



Meeting the Expectations of Canadians

Review of the Governance Framework for Canada's Crown Corporations

REPORT TO PARLIAMENT

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Executive Summary

Crown corporations play a vital role advancing government policy priorities and objectives in critical sectors from transportation and agriculture to culture and communications. With a mixture of public policy and commercial objectives, they are extraordinarily diverse and range in size from less than five employees to more than 45,000. Strengthening Crown corporation governance is an important element in the Government of Canada's agenda to strengthen public sector management.

The government will take action in several key areas.

The government will clarify the accountability structure for Crown corporations. The responsible Minister will be identified as the government's representative and the Minister's accountability to Parliament for the discharge of responsibilities related to this role will be affirmed. Ministers are ultimately accountable to Parliament for the overall effectiveness of Crown corporations in their portfolio, in addition to being answerable for all activities of the Crown corporation, including its day-to-day operations. The Board of Directors is accountable to the responsible Minister for the stewardship of the corporation. The chief executive officer (CEO) of the corporation is accountable to the Board of Directors.

The government will reinforce the notion of active ownership. The responsible Minister, as the representative of the owner, will be required to provide Crown corporations' Board of Directors with a clear statement of the government's policy priorities and performance expectations for the corporation, which would form the basis of a periodic review of the corporation's performance.

Governance experts agree that a critical element of achieving sound governance is choosing qualified directors to sit on Boards. The government will further refine the appointment process for chairs, directors, and CEOs so that it is not only transparent, professional, and competence-based, but is also consistent with the ability of the government to exercise its responsibilities as owner.

In the arena of corporate governance, the government has drawn upon best practices including those from the private sector where their application to the public sector is desirable. Measures include ensuring that boards are independent from management, providing orientation and continuing education programs for directors, and mandating the use of evaluations. Audit

committee composition requirements will also be revised to ensure that individuals chosen for audit committee work have the requisite qualifications. Audit committees will have direct oversight responsibilities for both external and internal audit functions.

To improve transparency, the government will extend the *Access to Information Act* to 10 of the currently 18 exempt Crown corporations and will examine means of including the remaining corporations under the Act in ways that protect their commercially sensitive information. Protection for journalistic sources will also be developed.

The government will also make significant changes to the audit regime of Crown corporations. The Auditor General of Canada will be made auditor or joint auditor of all Crown corporations and will be given the authority to conduct special examinations in all Crown corporations. With respect to the special examinations, the government will introduce a more flexible and transparent regime. The Auditor General will determine the frequency of special examinations for each corporation given their mandate, business lines, and risks. The special examination will be made available to the responsible Minister, Treasury Board, and Parliament.

Crown corporations will also be subject to the proposed *Public Servants Disclosure Protection Act*, Bill C-11, which will establish a mechanism for the disclosure of wrongdoing in the public sector and protect public servants who make disclosures. The proposed legislation provides substantial protection in law from reprisal for good faith disclosures and requires all federal institutions to establish their own codes of conduct and an internal disclosure mechanism.

These measures represent a significant step forward to strengthen the governance of Crown corporations. The government will act in a timely manner to implement the measures outlined in this report.



1. Introduction

Good governance requires transparency and accountability. Together, transparency and accountability build trust. No institution, no matter its size or mandate, can remain viable for very long if the bonds of trust are broken by the failure or perceived unwillingness to disclose information, explain decisions, and justify actions. Indeed, transparency is what makes accountability possible—not least because trust depends as much on being seen to be accountable by operating in a transparent manner as it does on meeting specific accountability requirements—whatever form they may take. In democratic societies, the people—whose interests institutions have been created to serve—possess not only the right but also the responsibility to access institutions, to analyze their information responsibly, and to participate in purposeful processes with these institutions.

Recently, the attention of Parliament, the news media, and Canadians has been focussed on the findings of the Auditor General's Report of November 2003 on *Government-Wide Audit of Sponsorship, Advertising, and Public Opinion Research*. In this report, the governance and activities of six of Canada's Crown corporations came under scrutiny. These organizations are correcting the deficiencies highlighted by the Auditor General. Nevertheless, as announced on February 10, 2004, as part of a package of initiatives to strengthen transparency, oversight, accountability, and management across the entire federal public sector, the Government of Canada made a commitment to take a thorough look at the governance and accountability framework for all of its Crown corporations, and to report to Parliament on its findings.

What Canadians are Saying About Accountability

Canadians are seeking the same assurances from all levels of government: that governments will

- ▶ spend taxpayers' money as though it were their own;
- ▶ provide better and more accessible information on how public funds are being used and what outcomes result from public expenditures;
- ▶ keep the promises that they make; and
- ▶ provide independent, non-political oversight to monitor whether governments are fulfilling their responsibilities and provide citizens with trustworthy information especially with respect to health, safety, the environment and the sound management of resources.

— J. Abelson, Ph.D., and F. Gauvin, M.A., Canadian Policy Research Networks Inc., for Treasury Board of Canada Secretariat (May 2004)

No comprehensive public review¹ of the governance and accountability framework under which federal Crown corporations operate has been conducted in this country in 20 years. In 2004, the Government of Canada believed that the time had come for such a review, particularly in light of the fact that improvements to corporate governance including transparency and accountability are being implemented in the private sector, in other jurisdictions in Canada, and in other countries. Ideally, the Government of Canada's Crown corporations should be leaders as opposed to followers in adopting new and innovative best practices for effective governance, transparency, and accountability suited to the challenges of the 21st century. Furthermore, the government should be enabling its Crown corporations to excel as models of good governance by removing impediments to innovation and by reforming the ways in which the federal government performs its oversight role.

At the heart of this review exercise is the following question: How can the Government of Canada improve the effectiveness of the current governance framework so that the programs and services delivered by Crown corporations respond to Canadians' interests and needs as well as meet Canadians' standards and expectations for ethical conduct and operations for all public institutions?

The government firmly believes it can and this document is the start. Its primary purpose is to announce a series of measures addressing the pillars of good governance, including transparency and accountability, that the government intends to take. The document is also meant to educate and stimulate an informed dialogue with parliamentarians and Canadians about these measures and others that may be needed. It provides explanatory and, in some cases, historical information aligned with the main findings from a comprehensive literature review and consultations with experts outside government² about what is needed to improve Crown corporation governance.

The six main findings discussed in this document are as follows:

1. **There is a need to reassert the role of Crown corporations as instruments of public policy.** (Chapter 3)
2. **The accountability regimes for Crown corporations require clarification and strengthening as do the stewardship roles of Boards of Directors.** (Chapters 4 and 5)
3. **The appointment process for chairs, CEOs, and directors of Crown corporations needs to reflect appropriate governance standards.** (Chapter 6)

1. An internal review was conducted in 1991 that led to some technical amendments to Part X of the *Financial Administration Act* (FAA).

2. See Appendix A.



4. **Boards of Directors need to be better equipped to fulfill their responsibilities.** (Chapters 5 and 6)
5. **The governance regime for Crown corporations should keep pace with best practices, including private sector reforms where applicable, while accommodating the differences between public and private sector corporations.** (Chapter 5)
6. **A greater degree of transparency should be brought to the activities and operations of Crown corporations.** (Chapters 7 and 8)

The underpinnings of good governance—legitimacy, transparency, and accountability—are explained in Chapter 2.

It should be noted that, although a federal Crown corporation, the Canada Pension Plan Investment Board (CPPIB) is unique because it—like the Canada Pension Plan (CPP) itself—is jointly governed by federal and provincial governments. Any legislative and regulatory changes affecting the CPPIB must be approved by two-thirds of the provinces representing two-thirds of Canada’s population before they can take effect. The CPP has in place a policy review process that requires federal and provincial governments to review the plan every three years. During the current triennial review, expected to be completed by the end of 2005, federal and provincial governments will review the measures of this report in a CPPIB context. The Bank of Canada also has a governance framework that reflects its unique mandate and role. The measures contained in this report will not be applied to the Bank of Canada.

The government has not yet addressed all the issues pertaining to the governance of Crown corporations. Chapter 9 provides an overview of those areas that require further examination, including compensation and indemnification of directors. Moreover, this report does not cover issues related to the operations of Crown corporations such as contracting practices or financial management and restricted transactions.

The entire list of measures is provided in the last chapter of the report. For more information on individuals consulted for this review, please see Appendix A.



2. Defining Good Governance in an Era of Increased Public Scrutiny

Over the past decade, a time of increasing fiscal discipline and increasing demand for participation in the public policy process, the public sector in Canada has gone through several waves of transformation.³ This has led to the rise of more public-private partnerships and the creation of institutional arrangements that involve third parties. More programs and services are being delivered by non-governmental organizations. These arrangements have been viewed as cost-effective alternatives to direct delivery by government and as better able to respond more rapidly to changing needs. They have changed the way governments operate, creating new entities with public mandates, including new Crown corporations, and introducing management practices from the private and not-for-profit sectors into the public sector.

However, over this same period, a series of corporate scandals and failures in the private sector have led to significant decreases in the value of shares and increased the public's scrutiny of private sector governance practices. They have raised the thorny issues of who should have been protecting shareholders' interests and who should be held accountable for the performance of corporations. Institutional investors in particular have pressed for reforms aimed at strengthening the legitimacy of boards of directors and their role of guiding, governing, and overseeing corporations. Strong Boards of Directors can serve as a mechanism — along with regulators and law enforcement agencies — to protect the interests of shareholders and other stakeholders, and thereby ensure a sound market system. Governments, regulatory bodies, and stock exchanges are using their authorities to put in place measures requiring Boards of Directors to govern seriously and effectively.

Naturally, similar pressures to reform the governance of private sector corporations extend to those in the public sector. Specialized organizations, institutional investors, and the general public are all pressing for more transparency and accountability in the way private and public institutions manage their operations.

3. Key initiatives include Getting Government Right (1994-1996); La Relève (1996); Government On-Line (2000); Results for Canadians (2000); HR Modernization (2003); and Strengthening Public Sector Management (2004).



In this more demanding environment, good public governance is understood to be about relationships, based on shared values and principles, between citizens, the government, and entities that exercise state delegated power for the management of public policies, resources, and services. The sound management of resources and the implementation of policies and programs that respond to the expectations of the citizenry largely depend on the government's ability to establish good governance arrangements with and within these entities. Crown corporations — as public institutions — created, mandated and entrusted by Parliament to serve Canadians, are an integral part of this new dynamic.

2.1 The Principles of a Sound Governance System

There are several elements required in a sound governance system: clarity of objectives and expectations, clear lines of accountability, transparency in the application of and compliance with rules, and a culture based on a solid ethical foundation. In this context, clarity of roles, responsibilities and accountabilities is essential.

In our system of responsible government, Parliament, the body elected to represent Canadians, is sovereign under the Constitution. The elected government of the day can only govern if it maintains the confidence of the House of Commons. Parliament has three main responsibilities: (1) to adopt laws that govern and regulate the relations among citizens, groups, and institutions; (2) to vote on taxation and supply; and (3) to hold the government to account for use of its executive authority. Canadians elect the government to govern them and the government in turn may task different institutions including Crown corporations with achieving public policy objectives and delivering services to Canadians. At the core of our system is a democratic contract between citizens and institutions based on the principles of legitimacy, accountability, and transparency. In the Canadian context, the legitimacy of public institutions is embodied in law and/or in long-standing practices. The FAA and the specific statutes creating Crown corporations provide the legal framework of action for the government and the corporations themselves.

The principle of accountability is central to our system of democratic governance, characterized by the accountability of the executive to the democratically elected legislature. Accountability can be defined as “a relationship based on the obligation to demonstrate and take responsibility for performance in light of agreed expectations.”⁴ Because they exercise executive power, Crown corporations are accountable for their decisions and actions to Parliament through a responsible Minister. Ministers are ultimately accountable to Parliament for the overall effectiveness of Crown corporations in their portfolio, in addition to being answerable for all activities of the

4. *Modernizing Accountability Practices in the Public Sector*, 1998, Treasury Board of Canada Secretariat and the Office of the Auditor General

Crown corporation, including its day-to-day operations. The Minister is, however, accountable at a systemic level, for example, for ensuring the right organizational structures and governance arrangements are in place and that qualified people are recommended for appointment as directors. When required, the responsible Minister also must take action to protect the public interest, for example, by issuing a directive. In short, while the corporation has day-to-day autonomy, Parliament will ultimately look to the Minister to ensure that the corporation is delivering efficiently and effectively on its mandate.

