulations and measures enforced by Transport Canada. But, as shown above, other organizational models could equally support public policy objectives, while being more responsive to emerging national security threats or sudden events.

4.3 CATSA is citizen-focussed and protects the public interest

CATSA's *raison d'être* is administering programs for public security – not creating regulations, leasing facilities, generating returns for shareholders, or other functions undertaken by airports, airlines, or government departments. At the same time, the Authority strives to balance its security mandate with high sensitivity to passenger needs and confidence. Evolution toward a more flexible operational model would enable CATSA to strengthen airport security, while remaining citizen-focussed; the necessary flexibilities and conditions could be spelled out in framework agreements, risk-based regulation or amended legislation.

4.4 CATSA operates efficiently

CATSA's budgets are scrutinized closely by TBS; indeed, to satisfy TBS concerns, the Authority has even engaged a private accounting firm to review the budget assumptions and forecasts and determine whether funds are being allocated efficiently and effectively.[24] One conclusion was that CATSA's overhead costs are reasonable compared to similar-sized organizations. Moreover, CATSA measures and reports quarterly on costs of pre-board screening per passenger, passenger throughput at screening lines, budget vs. expenditures and other indicators of efficiency. Ongoing data collection and frequent reporting enable CATSA to manage its costs with a view to efficiency and security. Whether CATSA were a Crown corporation, an agency, or a not-for-profit corporation, these mechanisms would remain in place.

Evolving to become a mature organization, with responsibility for infiltration testing, the prohibited items list, and selecting and evaluating new equipment, CATSA and its Board can be held accountable to ensure continuous improvements to performance. In this sense, CATSA has "outgrown" the need for strict oversight of its operations by Transport Canada. The prescriptive regulatory regime, for example, might have been necessary to build an effective security organization, but it now hampers CATSA's ability to achieve its mandate and goals. Limits on carry-forwards and cost recovery might have been

24 Deloitte and Touche LLP, *Canadian Air Transport Security Authority Financial Budget Review*, April 15, 2005.

appropriate for the first five years, but these limits have become impediments to responding to new security threats.

CATSA's strategic priorities: operational and financial flexibility, access to information, and strong collaborative partnerships, require some modifications to the existing organizational structure. These priorities could be achieved in any number of operational models, provided the appropriate tools are in place. For example, as a Crown corporation, albeit with some policy or regulatory and legislative changes, CATSA could continue to support its mandate, while achieving its strategic priorities. Certain agency models, partnerships and collaborative arrangements could also support CATSA's mandate and strategic objectives.

5.0 CONCLUSIONS AND RECOMMENDATIONS

At this point in CATSA's existence, it is worth reviewing the appropriateness of CATSA's organizational models, and the attributes of an "ideal" model. As an instrument of public policy, CATSA must:

- Submit corporate plans and annual reports for outside scrutiny
- Comply with regulations, legislation and public policy objectives
- Ensure consistent service across Canada in both official languages
- Provide effective security in an efficient manner
- Submit to annual audits and periodic evaluations whose results are made public
- Develop and implement effective tools for performance measurement and reporting
- Implement internal policies and mechanisms to ensure fairness in contracting and hiring

CATSA believes that the best balance among the imperatives of accountability and flexibility can exist within a Crown corporation model.

CATSA believes that the best balance among the imperatives of accountability and flexibility can exist within a Crown corporation model. Currently, however, CATSA does not enjoy the mechanisms available to other Crown corporations which have relative autonomy from government departments, and true public accountability. As is discussed at greater length in CATSA's position paper entitled *Looking Forward: the Ideal CATSA*, other Crown corporations have financial flexibilities -- such as non-lapsing budgets and the capability to generate revenues and cost recover -- that would be equally useful to CATSA.

Moreover, CATSA's Board of Directors carries a heavy burden of accountability, even though many decisions critical to CATSA's strategic direction are made by other government officials. Thus, for example, even though CATSA's Board could approve activities through the corporate planning process, CATSA must still seek approval – and might be required to make modifications to the Board-approved plan – by Transport Canada departmental officials. Nonetheless, CATSA recommends retaining the Crown corporation model, while securing operational and financial flexibilities that would bring CATSA more in line with other Crown corporations.