The principle of transparency implies that the public has the right and should have the means to assess whether or not the government is delivering on its policy commitments and whether or not public funds are being managed effectively. Laws such as the *Access to Information Act* and other tools such as annual reports have improved the transparency of public institutions, including Crown corporations. By disclosing publicly and by reporting accurately on their commercial and non-commercial activities, Crown corporations build public confidence in their capacity to deliver their mandate.

Good governance of Crown corporations relies on a consistent application of these principles in a way that respects the attributes and responsibilities of each actor: Parliament to hold government to account; the government to ensure that its policies and services meet the needs and expectations of Canadians; and Crown corporations to achieve value for money in delivering on the government's public policy. By exercising these responsibilities in a transparent manner, the actors demonstrate that they have integrity and are making a credible contribution to the governance and oversight of Crown corporations.



3. The Role of Crown Corporations — Flexible and Autonomous Instruments for the Delivery of Public Policy

Crown corporations derive their *raison d'être* from their statutory role as instruments of public policy. A large number of them, however, operate in a business environment where they may sometimes find it challenging to manage both their commercial and public policy objectives. Academics, experts, and practitioners agree that the accountability frameworks provided by the FAA and the specific statutes under which some Crown corporations operate have, until recently, attained the balance necessary to accommodate these tensions. The government is of the view that a more consistent application of authorities provided in the FAA and a clearer accountability regime are required now to strengthen governance.

Crown corporations have been part of the Canadian public sector for close to a century. They have played a vital role in key activities such as transportation, power generation, and communications where private enterprises were unwilling or unable to provide the necessary services. With their mixture of public policy and commercial objectives, Crown corporations, such as the Canadian Broadcasting Corporation and Canada Post Corporation, play critical roles promoting the country's identity and connectedness.

3.1 A Brief History of Crown Corporations as Policy Instruments

The first federal Crown corporation—the Canadian National Railway Company—was created in 1922 out of more than 200 companies, many of them insolvent, after the government became owner of the Canadian Northern Railway Company in 1918. The Bank of Canada was created as a private company through the *Bank of Canada Act* in 1934 and was subsequently nationalized in 1938.

In 1981, all parties in the House of Commons supported the conversion of the Post Office Department into a Crown corporation, after numerous attempts by federal governments over the previous decade had failed to remedy unsatisfactory postal service and address operational, financial, and labour challenges. The Canadian Air Transport Security Authority became a Crown corporation in 2002 to manage several key aviation security services in Canada

previously provided by airlines, airports, and others, but perceived to be inadequate after the terrorist attacks in the United States.

Over the last 20 years, federal governments have created 26 new Crown corporations. Several started as completely new organizations; others were previously subsidiaries of Crown corporations, and in some isolated cases the government acquired ownership of existing corporations. In all instances, the federal government has used, and continues to use Crown corporations to deliver public policy when the private sector, other levels of government, or federal departments and agencies cannot satisfy adequately the needs and interests of Canadians. (For a list of all current Crown corporations and the dates they were established, please see Appendix B.)

3.2 The Diversity of Crown Corporations

The current complement of Crown corporations is a diverse set of organizations.⁵ They range in size from fewer than five employees to more than 45,000. Their asset bases are also diverse. The corporations operate in different social and economic sectors such as transportation, agriculture, heritage and the arts, and international trade. In their respective spheres of influence these corporations advance government policy priorities and objectives. Some corporations are almost completely funded by government appropriations while others, primarily those with a commercial orientation, tend to be self-sufficient or profit-making. A few corporations receive government funding to manage and administer discrete government programs in addition to their other lines of business. Some corporations are agents of the Crown and some pay dividends. The set of corporations includes those with regulatory or quasi-regulatory authorities. Strengthening the governance and accountability regime of Crown corporations requires that we take full account of this diversity.

3.3 The Autonomy of Crown Corporations

Crown corporations are used to pursue certain public policy objectives, especially when autonomy is a key requirement. Their structure and financing allows for autonomy in the following two complementary ways:

1. in terms of independence and credibility as non-partisan, non-political providers of services, such as the promotion and development of cultural industries or the formulation and implementation of Canada's monetary policy; and

5. A full account of the diversity of Crown corporations can be found in the Treasury Board President's annual report to Parliament entitled *Crown Corporations and Other Corporate Interests of Canada*.



2. 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.

While they operate at arm's length from the government, as public institutions, Crown corporations are ultimately accountable to the government. The government has a range of instruments to influence the conduct of Crown corporations, such as amendments to the constituent Acts of corporations, directive power (see sidebar), approval of corporate plans, appointment of individuals to key positions, and approval and guarantee of the financing of corporations.

Crown corporations for their part concentrate on the delivery of services and operational matters. Wholly owned by the government and subject to an annual audit, they are governed by a Board of Directors. The Board assumes responsibility for the stewardship of the organization, providing strategic direction, overseeing management performance, and holding the management to account.

What is Directive Power?

Directive power is the government's authority to intervene in the management of a Crown corporation by directing the Board of Directors to follow a particular course of action when the government believes it is in the public interest to do so.

The FAA requires that the appropriate Minister consult the Board of Directors prior to issuing a directive and that once issued, the Minister table the directive with both Houses of Parliament within 15 sitting days.

The directors of the corporation are required to implement the directive promptly, efficiently and with the requisite duty of care. Compliance with a directive is deemed to be in the best interests of the corporation.

3.4 The FAA and the Governance of Crown Corporations

Prior to 1984, there were 72 parent Crown corporations and 114 subsidiaries out of which 47 were scheduled in the FAA. Corporations that did not fall under the provisions of the Act followed the governance rules set out in their constituent acts, or in the *Canada Business Corporations Act* under which several were incorporated.

In 1984 the government adopted Part X of the FAA in order to bring a more standardized control and accountability regime to different classifications of Crown corporations. Part X features five divisions: Division I—Corporate Affairs, Division II—Directors and Officers of Crown Corporations, Division III—Financial Management and Control, Division IV—General, and Division V—Implementation of the North American Free Trade Agreement. Today, of 46 federal Crown corporations, 34 are classified under Part X of the FAA as Schedule III: Part I. Three are classified as Schedule III: Part II—the Royal Canadian Mint, Canada Post Corporation, and the Canada Development Investment Corporation. Nine are exempt from Part X, Divisions I through IV of the FAA.⁶

There are only a few differences between the requirements applicable to Crown corporations that fall under Part X of the FAA, Schedule III, Part I and Part II. Overall, these differences tend to give Part II corporations somewhat greater operational autonomy. The Governor in Council can move a Crown corporation from Schedule III, Part I, to Schedule III, Part II, only if the corporation

- ▶ operates in a competitive environment;
- ▶ is not ordinarily dependent on appropriations for operating purposes;
- ▶ ordinarily earns a return on equity; and
- ▶ has a reasonable expectation of paying dividends.

Key Distinctions between Schedule III: Part I and Part II

- ▶ Schedule III, Part I Crown corporations must submit annually for approval a corporate plan, capital budget and operating budget, but Schedule III, Part II Crown corporations must submit annually only a corporate plan and capital budget.
- ▶ Schedule III, Part II Crown corporations must include a dividend proposal in their corporate plan.
- ▶ The Auditor General of Canada has the right, at his/her option, to be appointed auditor of any Schedule III, Part I Crown corporation. The Governor in Council may appoint a private sector auditor for any Schedule III, Part II, unless the constituent act of the corporation names the Auditor General as the external auditor.
- ▶ Crown corporations not exempted from the Part X, Divisions 1 through 4 of the FAA must have a special examination. The special examiner forwards the special examination report to the Board of Directors. The special examiner of Schedule III, Part I corporations can, where he/she believes the report contains information of interest to the responsible Minister or Parliament, report that information to the Minister or Parliament. The special examiner of Schedule III, Part II corporations is limited to reporting only to the Board of Directors.

6. Exempt Crown corporations are as follows: Canada Pension Plan Investment Board, Canadian Broadcasting Corporation, Canadian Race Relations Foundation (also exempt from Division V), Telefilm Canada, Bank of Canada, International Development Research Centre, National Arts Centre Corporation, Public Sector Pension Investment Board, and Canada Council for the Arts.



The nine exempt Crown corporations are subject only to their individual constituent acts although these often reflect the governance regime provided in the FAA. The most common variation from the standardized governance, control, and accountability regime in the FAA is to exclude the corporation from the obligation to submit annually a corporate plan for government approval. This measure, which applies mainly to several cultural corporations, was adopted to shield the explicit mandate assigned to the organization by Parliament against potential political interference.

Generally, corporations that enjoy greater independence also receive fewer benefits provided by the government. Crown corporations, other than the cultural organizations that are exempt from the requirements of Part X, Divisions I through IV of the FAA,⁷ particularly those that do not submit a corporate plan or budgets for approval, do not receive government funding or loan guarantees. They do not enjoy agent status with the associated privileges and immunities, and do not have access to centralized government services available to government departments and some Crown corporations.

There are currently 43 parent Crown corporations and three subsidiaries of Crown corporations that must report on their activities as if they were parent organizations. No single governance framework could possibly meet the requirements of all 46 corporations given the diversity of their mandates, structures, and operating environments. Though not explicitly stated in the measures to strengthen the transparency and accountability of Crown corporations in this report, implementing them would have to take into account the nature of each corporation and its status under or outside the FAA.

7. This includes the Bank of Canada, the Canadian Race Relations Foundation, the Canada Pension Plan Investment Board, the Public Sector Pension Investment Board, and the International Development Research Centre.



4. Strengthening Governance — Clarifying Accountabilities and Assigning Roles and Responsibilities

4.1 Clarifying Accountabilities

Crown corporations operate in a complex environment—one in which they often need to deal with a mix of commercial and public policy objectives. The concept of shareholder, particularly as it applies to widely-held public companies, is not entirely transferable to Crown corporations, which may or may not have formal share capital. Functionally, the role of owner is exercised by the responsible Minister on behalf of the government of the day. The corporation is accountable to the responsible Minister, who is in turn accountable for the corporation to Parliament. The most explicit statement of this accountability is found in section 88 of the FAA, which states: “Each Crown corporation is ultimately accountable, through the appropriate Minister, to Parliament for the conduct of its affairs.”

Section 88 reinforces two basic principles. First, that Parliament has the authority to hold the executive accountable, so that ultimately all instruments of the executive branch, Crown corporations included, are accountable to Parliament. Second, that the executive’s accountability to Parliament is effected through the core constitutional convention of ministerial responsibility. However, during the course of this review it has become evident that section 88 could be interpreted in various ways.

First, section 88 ascribes accountability to the corporation. Though the corporation is a legal person, the question has arisen who precisely is accountable to the government for the corporation: the Board and its chair, or the CEO. Furthermore, the phrasing, “through a Minister to Parliament” has caused confusion about precisely to whom in government the corporation is accountable. For example, during the consultation phase of the review some CEOs and chairs voiced their belief that their accountability was to Parliament rather than to their responsible Minister. There was also confusion about who speaks authoritatively for the executive.



Although Part X of the FAA assigns roles and responsibilities to the responsible Minister, the Governor in Council, the Board of Directors, and even Parliament, the government has determined that the accountability structure under the legislation should be more clearly articulated. In particular, the following relationships should be set out explicitly.

1. The responsible Minister is **accountable** to Parliament for the Crown corporation. The Minister is accountable for the discharge of his or her responsibilities under Part X of the FAA and constituent legislation, for the legislative and regulatory framework applicable to the corporation, and for the policy instruments of the government, including the provision of broad policy direction to the corporation. In addition, the Minister is **answerable** in Parliament for all activities of the corporation, including those pertaining to day-to-day operations.
2. The Board of Directors is accountable to the responsible Minister for the stewardship of the corporation.
3. The CEO is accountable to the Board of Directors for the management and performance of the corporation.

Accountability and Answerability

Accountability is the means of enforcing or explaining responsibility. It involves rendering of account of how responsibilities have been carried out. It also includes taking any necessary corrective action if things go wrong and explaining how problems have been or will be corrected. Depending on the circumstances, it may entail accepting personal consequences for problems that the office holder caused or that could have been avoided or corrected if the office holder had acted properly.

Answerability is the duty to inform and explain but does not entail the personal consequences associated with accountability.

Measure #1

The government will clarify the accountability structure for Crown corporations, including in the FAA, in order to describe the relationships between Parliament, the responsible Minister, the Board of Directors and the CEO.

4.2 The Role of the Minister

As suggested earlier, the private sector concept of shareholder, particularly as applied to widely-held corporations, is used in the context of Crown corporations more or less as an approximation. Crown corporations may or may not have formal share capital. Either way, the Crown is the lawful owner of the corporation and the government of the day exercises authority on behalf of the Crown. While the Crown ultimately represents the Canadian people, they are not legally the shareholders of Crown corporations.

Authorities and duties of Ministers for Crown corporations assigned by the FAA

- ▶ Recommending the issuance of directives
- ▶ Recommending the appointment of directors, subject to the concurrence of the government
- ▶ Recommending corporate plans for approval by the government, and operating and capital budgets for Treasury Board approval
- ▶ Tabling annual reports and summaries of plans and budgets in Parliament
- ▶ Reviewing information from a special examination report
- ▶ Reviewing reports on material developments that have occurred in a corporation and answering questions in Parliament

Within the government, a variety of officials inevitably play a role with respect to Crown corporations – for example, in reviewing corporate plans or developing operational guidelines for broad application. These officials do not have direct authority over the Crown corporations. Rather, they provide support to the responsible Ministers as part of the governance regime for Crown corporations. However, there is confusion about who speaks authoritatively for the government to the corporation. It is the responsible Minister who does so, and whose role most closely equates to that of shareholder.

Measure # 2

The government will affirm, including through amendments to the FAA and other relevant statutes, that the responsible Minister is its representative.

The responsible Minister's role is central to the effective functioning of the governance and accountability framework. The distinctive nature of the relationship between the Crown corporation and the government makes the responsible Minister's role one that must be executed with skill and an appreciation for the distinct relationship. Crown corporations are instruments of the government for which the government is ultimately accountable, but they have operational autonomy for the specific purpose of keeping their day-to-day activities at arm's length from government.

This arm's-length relationship is reflected in the nature of a Minister's accountability for Crown corporations within his or her portfolio. Broadly speaking, Ministers are accountable at a systemic level: for appointments and framework legislation, as applicable; for review and approval of corporate plans; for assessing the ongoing relevance of the corporation's mandate



and its effectiveness as a policy instrument; and for providing broad policy direction to the corporation. Ministers are not accountable for the day-to-day administration and operations of the corporation. However, they must answer to Parliament—that is, provide information and explanations, as appropriate—for all of the corporation’s activities. As previously noted, directors and senior executives of Crown corporations may facilitate Parliament’s capacity to scrutinize the activities of Crown corporations and hold the government to account by appearing before parliamentary committees on behalf of the corporation to answer questions when invited.

Maintaining the balance between the autonomy of Crown corporations as arm’s-length organizations and the government’s overall responsibility for their effectiveness as instruments of public policy can be challenging. Overall, arm’s-length status is maintained as long as Boards of Directors and corporate management remain effectively in charge of administration and management. The extent of a Minister’s involvement will vary somewhat depending on the Act that establishes the corporation, but in all cases Ministers are required to provide the corporation with general guidance on the government’s objectives and expectations. This review has found some need to enhance the ways in which the government influences the activities of Crown corporations.

The government, through the responsible Minister, has a range of instruments by which it may influence the activities of Crown corporations—from amendments to constituent acts, to mandate reviews, to the approval of restricted transactions. All of these instruments have been used at one time or another. However, there are three key vehicles for the issuance of policy guidance to Crown corporations: (1) the mandate provided in law; (2) the corporate plan approved on an annual basis; and (3) the power to issue a formal directive should it be necessary to direct the corporation to act in a specific manner in response to the public interest.

Of these vehicles, the Crown corporation’s mandate provides the broadest level of policy guidance. The mandate sets out the corporation’s goals, responsibilities and authorities, and identifies the powers of its Board. Typically, the mandate is defined with sufficient breadth to accommodate the range of possible roles and responsibilities envisaged for the corporation at the time of its creation. Consequently, when applied to specific circumstances, the mandate can be subject to divergent interpretations by the Minister, the Board of Directors, and the CEO. Moreover, several Crown corporations have been established through articles of incorporation under the *Canada Business Corporations Act* and have mandates that do not set out clear corporate goals and objectives.

The second key vehicle, the corporate plan, allows for policy direction to be articulated with more specificity, and has become the principal instrument for defining corporate objectives. A small number of exempt Crown corporations are not required to submit corporate plans—although some do for information purposes—despite the fact that some of these

corporations receive annual appropriations. In the government’s view the corporate plan is an important instrument for business and strategic planning; however, the process of developing and approving corporate plans is not always used effectively to convey policy objectives to the corporation. In Chapter 18 of its 2000 report, the Office of the Auditor General observed that “many corporations receive little or no feedback on their corporate plan from their responsible Minister.” In the absence of clear guidance as to the government’s expectations, corporate plans can be a one-way street.

The third key vehicle for the issuance of policy guidance—directive power—enables government, when necessary, to oblige Crown corporations to deliver on their public policy mandate. It enables the government, in effect, to set aside the corporation’s autonomy and direct specific action in response to what the government deems to be in the public interest. In keeping with their exceptional status, directives must be tabled in both Houses of Parliament and must be implemented by corporations in a prompt and efficient manner. The Board of Directors implementing the directive are legally considered to be acting in accordance with their fiduciary responsibilities, even where the directive may conflict with the immediate interests of the corporation. The power of directive was never intended to be used extensively and has remained a tool of last resort.

Other than the instruments just mentioned, all of which have limitations, there is no formal process for transmitting the government’s expectations to the Boards and management of Crown corporations. The government has provided policy guidance through informal means such as the participation of senior officials in board meetings, exchanges between corporations and portfolio units of the responsible Minister’s department, or direct communications between the Minister or the deputy minister’s office and the chair or CEO. The use of these tools typically reflects the style of a particular Minister and does not support a consistent, structured approach to the provision of policy guidance.

The government is of the opinion that a more proactive approach to its relationship with Crown corporations is warranted, particularly with respect to communicating its policy priorities, performance expectations, and the corporations’ expected contribution to government objectives. The responsible Minister is the appropriate person to provide government input into the Crown corporation’s corporate planning process.

Measure # 3

To improve the communication of policy objectives and priorities from the government to Crown corporations, the responsible Minister will issue a statement of priorities and accountabilities to Crown corporations within his or her portfolio. The statement will be discussed beforehand with corporate management and the Board, but ultimately it will reflect the



government's policy expectations for the corporation. The statement will be subject to an annual review and help form the basis for a periodic review of the corporation's performance.

The statement of priorities and accountabilities will serve several purposes. It is intended to

- ▶ confirm the corporation's mandate and business lines;
- ▶ inform the corporation of government priorities;
- ▶ achieve consistency between the government and the corporation regarding the government's priorities, policy objectives and performance expectations for a fixed period; and
- ▶ serve as a key driver in the development of the Crown corporation's corporate and/or strategic plans, annual reports and financial forecasts.

The statement of priorities and accountabilities will not be legally binding. It will be tailored to the specific operating circumstances of each Crown corporation. In an effort to resolve potential conflicts regarding the mandate of the corporation, the statement will enunciate clearly the public policy goals of the organization as well as its commercial objectives and, if applicable, how they are interrelated. The document will provide the flexibility needed to respect the status of corporations that are outside the provisions of Part X of the FAA, and help promote a better working relationship including supporting the corporate planning process. It will not provide a vehicle for the responsible Minister to venture into specifics of programming, management of the corporation, or management and distribution of corporate assets.

4.3 The Role of the Board of Directors — Translating Public Policy into Efficient and Ethical Operations

Crown corporations have operational autonomy but are not independent of government. Transparency in the provision of policy guidance and clarity in public policy objectives, such as through the issuance of a statement of priorities and accountabilities, will go a long way towards ensuring that the activities of corporations better support the overall orientation of the government. Boards of Directors have an important role to play. Accountable to their responsible Minister, with a mandate legislated to them by Parliament and with a duty to act in the best interests of the corporation, directors are expected fulfill their role with vigour and, when required, enter into a process of dialogue with the Minister to arrive at an appropriate understanding of the corporation's activities based on the government's policy priorities.

Boards are accountable to the responsible Minister for ensuring that the activities of Crown corporations are in line with their mandates. They also have the ultimate responsibility for the implementation of the policy guidance that would be provided in the statement of priorities and accountabilities. It would be their responsibility to seek clarification from the responsible Minister and/or play a challenge function. By assuming a more active role in the definition and

interpretation of policy priorities and by working with management to facilitate implementation, Boards will ensure that the plans and activities of the corporation support the government's policy agenda.

The Board of Directors should play a central role in overseeing the corporation's management. Strengthening this role has taken on increasing importance in recent years. Shareholders now expect Boards to deliver on this function with diligence and assertiveness.

The roles and responsibilities of Crown corporations' Board of Directors are enunciated in several longstanding legal and policy instruments. The *Canada Business Corporations Act* stipulates, "Subject to any unanimous shareholder agreement, the directors shall manage, or supervise the management of, the business and affairs of a corporation."

Both the *Canada Business Corporations Act* and the FAA mandate directors to

- ▶ act honestly and in good faith with a view to the best interests of the corporation; and
- ▶ exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

The guidelines on Corporate Governance in Crown Corporations and other Public Enterprises released in 1996 by the Minister of Finance and the President of Treasury Board, includes the statement that:

"The Board of Directors of every Crown corporation should explicitly assume responsibility for the stewardship of the corporation. As part of the overall stewardship responsibility, the Board should:

- ▶ approve the strategic direction of the corporate plan for the Crown corporation;
- ▶ ensure that the principal risks of the corporation's business have been identified and that appropriate systems to manage these risks have been implemented;
- ▶ approve management's succession plan including appointing, training and monitoring senior management;
- ▶ ensure that the corporation's information systems and management practices meet its needs and give the Board confidence in the integrity of information produced."

As noted earlier, under Part X of the FAA, Crown corporations are accountable to Parliament through their responsible Minister. The Act, however, does not indicate who would be accountable on behalf of the corporation — the chair of the Board or the CEO — should issues of public concern arise. In practice, parliamentarians have tended to hold the Minister publicly accountable. However, in matters of day-to-day operations and management, the Minister's role, on behalf of the corporation, is limited to answerability, as defined earlier in this chapter.



Measure #4

In order to reaffirm that Boards of Directors are accountable for the activities and performance of the corporation to the responsible Minister, the government will embody the role and the responsibilities of directors in Part X of the FAA and in other enabling statutes.

Boards of Directors need authorities that match their responsibilities if they are to fulfill their obligations. One important duty is oversight of the CEO. In recognition of this requirement, the new process for the selection and appointment of CEOs (Chapter 6) provides a more prominent role for Boards of Directors.

4.4 The Role of Parliament — Legislation, Oversight and Scrutiny

Parliament's key responsibilities are to review and vote on legislation, including appropriation bills through which Parliament authorizes the spending of government funds, and to scrutinize and hold the executive arm of government accountable for the decisions and actions it takes in governing the country.

With respect to Crown corporations, Parliament annually approves appropriations for a number of Crown corporations. In order to facilitate its oversight role, Parliament receives, on an annual basis, summaries of corporate plans, annual reports, and a consolidated report on Crown corporations presented by the President of the Treasury Board. Parliament may also ask Ministers questions about the activities of Crown corporations. In addition, parliamentary committees have the authority to invite chairs and CEOs to appear before them to explain the activities of their organizations.

These mechanisms and authorities make Parliament a significant element in the Crown corporation governance and accountability regime. While it does not have a role to play in governing, Parliament's ongoing assessment of the roles, attributes and performance of public institutions can make an essential contribution to improving the delivery of services that respond to the expectations and needs of Canadians.



5. Boards of Directors — Building Solid Foundations

In the private sector, best management practices have evolved significantly over the past decade. While a number of best management practices have also been introduced for Crown corporations,—guidelines entitled *Corporate Governance in Crown Corporations and Other Public Enterprises* were released in 1996—the time has come to strengthen the governance of Crown corporations by proposing a series of mandatory measures applicable to Boards of Directors of all Crown corporations. Some Crown corporations have taken note and adopted several of these measures on their own initiative.

5.1 Making Boards More Effective — Ensuring Independence

As stated in the previous chapter, directors have the responsibility under law to act in the best interests of the corporation and to exercise due care and diligence. Boards of Directors are expected to provide strategic guidance to management and oversee the activities of the corporations. To meet these expectations and maintain sound professional relationships with their respective Ministers and corporation management, they need a clear understanding of their responsibilities and accountabilities, and those of Ministers and management.

To provide effective strategic guidance, Boards need a solid understanding of their respective corporation's mandate, activities, risks, assets, and resources, as well as the government's policy orientations. This is essential for Boards to have the capacity to engage effectively with the government, if necessary, on its specific objectives for each corporation, and to fulfill the oversight role that requires accurate knowledge of their respective corporation's activities, operating environment, potential risks, and long-term viability.

Best practices dictate that, to be effective, directors must approach their work objectively and with decision-making independence. This independence helps to establish a Board's credibility and supports sound governance and effective accountability. For this reason, corporate governance best practices require that boards of directors of Crown corporations function independently from management.



Several corporations have public servants as directors on the Board. In fact, a number of statutes identify public servants as ex-officio directors. These public servants bring knowledge and expertise, help ensure the protection of public interests, and can help the board of directors to understand better the policy and the machinery of government. There is a risk, however, that their presence in some circumstances, could lead to questions about the independence of the Board, and for the individuals concerned, could give rise to situations of divided loyalty.

Although public servants who sit on boards have the same fiduciary responsibility toward the corporation as other directors and are required to act accordingly, situations could arise in which this responsibility conflicts with their duties as public servants, leading to concerns—real or perceived—as to whether the conflict is being properly handled.

Public servants might not be—or might not be perceived to be—in the same position as an independent director to perform a challenge function vis-à-vis the Minister in areas such as policy direction and approval of corporate plans. In addition, other members of the board might incorrectly perceive that directors who are also public servants speak more authoritatively as representatives of the government. The government is committed to the principle of ensuring board independence, and will only continue to have public servants on Boards of Crown corporations in a limited number of cases, when it is essential to the best interests of the government and the Crown corporation.

Measure #5

The government will review the appointment of public servants as directors on the Boards of Crown corporations with a view to restricting or eliminating their participation. The government will take administrative action, and where necessary seek legislative changes, to implement this measure.

Adequate processes, functions, and structures must be put in place to ensure that individual directors and the Board as a whole maintain an independent perspective in the governance and oversight of the corporation. One way to ensure that a Board can function independently from management is to require that different individuals perform the duties of chair of the Board of Directors and CEO of the corporation. Most Crown corporations currently have statutes or practices that respect this distinction.

Measure #6

The government will enact the legislative changes required to ensure a split in the positions of CEO and chair of the Board for Crown corporations.

The composition of boards of directors varies greatly from one Crown corporation to another given the significant differences among these organizations. Ensuring that a majority of board members are independent from management would support the realization of an independent board and thus contribute to sound governance.

Measure #7

The government will require that the CEO be the sole representative of management to a Board of Directors.

Crown corporations are public institutions subject to increasing scrutiny. In the name of greater transparency, citizens and stakeholders have pressured organizations to open the proceedings of board meetings to the public. Notwithstanding the general recognition of the value of disclosure, sensitive information related to human resources, corporate strategies, confidential commercial information, and other operations discussed in the purview of board meetings could cause damage if inappropriately released to the public. Directors could be pressured by community members and would be reluctant to voice their concerns and ask the difficult questions if they were not confident that their intervention would be protected by confidentiality. In such circumstances, the Board would not be seen and could not act as a credible independent actor in the decision-making process.

Measure #8

To ensure that the Board may deliberate freely, and exercise the challenge function expected of directors, Board proceedings should remain confidential. The government will require that Boards of Directors of Crown corporations hold annual public meetings at which stakeholders could express their views and seek information about the activities of the corporations. Corporations are also encouraged to develop outreach activities to solicit input and feedback from stakeholders on an ongoing basis.

5.2 Setting Expectations — Directors' Responsibilities

Although the law is clear with regard to the obligation of directors, it does not provide much information as to what is expected in practice. Many new directors arrive at their first board meeting unclear as to their primary duties and role. They are uncertain about whom they represent; how far they can go in challenging management's plans and proposals; how to interface with the appropriate Minister and his/her staff; and other issues of governance related to strategic guidance and oversight. To discharge their legal obligations as directors and contribute to the good governance of the corporation, new appointees should know about their responsibilities under the FAA; the specific statutes relevant to their corporation; the expectations of government; and good practices in the organization and management of boards.



This would assist new directors in understanding their legal obligations and provide them with the appropriate perspective from which to approach their duties.

Measure #9

To assist the work of Board members, the government will issue to every new director, upon appointment, a guidance letter that would make explicit the expectations of the government with regard to the role and responsibilities of directors under law and in practice. The letter would also include provisions related to the values and ethics of public office holders and disclosure of conflict of interest.

5.3 Clarifying Responsibilities — Board Mandate and Committee Charters

Board and Board committee charters promote effective accountability. Accountability requires clarity about what one is accountable for and to whom. Charters delineate clearly the boundaries of responsibilities and in so doing sharpen accountabilities.

Boards often establish committees to undertake substantive work in support of their broad responsibilities. The Board as a whole, however, remains accountable for any decisions made by its committees. For this reason, and in support of an effective accountability regime, it is important that each committee have a written charter clearly stating its responsibilities and authorities. A charter applicable to the Board of Directors as a whole would also set out the Board's responsibilities and the authorities that it has delegated to management.

Measure #10

To strengthen the corporate governance of Crown corporations, the government will work with Boards to adopt a charter that would define clearly the roles and responsibilities of the Board.

5.4 The Right Foundation — Reinforcing Director Orientation, Education, and Evaluation

Governing a Crown corporation is demanding. In a challenging operating environment that straddles private and public sector spheres, the orientation and training of directors is critical to ensure good governance. Ongoing professional development is equally critical to maintain the knowledge and expertise required to understand the corporation, its business conditions, and the stakeholders with which it is dealing. The government recognizes that learning is integral to maintaining the capacity of Boards. The Privy Council Office in collaboration with the Treasury Board of Canada Secretariat currently delivers a two-day training session for new directors on public sector governance in relation to Crown corporations. Despite the success of this program, further effort is required if Boards and Board members are to improve their performance.

Measure #11

To further enhance the skills and performance of Boards of Directors and building on current orientation programs, the Canada School of Public Service will establish additional training and professional development programs on public sector management and Crown corporations.

A well-managed appraisal process would increase the effectiveness of Boards and help identify areas where training may be required or where other remedial actions must be taken. Evaluations provide a mechanism for the Board and the chair to hold each other accountable while peer assessments have an impact on the performance of individual directors and the overall effectiveness of the Board.

Measure #12

Consistent with good governance practices, the government will ask Boards of Directors to establish regular assessments of their effectiveness and the contribution of individual directors as a self-development tool. The assessment of the Board as a whole will be communicated by the Chair of the Board to the appropriate Minister.

5.5 What Every Board Needs: The Audit Committee

The FAA (Part X, section 148) requires Crown corporations that fall under the Act to establish an audit committee. However, six of the nine corporations that are exempt from Part X, Divisions I through IV, do not have this requirement in their statutes. The audit committee is an indispensable element of the modern Board of Directors. On behalf of the Board, the audit committee plays a key oversight function in the areas of internal and external audit and the probity of financial statements, internal controls and risk assessment, management and mitigation. Bolstering audit committees has been a critical feature of the private sector's efforts to improve corporate governance.

Measure #13

The government will require that Boards of Directors for all Crown corporations establish an audit committee.

- ▶ The committee would consist of a minimum of three members and would have the authority to engage independent counsel and expertise, as it deems necessary, to carry out its duties.
- ▶ The mandate of the committee should include the requirement to set up a process to investigate complaints related to issues of integrity and behaviour and to establish a risk assessment and management mechanism as well as adequate controls and protocols to mitigate those risks.
- ▶ The audit committee would also adopt an audit plan that would be communicated to the Board of Directors.



Given the significance of the role the audit committee plays with regard to the governance of the corporation and the oversight of corporate activities, it is imperative that it be a credible body. Credibility is ultimately established by how effectively the committee meets its responsibilities. The foundation for a credible audit committee consists of the qualifications and competencies of its members. Financial literacy and a solid understanding of the business environment in which the corporation operates should be prime features in the competencies of directors serving on the audit committee.

Measure #14

All directors on the audit committee must be independent of management and have financial literacy. An individual with financial expertise must chair the activities of the committee. The government will be mindful of this requirement in the context of the selection and appointment process of directors.

Audited financial statements are the primary mechanism through which management shares results and performance information with the owners of the corporation and other interested parties. They provide assurance to the readers that the information contained within the statements is accurate and reliable. The integrity of financial statements is critical in both the private and public sectors. To maintain the credibility of financial statements, the auditor must be independent from the management team that produced them.

Internal audit is another important component of the control system for a corporation. Internal audit allows the organization to assess its own processes and systems and identify and correct weaknesses and deficiencies. For internal audit to be credible it must also function independently of management.

Measure #15

In order to enhance and protect the independence of the audit function, internal and external auditors will report directly to the audit committee.



6. Appointments

Strong boards of directors are essential to effective governance of Crown corporations. Strong boards are built by recruiting individuals with the necessary knowledge and skills to oversee the operations of the corporation, and are sustained through appropriate orientation and training and by the necessary support from within the corporations and from the central agencies.

6.1 Appointments by the Governor in Council to Crown Corporations

There are 45 Crown corporations to which directors⁸ are appointed under the authority of the Governor in Council. The authority for appointments is contained in the FAA for corporations subject to Part X of that Act; for others it is found in the enabling statute for the corporation.

Depending on the statutory provisions, directors may be appointed either by the responsible Minister with the approval of the Governor in Council, or by the Governor in Council. Directors appointed under the FAA hold office for such term, not exceeding three years, as will ensure, as far as possible, the expiration in any one year of the terms of office of not more than one-half of the directors. Directors continue in office until replaced, and they are eligible for reappointment.

Directors appointed under other statutes may be appointed for a fixed term as determined by statute or for a term set by the Governor in Council. They may or may not continue in office until replaced, and there may be reappointment restrictions. For example, in the case of directors of the Canadian Museum of Civilization, a director who has served three consecutive terms is not eligible to be reappointed during the year following the expiration of the third term.

Depending on the statutory provisions, chairs may be appointed by the Governor in Council or designated by it from among the directors of the corporation. Chairs appointed under the FAA hold office for a term set by the Governor in Council. Appointment provisions under other statutes specify that chairs serve for a term not to exceed a certain number of years or for such term as the Governor in Council may determine. The FAA and most other statutes require the responsible Minister to consult the Board of Directors with respect to the appointment of a chair.

8. The term "director" is used in this chapter to distinguish directors from chairpersons and CEOs who are "officer-directors."



Chairs and directors normally serve during pleasure and may be removed or replaced at the discretion of the Governor in Council. However, there are four corporations in which chairs and directors serve during good behaviour and may be removed by the Governor in Council only for cause. These corporations are: the Canadian Broadcasting Corporation, the Bank of Canada, the Canada Pension Plan Investment Board and the Public Sector Pension Investment Board.

Depending on the statutory provisions, CEOs may be appointed by the Governor in Council, by the Board of Directors with the approval of the Governor in Council, by the Governor in Council on the recommendation of the Board of Directors or by the Board of Directors itself. The seven corporations where the CEO is appointed by the Board of Directors are: the National Arts Centre, the Canada Pension Plan Investment Board, the Pacific Pilotage Authority, the Great Lakes Pilotage Authority, the Laurentian Pilotage Authority, the Atlantic Pilotage Authority and the Public Sector Pension Investment Board. One CEO is ex-officio: the CEO of the Enterprise Cape Breton Corporation is the President of the Atlantic Canada Opportunities Agency.

CEOs appointed under the FAA hold office for such term as the Governor in Council may determine. Appointment provisions under other statutes specify that CEOs serve for a term not to exceed a certain number of years or for such term as the Governor in Council may determine. There is normally a requirement for the responsible Minister to consult the Board of Directors with respect to the appointment of a CEO.

CEOs normally serve during pleasure. However, there are three corporations in which CEOs serve during good behaviour: the Canadian Broadcasting Corporation, the Bank of Canada and the Business Development Bank of Canada.

6.2 The Appointment Process

In March 2004, the government announced an interim appointment process for Governor in Council appointments to Crown corporations, in the broader context of its comprehensive review of Crown corporation governance. The interim process served as an initial measure to help ensure a competency-based, professional and transparent appointment process.

Roles and Responsibilities

Over the past several months the government has studied the issue of Crown corporation governance and consulted with interested parties. This, together with the government's experience with the interim process, has led it to conclude that the appointment process needs to be further refined in order to achieve the correct balance.

As the owner and shareholder, the government has the responsibility of ensuring that the governance standards of its Crown corporations meet the highest level, and the appointment process is not only competency-based, professional and transparent, but is also consistent with

the ability of the government to exercise its responsibilities as owner. The shareholder must be able to provide appropriate direction to Crown corporations, and Boards of Directors need to be responsive to the shareholder.

Within the framework of authorities establishing the corporation and directing the conduct of its activities, the chairs and the directors represent the interests of the owner, that is, the government as represented by the responsible Minister. The government must, therefore, have an appropriate role in the appointment of directors and chairs.

In the case of CEOs, the government, like the Board of Directors, wishes to ensure the appointment of individuals who can successfully lead a Crown corporation. The CEO, as an officer-director, is an office-holder in the employ of the corporation and responsible to the Board of Directors. Therefore, the Board of Directors should have primary responsibility for the selection of CEOs.

Appointment Principles

The government reaffirms its ultimate responsibility for the quality of Governor in Council appointments. The government's goals for the selection process remain as they were in March 2004: the process should be competency-based, professional and transparent. The government is also firmly committed to ensuring that its appointments are representative of Canada's regions and official languages, as well as of women, Aboriginal peoples, disabled persons and visible minorities. The government also recognizes the need for the selection process to identify candidates in a timely and cost-effective manner.

Selection Criteria and Competency Profile

Boards of Directors will advise the government on appropriate selection criteria for chairs, as well as competency profiles and future needs for directors. The government will make the final determination on the selection criteria and Board profiles, in consultation with Boards of Directors. The government will ensure that individuals appointed as chairs meet the selection criteria and that the directors appointed meet the needs of Crown corporations. In the case of CEOs, Boards of Directors will develop selection criteria, in consultation with the government. Selection criteria for chairs and board profiles will be made public by the government; similarly, Crown corporations will make CEO selection criteria available to the public.

The selection criteria for the CEO and chair will normally include a description of the education, experience, knowledge, abilities and personal suitability sought for the position. For directors, the Board profile will include a description of the experience, attributes and skills that should be possessed by the Board as a whole. This profile is based on the role and responsibilities of the



Board, and will include a set of generic qualifications that all Board members must have, as well as specific qualifications that should be possessed by one or more members of the Board.

Measure #16

Selection criteria for chairs and Board profiles will be made public by the government. Similarly, Crown corporations will make CEO selection criteria available to the public.

Directors and Chairs

The government will identify candidates from a variety of sources. The government will develop a central Web site to solicit candidates for director and chair positions. In the interim, the government will advertise appointment opportunities in the *Canada Gazette*, as required. The government will look to Boards of Directors for any names they wish to submit for the government's consideration. In addition, the government will consider how best to use executive search services as a source of highly-qualified candidates.

Measure #17

The government will develop a central Web site to solicit potential candidates for director and chair positions.

CEOs

The selection process for the CEO will be determined by the Board of Directors. Each Board of Directors will establish a nominating committee to identify candidates for the position of CEO appointed by the Governor in Council. This committee may include outside eminent persons.

As a minimum, the process will include advertisements in either or both the *Canada Gazette* and the corporation's Web site. If the Board considers it appropriate, taking into account relevant factors such as timeliness and cost-effectiveness, the process may also include advertising in national newspapers and the use of an executive search firm. The Board's nominating committee will screen potential candidates and will then submit its preferred candidate to the government for final approval or veto.

Measure #18

The selection process for the CEO will be determined by the Board of Directors and will include, at minimum, advertising in either or both the *Canada Gazette* and the corporation's Web site.

Due Diligence

The government needs to ensure that individuals appointed as director, chair or CEO of its Crown corporations meet the highest standards of integrity.

Measure #19

The government will obtain references on all candidates for appointment as director or chair. In the case of CEOs, the Board's nominating committee will be required to do the same for any candidate it submits to the government for appointment. In addition, the government will continue to conduct background checks and ensure that candidates are not in a conflict of interest, prior to making any appointment.

Reappointments

The nominating committee and the Board of Directors should ensure that CEOs recommended for reappointment meet the current and future needs of the corporation as identified in the selection criteria. It is not necessary for other candidates to be brought forward by the Board when reappointment is recommended. Director and chair reappointments will be determined by the government, taking into account the Board profile, the needs of the corporation and the views of the Board of Directors.

Prior review of appointments by standing committees

The Government Leader in the House of Commons has provided parliamentary committees with a list of appointments, including those made to Crown Corporations, and asked the committees to determine which key appointments they wish to review prior to these appointments being finalized. The Procedure and House Affairs Committee has been asked to determine how the reviews would be conducted, and to consult with parliamentarians from both Chambers on how these reviews should be implemented. The government is of the view that individuals nominated for reappointment would not be subject to prior review by a standing committee if their initial appointment received prior review.

Measure #20

The government will work closely with parliamentary committees to ensure a workable appointment review process that will not unduly delay necessary appointments.

6.3 Succession Planning

For those corporations subject to Part X of the FAA, directors may be appointed for a term not to exceed three years. This is also true for some corporations exempt from Part X. This is a relatively short period and requires decisions on reappointments on a frequent basis. If the decision to reappoint is not made in a timely fashion, directors continue in office until reappointed or replaced. While this allows the directors to continue to perform their functions it creates uncertainty and is not conducive to the proper functioning of the Board.



The government proposes to amend the FAA and other enabling statutes to permit the appointment of directors for up to four years to help ensure the maintenance and continuity of expertise on Boards of Directors.

Measure #21

The government will amend the FAA and enabling statutes to provide for appointments for up to four years.



7. Reporting — Making Transparency and Accountability Come to Life

Reporting on activities and performance is an important element of a governance system involving the delegation of authority. Reporting allows the party to whom authority has been delegated to demonstrate how they have discharged their responsibilities. To be effective, the information reported must be reliable, relevant, balanced and complete. In some instances, such as financial statements, an independent party such as an external auditor must provide assurance as to the information reported. In general, reporting should adhere to the principle of transparency. Those who have delegated authorities should have the ability to “see” into the activities of those to whom authorities have been delegated. Effective reporting mechanisms permit this to take place.

The government is of the view that existing reporting mechanisms have served Canadians well but could be improved. It proposes to add some additional features to the existing regime such as improved reporting, certification, the extension of the *Access to Information Act* to most corporations, and the adoption of legislation on the disclosure of wrongdoing that would apply to all Crown corporations. These features should make relevant reporting information more readily accessible to parliamentarians and the general public and strengthen the accountability of Crown corporation management when it comes to the accuracy of the information that is disclosed.

7.1 Reporting

The annual report with its core elements, the Management’s Discussion and Analysis section and the audited financial statements, is the primary mechanism through which Crown corporations report to Parliament and to Canadians. Specifications on what must be included in the annual report are found in Part X, section 150 of the FAA. The Office of the Auditor General has observed that the quality of non-financial content in Crown corporation annual reports needs improvement. Organizations such as the Canadian Institute of Chartered Accountants have prepared guidance on the preparation and disclosure of non-financial information in reports (e.g., discussion and analysis). The government believes that information such as the governance structure of Crown corporations, their codes of conduct, and compliance with their own policy on ethics and values should appear more prominently in the annual reports produced by Crown corporations.



Measure #22

To respond to the public interest in non-financial issues, the Treasury Board of Canada Secretariat will produce a guidance document for Crown corporations on annual report specifications, including the Management's Discussion and Analysis Section and issues pertaining to values and ethics.

Measure #23

In order to make the financing of Crown corporations more transparent, the government will also ensure that the Main Estimates document clearly identifies the funds allocated to each Crown corporation that receives parliamentary appropriations.

Parliamentarians have the prerogative of inviting the Board chairs and senior management to appear before parliamentary committees to seek more information or clarification regarding information reported in the Crown corporation's annual report. The government invites Parliament to fully exercise its prerogative when it is of the opinion that it requires information in addition to what has been reported to effectively discharge its own responsibilities.

7.2 Certification

Certification refers to the requirement that senior officers of a corporation certify by signature that they have discharged certain prescribed responsibilities. Certification has been adopted recently by both the United States (Sarbanes Oxley Act and Securities Exchange Commission regulations) and several provincial jurisdictions in Canada.

Under the current private sector legal and regulatory regimes the CEO and Chief Financial Officer (CFO) of a corporation, or in cases where a corporation does not have a CEO or CFO, persons performing duties generally associated with these senior positions, are required to personally certify performance of a particular set of responsibilities.

Certification generally does not impose new responsibilities upon signatories. Rather it is a means to confirm performance of existing responsibilities. It is the position of the government that certification designed to respond to the specific needs of public institutions would enhance the Crown corporation governance and accountability regime. In addition to CEO and CFO certifications, it is the opinion of the government that accountability would be further enhanced by requiring chairs, on behalf of Boards of Directors, to certify performance of a set of key responsibilities accorded to them. This would be a departure from practice in the private sector, where board responsibilities related to corporate governance have traditionally been cast as best practices. Private sector corporations have been expected to comply with these best practices or explain why it is not feasible for them to do so.

The governance system for Crown corporations must be as robust as its private sector counterparts, therefore the government supports the use of certification. In addition to the certifications required by private sector regulators, the government believes that Crown corporations' senior executives should certify items that are of particular concern and interest to the public, such as the availability of reporting mechanisms for the disclosure of wrongdoing and the application of a code of conduct.

The use of certification is a very recent addition to the reporting requirements in the private sector. How it will be implemented and whether it will bring the expected results is still unclear. Further work is required before the government can finalize its decision on the specific elements that would be certified personally by CEOs, CFOs, and chairs of Boards of Directors.

Measure #24

In principle, the government supports the use of a certification regime adapted to the reality of public institutions. The Treasury Board of Canada Secretariat will examine, in consultation with Crown corporations, the development of a certification regime that would be applicable to all Crown corporations.

7.3 Access to Information

The *Access to Information Act* is built on the principle that Canadians have a right of access to government information. Access to information provides Canadians with a mechanism to scrutinize the activities of government. Currently 28 out of 46 Crown corporations⁹ are subject to the *Access to Information Act*.

In line with the Task Force report entitled, *Access to Information: Making it Work for Canadians* released in June 2002, the government recommends that the Act not apply to information relating to critical interests of organizations such as journalistic sources and competitive commercial activities, where the current exemptions would not adequately protect this information. Two examples are the competitive commercial activities of the Canada Post Corporation relating to its courier business and program development at the Canadian Broadcasting Corporation.

9. These are: Atlantic Pilotage Authority, Bank of Canada, Blue Water Bridge Authority, Business Development Bank of Canada, Canada Council for the Arts, Canada Deposit Insurance Corporation, Canada Mortgage and Housing Corporation, Canadian Air Transport Security Authority, Canadian Commercial Corporation, Canadian Dairy Commission, Canadian Museum of Civilization Corporation, Canadian Museum of Nature, Canadian Tourism Commission, Defence Construction (1951) Limited, Farm Credit Canada, Federal Bridge Corporation Ltd., The, Freshwater Fish Marketing Corporation, Great Lakes Pilotage Authority, International Development Research Centre, Laurentian Pilotage Authority, National Capital Commission, National Gallery of Canada, National Museum of Science and Technology, Pacific Pilotage Authority, Royal Canadian Mint, Standards Council of Canada, and Telefilm Canada.



The government will extend the Act to 10 of the 18 Crown corporations currently not covered by Order in Council. The other Crown corporations are of a commercial nature and will remain outside the legislation until legal instruments can be designed to protect their commercially sensitive information holdings. The government will develop these instruments in the context of overall review of the Act.

Measure #25

The *Access to Information Act* should

- ▶ be extended to 10 of the existing 18 Crown corporations¹⁰ currently outside the provisions of the Act by an Order in Council;
- ▶ not include seven Crown corporations¹¹ until the government has developed mechanisms to protect their commercially sensitive information;
- ▶ not include the Canada Pension Plan Investment Board at this time because of its federal-provincial structure. Its inclusion will require provincial consent;
- ▶ be amended to include protection for journalistic sources.

7.4 Disclosure of Wrongdoing

On October 8, 2004, the government tabled in Parliament an Act to establish a mechanism for the disclosure of wrongdoing in the public sector and to protect public servants who make disclosures. The proposed Public Servants Disclosure Protection Act, Bill C-11, was referred to Committee on October 18, 2004. The proposed legislation provides substantial protection in law from reprisal for good faith disclosures and requires all federal institutions, including Crown corporations,¹² to establish their own internal disclosure mechanisms. The Bill also requires Treasury Board to establish a Code of Conduct for the federal public sector. However, chief executives of federal departments and organizations may go further and establish their own codes, provided that they are consistent with the Treasury Board code but adapted to the needs of their organizations.

10. These are: Canada Development Investment Corporation, Canadian Race Relations Foundation, Cape Breton Development Corporation, Cape Breton Growth Fund Corporation, Enterprise Cape Breton Corporation, Marine Atlantic Inc., Old Port of Montreal, Parc Downsview Park Inc., Queens Quay West Land Corporation, and Ridley Terminal Inc.

11. These are: Via Rail Canada Inc., National Arts Centre Corporation, Canadian Broadcasting Corporation, Export Development Canada, Canada Post Corporation, Atomic Energy of Canada Limited and the Public Sector Pension Investment Board.

12. Should Bill C-11 be adopted, it would not apply to the Canada Pension Plan Investment Board until consent is provided by the provinces.



8. An Outsider's View on the Inside — Annual Audit and Special Examination

Crown corporations are the most audited organizations in the public sector. Unlike departments and agencies, all Crown corporations, inside or outside the purview of Part X of the FAA, are subject to an annual audit, and most of them are subject to a special examination by the Auditor General of Canada every five or six years.

The Auditor General currently audits 41 out of 46 corporations; 6 of the 41 are audited jointly with private sector firms.¹³ Crown corporations operate financially very much like private sector enterprises and, accordingly, are audited against the General Accepted Accounting Principles (GAAP) established by the Canadian Institute of Chartered Accountants. Their financial statements are reported in their respective annual reports.

8.1 Annual Audit

In the context of the review of Crown corporations' governance, the question was raised on several occasions as to whether Crown corporations should be required to use the Auditor General as their external auditor. Since the financial statements are certified according to GAAP, any reputable accounting firm could perform that function with credibility. Moreover, several Crown corporations are operating in a market environment. The option of using auditors specialized in the sectors in which the corporations are involved would therefore seem viable. However, the government is of the view that the role of the Auditor General as external auditor or joint auditor for Crown corporations should be maintained and even extended to all corporations for the following reasons:

1. The Office of the Auditor General of Canada is most familiar and best equipped to assess the corporations' conformity with the FAA.

13. Bank of Canada, Canada Pension Plan Investment Board, Public Sector Pension Investment Board, Canadian Race Relations Foundation, and Canada Post Corporation are audited by private sector firms. Canada Development Investment Corporation, Canada Mortgage and Housing Corporation, Business Development Bank of Canada, Canada Lands Company Limited, Atomic Energy of Canada Limited and VIA Rail Canada Inc. are currently jointly audited by the Office of the Auditor General and private sector firms.



2. The Auditor General conducts the special examinations for most corporations. Being the external auditor on an annual basis contributes significantly to the work that is required in the context of the special examination and assists in monitoring the implementation of recommendations that may come out of the examination.
3. When the complexity of the situation or the nature of the audit work requires specialized expertise, the Auditor General can hire or team up with private firms to conduct audits.

Measure #26

The government will amend the relevant legislation in order to allow for the appointment of the Auditor General of Canada as the external auditor or joint auditor for all Crown corporations, inside or outside the purview of Part X, Divisions I through IV, of the FAA. In recognition of the specific needs of commercial Crown corporations, and in line with current practice with regard to several organizations, the government would encourage the Office of the Auditor General of Canada to work in partnership with private sector auditing firms.

8.2 Special Examination

The current legislative framework requires that all Crown corporations subject to Part X of the FAA undergo a special examination by the Office of the Auditor General at least once every five years. The special examination is a type of value-for-money or performance audit, where the examiner expresses an opinion on the systems and practices in place in the corporation and goes beyond issues that are strictly financial. It is a powerful tool for management and the Board of Directors to better understand the risks and deficiencies in the control and monitoring mechanisms of their organization.

Of the nine Crown corporations currently exempt from Divisions I through IV of Part X of the FAA, six are not subject to the requirement for a special examination. Since exempt Crown corporations do not submit an annual corporate plan to the government and Parliament, the special examination is one of the few tools at the disposal of a third party to assess the operations and activities of those corporations against their mandate and government objectives.

Measure #27

The government will implement the necessary legislative changes to provide the Office of the Auditor General of Canada with the authority to conduct special examinations in all Crown corporations.

Crown corporations that fall under Part X of the FAA undergo a special examination once every five years regardless of the level of materiality and risks associated with their operations. The Canada Pension Plan Investment Board and the Public Sector Pension Investment Board, although outside of Divisions I through IV of Part X, are subject to special examination every six

years. It is clearly preferable to match the frequency of special examinations with the level of risk inherent in a Crown corporation's operations.

Measure #28

The government will establish a more flexible system for the timing of special examinations, reflective of the level of risk related to each corporation. The risk analysis would be based on the complexity of the organization, the field of operation, and the changes taking place in the business and policy environment that may impact on the corporation. The Office of the Auditor General of Canada would have the responsibility for determining the frequency of special examinations for each Crown corporation. At a minimum, all corporations would undergo a special examination every eight years.

Currently the special examination is positioned in the FAA as an oversight mechanism for use by Boards of Directors, although the decision to make the examination available to the appropriate Minister and Parliament is left to the examiner for Crown corporations that fall under Part X, Schedule III, Part I. While boards do play a fundamental oversight role, other actors including the appropriate Minister, Treasury Board, and Parliament also have oversight responsibilities.

Measure #29

The government will require that each special examination report prepared by the Auditor General be submitted to the Board of Directors, the responsible Minister, the Treasury Board, and Parliament, to maximize the value of these reports to Canadians. In accordance with the provisions of the FAA to protect commercial interests of a parent Crown corporation or a wholly-owned subsidiary of a parent Crown corporation, the government will work with the Office of the Auditor General of Canada to develop a protocol relating to the release of the special examination.



9. Other Issues

Several issues related to the governance of Crown corporations are not covered in detail within the scope of this report. The intent of this chapter is to provide a general sense of how the government intends to proceed in the future to address the compensation and indemnification of directors.

9.1 Compensation

The increased involvement of boards in the provision of strategic guidance to Crown corporations, and the recognition of their responsibility for the performance and activities of their organizations, raises the question as to whether the compensation currently paid to directors should be reviewed.

Some individuals consulted during the course of this review recognized there is a requirement to adjust the level of compensation for directors in response to increasing responsibilities and workload. This being said, compensation does not seem to be a prime consideration for individuals who accept appointments to boards. They are more attracted by the opportunity to make a contribution to public service and the nature of the work that the appointment involves.

Measure #30

The government will ask the Advisory Committee on Senior Level Retention and Compensation to review the compensation provided to chairs and directors of Crown corporations.

9.2 Indemnification of Directors

The FAA protects directors against all costs that are reasonably incurred in respect of any civil, criminal, or administrative action or proceeding to which they are a party by reason of being or having been such directors, if directors acted honestly and in good faith with a view to the best interests of the Crown corporation, and if, in the case of any criminal or administrative action or proceeding that is enforced by a monetary penalty, the director's conduct is believed, on reasonable grounds, to have been lawful.

The FAA also specifies that the Treasury Board is required to indemnify directors only if the directors were substantially successful on the merits of the defence of the action or proceeding and fulfill the conditions set out above. Although the Act provides the Treasury Board with the

authority to make regulations specifying terms and conditions governing indemnification, none have been developed or approved.

At issue is the growing number of Crown corporations purchasing separate indemnification insurance policies for their directors who, in many cases, would not otherwise accept the appointment. These insurance policies typically provide for an advance of costs should an action or proceeding be brought against directors, which the Treasury Board *Policy on the Indemnification of and Legal Assistance for Crown Servants* does not provide. This would allow a corporation to advance moneys to a director for the costs, charges and expenses of a proceeding. However, directors are required to repay the advance if they are found to have acted dishonestly, in bad faith, not in the best interests of the corporation, or if there are reasonable grounds to believe the directors' conduct was unlawful.

Measure #31

The government intends to develop regulations pursuant to the FAA to provide for an advance of costs to directors in much the same manner as in the *Canada Business Corporation Act*.



10. Conclusion

The transparency and rigour of governance and accountability regimes for public institutions, including Crown corporations, has been an area of growing concern for Parliament and the general public. The government launched a series of reviews, including this one, to strengthen transparency, oversight, accountability, and management across the public sector. The government recognizes the connection between the transparency and accountability of public institutions, and their effectiveness. As stated in *Strengthening Public Sector Management: An Overview of the Government Action Plan and Key Initiatives*,¹⁴ the government understands that for Canada to build a 21st century economy, strengthen its social foundations and secure its place in the world, it must have a modern public sector in which Canadians have pride and confidence.

The purpose of this review was to undertake a comprehensive examination of Crown corporation governance in light of recent developments in both public and private sectors. Indeed, this review constitutes the first examination of all major aspects of the governance regime for Crown corporations since Part X of the FAA was last amended in 1984. Since then, in the private and public sectors, a range of innovative and successful improvements to corporate governance have been instituted. Some of these best practices are reflected in measures outlined in this report.

We hoped to answer a fundamental question: How can the government improve the effectiveness of the current governance framework so that the programs and services delivered by Crown corporations respond to Canadians' interests and needs, as well as meet Canadians' standards and expectations of ethical conduct and operations for all public institutions? The measures outlined in this report reflect our determination to succeed and our commitment to action.

However, as this report makes clear, no single governance framework could possibly meet the requirements of all 46 Crown corporations given their extraordinary diversity. Many of the measures the government will pursue will still need to be tailored to fit the nature of each corporation and its status under or outside the FAA. However, the government is confident that the measures announced provide an integrated governance framework reflecting the core principles of accountability and transparency. In addition to these measures, the government

14. *Strengthening Public Sector Management: An Overview of the Government Action Plan and Key Initiatives*, Treasury Board of Canada Secretariat, 2004

recognizes the requirement to periodically review Crown Corporation mandates and will set in place a process to do so.

The measures focus on five key areas: (1) clarification of the relationship between the responsible Minister and the Crown corporation; (2) clarification of the Crown corporations' accountability regimes and the stewardship roles of their Boards; (3) an update of the interim process announced in March 2004 to make the appointment process more professional, transparent, and rapid; (4) keeping pace with governance reforms in the private sector, and (5) increasing the transparency of Crown corporations' activities and operations.

The implementation of the measures will flow from legislative, policy, and guidelines changes, which the Government of Canada will pursue in consultation and collaboration with Crown corporations.



11. Summary of Measures

Measure #1

The government will clarify the accountability structure for Crown corporations, including in the FAA, in order to describe the relationships between Parliament, the responsible Minister, the Board of Directors and the CEO.

Measure #2

The government will affirm, including through amendments to the FAA and other relevant statutes, that the responsible Minister is its representative.

Measure #3

To improve the communication of policy objectives and priorities from the government to Crown corporations, the responsible Minister will issue a statement of priorities and accountabilities to Crown corporations within his or her portfolio. The statement will be discussed beforehand with corporate management and the Board, but ultimately it will reflect the government's policy expectations for the corporation. The statement will be subject to an annual review and help form the basis for a periodic review of the corporation's performance.

Measure #4

In order to reaffirm that Boards of Directors are accountable for the activities and performance of the corporation to the responsible Minister, the government will embody the role and the responsibilities of directors in Part X of the FAA and in other enabling statutes.

Measure #5

The government will review the appointment of public servants as directors on the Boards of Crown corporations with a view to restricting or eliminating their participation. The government will take administrative action, and where necessary seek legislative changes, to implement this measure.

Measure #6

The government will enact the legislative changes required to ensure a split in the positions of CEO and chair of the Board for Crown corporations.

Measure #7

The government will require that the CEO be the sole representative of management to a Board of Directors.

Measure #8

To ensure that the Board may deliberate freely, and exercise the challenge function expected of directors, Board proceedings should remain confidential. The government will require that Boards of Directors of Crown corporations hold annual public meetings at which stakeholders could express their views and seek information about the activities of the corporations. Corporations are also encouraged to develop outreach activities to solicit input and feedback from stakeholders on an ongoing basis.

Measure #9

To assist the work of Board members, the government will issue to every new director, upon appointment, a guidance letter that would make explicit the expectations of the government with regard to the role and responsibilities of directors under law and in practice. The letter would also include provisions related to the values and ethics of public office holders and disclosure of conflict of interest.

Measure #10

To strengthen the corporate governance of Crown corporations, the government will work with Boards to adopt a charter that would define clearly the roles and responsibilities of the Board.

Measure #11

To further enhance the skills and performance of Boards of Directors and building on current orientation programs, the Canada School of Public Service will establish additional training and professional development programs on public sector management and Crown corporations.

Measure #12

Consistent with good governance practices, the government will ask Boards of Directors to establish regular assessments of their effectiveness and the contribution of individual directors as a self-development tool. The assessment of the Board as a whole will be communicated by the Chair of the Board to the appropriate Minister.



Measure #13

The government will require that Boards of Directors for all Crown corporations establish an audit committee.

- ▶ The committee would consist of a minimum of three members and would have the authority to engage independent counsel and expertise, as it deems necessary, to carry out its duties.
- ▶ The mandate of the committee should include the requirement to set up a process to investigate complaints related to issues of integrity and behaviour and to establish a risk assessment and management mechanism as well as adequate controls and protocols to mitigate those risks.
- ▶ The audit committee would also adopt an audit plan that would be communicated to the Board of Directors.

Measure #14

All directors on the audit committee must be independent of management and have financial literacy. An individual with financial expertise must chair the activities of the committee. The government will be mindful of this requirement in the context of the selection and appointment process of directors.

Measure #15

In order to enhance and protect the independence of the audit function, internal and external auditors will report directly to the audit committee.

Measure #16

Selection criteria for chairs and Board profiles will be made public by the government. Similarly, Crown corporations will make CEO selection criteria available to the public.

Measure # 17

The government will develop a central Web site to solicit potential candidates for director and chair positions.

Measure #18

The selection process for the CEO will be determined by the Board of Directors and will include, at minimum, advertising in either or both the *Canada Gazette* and the corporation's Web site.

Measure #19

The government will obtain references on all candidates for appointment as director or chair. In the case of CEOs, the Board's nominating committee will be required to do the same for any candidate it submits to the government for appointment. In addition, the government will continue to conduct background checks and ensure that candidates are not in a conflict of interest, prior to making any appointment.

Measure #20

The government will work closely with parliamentary committees to ensure a workable appointment review process that will not unduly delay necessary appointments.

Measure #21

The government will amend the FAA and enabling statutes to provide for appointments for up to four years.

Measure #22

To respond to the public interest in non-financial issues, the Treasury Board of Canada Secretariat will produce a guidance document for Crown corporations on annual report specifications, including the Management's Discussion and Analysis Section and issues pertaining to values and ethics.

Measure #23

In order to make the financing of Crown corporations more transparent, the government will also ensure that the Main Estimates document clearly identifies the funds allocated to each Crown corporation that receives parliamentary appropriations.

Measure #24

In principle, the government supports the use of a certification regime adapted to the reality of public institutions. The Treasury Board of Canada Secretariat will examine, in consultation with Crown corporations, the development of a certification regime that would be applicable to all Crown corporations.



Measure #25

The *Access to Information Act* should

- ▶ be extended to 10 of the existing 18 Crown corporations¹⁵ currently outside the provisions of the Act by an Order in Council;
- ▶ not include seven Crown corporations¹⁶ until the government has developed mechanisms to protect their commercially sensitive information;
- ▶ not include the Canada Pension Plan Investment Board at this time because of its federal-provincial structure. Its inclusion will require provincial consent;
- ▶ be amended to include protection for journalistic sources.

Measure #26

The government will amend the relevant legislation in order to allow for the appointment of the Auditor General of Canada as the external auditor or joint auditor for all Crown corporations, inside or outside the purview of Part X, Divisions I through IV, of the FAA. In recognition of the specific needs of commercial Crown corporations, and in line with current practice with regard to several organizations, the government would encourage the Auditor General of Canada to work in partnership with private sector auditing firms.

Measure #27

The government will implement the necessary legislative changes to provide the Office of the Auditor General of Canada with the authority to conduct special examinations in all Crown corporations.

Measure #28

The government will establish a more flexible system for the timing of special examinations, reflective of the level of risk related to each corporation. The risk analysis would be based on the complexity of the organization, the field of operation, and the changes taking place in the business and policy environment that may impact on the corporation. The Office of the Auditor General of Canada would have the responsibility for determining the frequency of special examinations for each Crown corporation. At a minimum, all corporations would undergo a special examination every eight years.

15. These are: Canadian Development Investment Corporation, Canadian Race Relations Foundation, Cape Breton Development Corporation, Cape Breton Growth Fund Corporation, Enterprise Cape Breton, Marine Atlantic Inc., Old Port of Montreal, Parc Downsview Park, Queens Quay West Land Corporation, and Ridley Terminal Inc.

16. These are: Via Rail, National Arts Centre, Canadian Broadcasting Corporation, Export Development Canada, Canada Post Corporation, Atomic Energy of Canada Limited and the Public Sector Pension Investment Board.

Measure #29

The government will require that each special examination report prepared by the Auditor General be submitted to the Board of Directors, the responsible Minister, the Treasury Board, and Parliament, to maximize the value of these reports to Canadians. In accordance with the provisions of the FAA to protect commercial interests of a parent Crown corporation or a wholly-owned subsidiary of a parent Crown corporation, the government will work with the Office of the Auditor General of Canada to develop a protocol relating to the release of the special examination.

Measure #30

The government will ask the Advisory Committee on Senior Level Retention and Compensation to review the compensation provided to chairs and directors of Crown corporations.

Measure #31

The government intends to develop regulations pursuant to the FAA to provide for an advance of costs to directors in much the same manner as in the *Canada Business Corporation Act*.



Appendix A: Individuals Consulted

1. Bilateral Consultations with Crown Corporations' Chairs and CEOs

Participants

Robert Van Adel, CEO
Atomic Energy of Canada Limited

David Dodge, Governor and CEO
Bank of Canada

Nalini Stewart, Acting Chair
John Hobday, CEO
Canada Council for the Arts

Marc Rochon, Chair
Kathy Milson, CEO
Canada Lands Corporation

Karen Kinsley, CEO
Canada Housing and Mortgage Corporation

Dr. Gail Cook-Bennet, Chair
John MacNaughton, CEO
Canada Pension Plan Investment Board

Allan Curleigh, Chairperson
Douglas Patriquin, former Chairperson
Hugh O' Donnell, CEO
Canadian Commercial Corporation

John Core, Chair and CEO
Canadian Dairy Commission

Paul Gobeil, Chair
Export Development Canada

John Ryan, President and CEO
Farm Credit Canada

Michel Fournier, President and CEO
The Federal Bridge Corporation Limited

Dr. David Leighton, Chair
National Arts Centre Corporation

Dr. Victor Rabinovitch, CEO
Museum of Civilization

Bill Blundell (former Chair)
Public Sector Pension Investment Board

2. Bilateral Consultations with Deputy Ministers, Summer 2004

Participants

Leonard Edwards Deputy Minister of Agriculture and Agri-Food Canada	George Anderson Deputy Minister of Natural Resources Canada
Judith LaRocque Deputy Minister of Canadian Heritage	I. David Marshall Deputy Minister of Public Works and Government Services Canada and Deputy Receiver General for Canada
André Juneau Deputy Head of Infrastructure Canada	Louis Ranger Deputy Minister of Transport Canada
Peter Harder Deputy Minister of Foreign Affairs	Kathy O'Hara Deputy Secretary to the Cabinet, Privy Council Office
Robert Fonberg Deputy Minister of International Trade	Morris Rosenberg Deputy Minister of Justice Canada
Alan Nymark Commissioner of Canada Revenue Agency	Monique Collette President of Atlantic Canada Opportunities Agency

3. Bilateral Consultations in British Columbia, Summer 2004

Participants from the Crown Agencies Secretariat

Dana Hayden Deputy Minister and CEO	Ron Townshend Executive Director
Les MacLaren Executive Director	Christina Zacharuk Policy Advisor
Molly Harrington Executive Director	

Participants from the Board Resourcing and Development Office (BRDO)

Elizabeth Watson Deputy Minister and Managing Director



4. Informal Telephone Interviews, Summer 2004

Participants

Bob Quart
Board Vice-Chair of Insurance Corporation
of British Columbia

Patrick O'Callaghan
Managing Partner of Patrick O'Callaghan &
Associates Ltd., Vancouver

Susan Paish
QC, Board member and Chair of HR Committee
for the Insurance Corporation of British Columbia

Larry Bell
Chair and former Chief Executive Officer
of British Columbia Hydro

Wendy Dean
Director Corporate Secretariat for Crown
Corporations in Saskatchewan

5. Participants of Roundtables on Corporate Governance

July 7, 2004

Rick Beaton
Chief Executive Officer
Cape Breton Growth Fund Corporation

Marcel Beaudry
Chairperson and Chief Executive Officer
National Capital Commission

David Bell
Chairperson
Parc Downsview Park Inc.

Peter Clark
Executive Director
Standards Council of Canada

Alan Curleigh
Chairperson
Canadian Commercial Corporation

Joanne DiCosimo
President and Chief Executive Officer
Canadian Museum of Nature

Dan Elash
President and Chief Executive Officer
Blue Water Bridge Authority

Michel Fournier
President and Chief Executive Officer
The Federal Bridge Corporation Limited

Anthony McGuinness
Chief Executive Officer
Atlantic Pilotage Authority

Ross Nicholls
President and Chief Executive Officer
Defence Construction (1951) Limited

Jean-Claude Michaud
President and Chief Executive Officer
Laurentian Pilotage Authority

Karen Mock
Executive Director
Canadian Race Relations Foundation

Kathy Milsom
President and Chief Executive Officer
Canada Lands Company Limited

Maureen O'Neil
President
International Development Research Centre

Tom Penny
Vice President, Planning
Canadian Tourism Commission

Victor Rabinovitch
President and Chief Executive Officer
Canadian Museum of Civilization

July 7, 2004 (cont'd)

Raymond Frenette
Chairperson
Atomic Energy of Canada Limited

Tony Genco
Executive Vice President
Parc Downsview Park Inc.

Ian Gillespie
President and Chief Executive Officer
Export Development Canada

Peter Herrndorf
President and Chief Executive Officer
National Arts Centre Corporation

Paul Jenkins
Senior Deputy Governor
Bank of Canada

Doug Keddy
Chairperson
Blue Water Bridge Authority

Louise Beaubien-Lepage
Acting Chairperson
Canadian Museum of Nature

Marc Rochon
Chairperson
Canada Lands Company Limited

Jean-Pierre Sabourin
President and Chief Executive Officer
Canada Deposit Insurance Corporation

Anne Soucie
Chairperson
Atlantic Pilotage Authority

Christopher Terry
President and Chief Executive Officer
National Museum of Science and Technology

Pierre Théberge
Director and Chief Executive Officer
National Gallery of Canada

Emmanuel Triassi
Chairperson
Royal Canadian Mint

July 9, 2004

Vivian Albo
Chairperson
Canada Post Corporation

Jim Bear
Chairperson
Freshwater Fish Marketing Corporation

André Bourdeau
Acting President and Chief Executive Officer
Business Development Bank of Canada

Dino Chiesa
Acting Chairperson
Canada Mortgage and Housing Corporation

Monique Collette
Chair and Chief Executive Officer
Enterprise Cape Breton Corporation

Paul Gobeil
Chairperson
Export Development Canada

Gerard Power
Vice President & Corporate Secretary
Canada Post Corporation

John Hobday
Director
Canada Council for the Arts

Anne Joynt
President and Chief Executive Officer
Canada Post Corporation

Hugh Krentz
Chairperson
Standards Council of Canada



July 9, 2004 (cont'd)

Paul Cantor
Chairperson
Public Sector Pension Investment Board

John Core
Chair and CEO
Canadian Dairy Commission

Paul Côté
Acting President and Chief Executive Officer
Via Rail Canada Inc.

Rosemary Davis
Chairperson
Farm Credit Canada

Jacques Duchesneau
President and Chief Executive Officer
Canadian Air Transport Security Authority

Brian Flemming
Chairperson
Canadian Air Transport Security Authority

Gordon J. Fyfe
President and Chief Executive Officer
Public Sector Pension Investment Board

Karen Kinsley
President
Canada Mortgage and Housing Corporation

John A. MacNaughton
President and Chief Executive Officer Canada
Pension Plan Investment Board

Robert Rabinovitch
President and Chief Executive Officer
Canadian Broadcasting Corporation

John Ryan
President and Chief Executive Officer
Farm Credit Canada

Nalini Stewart
Acting Chairperson
Canada Council for the Arts

The Honourable Murray Elston
President and CEO
Canadian Nuclear Association

6. Participants in Corporate Governance Leaders' Forum

July 8, 2004

Trevor Apperley Director, Relationship Investing Ontario Teachers' Pension Plan Board	Robert Fabes Senior Vice-President Toronto Stock Exchange
David Beatty Managing Director Canadian Coalition for Good Governance	Al Gunn Partner, Provincial Governments Deloitte & Touche LLP
Gil Bennett Chairman Canadian Tire Corporation Limited	Bill Langdon Vice-President, Intellectual Capital Society of Management Accountants of Canada
David Brown Chair Ontario Securities Commission	Andrew MacDougall President Spencer Stuart Canada
Gail Cook-Bennett Chairperson Canada Pension Plan Investment Board	Bill MacKinnon Chairman and Chief Executive Officer KPMG LLP
Purdy Crawford Counsel Osler, Hoskin & Harcourt LLP	Andy Poprawa President and Chief Executive Officer Deposit Insurance Corporation of Ontario



Appendix B: Parent Crown Corporations and Incorporation Data

Parent Crown Corporation	Year of Incorporation	Legislative Incorporation
Atlantic Pilotage Authority	1972	Pursuant to the <i>Pilotage Act</i> (R.S.C. 1985, c. P-14)
Atomic Energy of Canada Limited	1952	Part I of the <i>Canada Corporations Act</i> , continued July 8, 1977, under a certificate, amended July 5, 1982, under the <i>Canada Business Corporations Act</i>
Bank of Canada	1934	The <i>Bank of Canada Act</i> (R.S.C. 1985, c. B-2); acts as the fiscal agent of the Government of Canada
Blue Water Bridge Authority	1964	The <i>Blue Water Bridge Authority Act</i>
Business Development Bank of Canada	1974	The <i>Federal Business Development Bank Act</i> (R.S.C. 1985, c. F-6) and continued by the <i>Business Development Bank of Canada Act</i> (S.C. 1995, c. 28)
Canada Council for the Arts	1957	The <i>Canada Council Act</i> (R.S.C. 1995, c. C-2)
Canada Deposit Insurance Corporation	1967	The <i>Canada Deposit Insurance Corporation Act</i> (R.S.C. 1985, c. C-3; R.S.C. 1985, c. 18 (2nd Supp.)) S.C. 1992, c. 26
Canada Development Investment Corporation	1982	The <i>Canada Business Corporations Act</i> . Articles of incorporation, May 26, 1982
Canada Lands Company Limited	1956	By letters patent; reorganized under the <i>Canada Business Corporations Act</i> , September 19, 1977; Certificate of Continuance under the <i>Canada Business Corporations Act</i>
Canada Mortgage and Housing Corporation	1946	The <i>Central Mortgage and Housing Corporation Act</i> , amended March 16, 1979, to <i>Canada Mortgage and Housing Corporation Act</i> (R.S.C. 1985, c. C-7)
Canada Pension Plan Investment Board	1998	The <i>Canada Pension Plan Investment Board Act</i> (S.C. 1997, c. 40)
Canada Post Corporation	1981	The <i>Canada Post Corporation Act</i> (R.S.C. 1985, c. C-10)

Parent Crown Corporation	Year of Incorporation	Legislative Incorporation
Canadian Air Transport Security Authority	2002	Pursuant to the <i>Canadian Air Transport Security Authority Act</i> , as part of Bill C-49, the <i>Budget Implementation Act</i> , 2001
Canadian Broadcasting Corporation	1936	Established by The <i>Canadian Broadcasting Act</i> and continued by the 1958, 1968 and 1991 <i>Broadcasting Acts</i> (R.S.C. 1991, c. 11)
Canadian Commercial Corporation	1946	The <i>Canadian Commercial Corporation Act</i> (R.S.C. 1985, c. C-14)
Canadian Dairy Commission	1966	The <i>Canadian Dairy Commission Act</i> (R.S.C. 1985, c. C-15) (S.C. 1994, c. 26 and c. 38) (S.C. 1995, c. 23)
Canadian Museum of Civilization	1990	The <i>Museums Act</i> (S.C. 1990, c.3)
Canadian Museum of Nature	1990	The <i>Museums Act</i> (S.C. 1990, c. 3)
Canadian Race Relations Foundation	1996	The <i>Canadian Race Relations Foundation Act</i>
Canadian Tourism Commission	2001	The <i>Canadian Tourism Commission Act</i> (S.C. 2000, c. C-5)
Cape Breton Development Corporation	1967	The <i>Cape Breton Development Corporation Act</i> , (R.S.C. 1985, c. C-25)
Cape Breton Growth Fund Corporation	2000	Pursuant to the <i>Canada Business Corporations Act</i> , as a wholly owned subsidiary of the Enterprise Cape Breton Corporation and directed to report as if it were a parent Crown corporation (P.C. 2000-1341)
Defence Construction (1951) Limited	1951	The <i>Defence Production Act</i> (R.S.C. 1985, c. D-1); continued under the Canada Business Corporations Act, November 21, 1978
Enterprise Cape Breton Corporation	1988	The <i>Enterprise Cape Breton Corporation Act</i> (Part II of the <i>Government Organization Act, Atlantic Canada</i> , 1987 [S.C. 1988, c. 50])
Export Development Canada	1969	The <i>Export Development Act</i> (R.S.C. 1985, c. E-20); (S.C. 1993, c. 26, in force June 10, 1993); (S.C. 2001, c. 33, in force December 21, 2001)
Farm Credit Canada	1959	The <i>Farm Credit Act</i> , continued on April 2, 1993, under the <i>Farm Credit Corporation Act</i> (S.C. 1993, c. 14); and continued on June 14, 2001, under the <i>Farm Credit Canada Act</i> (S.C. 2001, c. 22)
Federal Bridge Corporation Limited, The	1998	The <i>Canada Business Corporations Act</i>



Parent Crown Corporation	Year of Incorporation	Legislative Incorporation
Freshwater Fish Marketing Corporation	1969	The <i>Freshwater Fish Marketing Act</i> (R.S.C. 1985, c. F-13)
Great Lakes Pilotage Authority	1972	The <i>Pilotage Act</i> (R.S.C. 1985, c. P-14); incorporated under the <i>Canada Corporations Act</i> in May 1972 as a subsidiary of The St. Lawrence Seaway Authority; became a parent corporation on October 1, 1998 pursuant to the <i>Canada Marine Act</i> .
International Development Research Centre	1970	The <i>International Development Research Centre Act</i> , (R.S.C. 1985, c. I-19)
Laurentian Pilotage Authority	1972	The <i>Pilotage Act</i> (R.S.C. 1985, c. P-14)
Marine Atlantic Inc.	1979	The <i>Canada Business Corporations Act</i> ; status and ownership changed as of December 31, 1986, pursuant to the <i>Marine Atlantic Inc. Acquisition Authorization Act</i> (S.C. 1986, c. 36)
National Arts Centre Corporation	1966	The <i>National Arts Centre Act</i> (R.S.C. 1985, c. N-3)
National Capital Commission	1958	The <i>National Capital Act</i> (R.S.C. 1985, c. N-4; amended in 1988 S.C. 1988, c. 54)
National Gallery of Canada	1990	The <i>Museums Act</i> (S.C. 1990, c. 3)
National Museum of Science and Technology	1990	The <i>Museums Act</i> (S.C. 1990, c. 3)
Old Port of Montreal Corporation Inc.	1981	The <i>Canada Business Corporations Act</i> ; a wholly owned subsidiary of the Canada Lands Company Limited; directed by Order in Council (P.C. 1987-86) to report as if it were a parent Crown corporation.
Pacific Pilotage Authority	1972	Pursuant to the <i>Pilotage Act</i> (R.S.C. 1985, c. P-14)
Parc Downsview Park Inc.	1998	Pursuant to the <i>Canada Business Corporations Act</i> as a wholly-owned subsidiary of Canada Lands Company Limited and directed to report as if it were a parent Crown corporation (P.C. 2003-1304)
Public Sector Pension Investment Board	1999	Pursuant to the <i>Public Sector Pension Investment Board Act</i> (S.C. 1999, c. 34)
Queens Quay West Land Corporation	1936	Terminal Warehouses Ltd. under the <i>Ontario Companies Act</i> ; July 14, 1978 as Harbourfront Corporation under the <i>Business Corporations Act</i> of Ontario; continued under the <i>Canada Business Corporations Act</i>

Parent Crown Corporation	Year of Incorporation	Legislative Incorporation
Ridley Terminals Inc.	1981	The <i>Canada Business Corporations Act</i> , became a wholly owned subsidiary of the Canada Ports Corporation in 1991; on November 1, 2000 pursuant to section 177 of the <i>Canada Marine Act</i> (R.S.C. 1998, c.10), Ridley Terminals Inc. became a parent Crown corporation
Royal Canadian Mint	1969	The <i>Royal Canadian Mint Act</i> (R.S.C. 1985, c. R-9)
Standards Council of Canada	1970	The <i>Standards Council of Canada Act</i> (R.S.C. 1996, c. 24)
Telefilm Canada	1967	The <i>Canadian Film Development Corporation Act</i> (R.S.C. 1985, c. C-16)
VIA Rail Canada Inc.	1977	The <i>Canada Business Corporations Act</i>