
PUBLIC ACCOUNTABILITY OF AUTONOMOUS PUBLIC ORGANIZATIONS

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1 Introduction

The accountability of public organizations has become an increasingly complex issue for contemporary governments. The traditional parliamentary model of accountability that presumed a linear and hierarchical relationship between a public organization, a Minister and Parliament has decreasing relevance for the manner in which public services are actually delivered at the beginning of the 21st century. The need to reconsider accountability is apparent even for organizations that are components of “mainstream government.” Ministers have become less willing to accept full responsibility for the actions of their organizations, especially implementation decisions made at lower levels

of those organizations, and the logic of government reforms has been that those lower level officials should have more latitude for making decisions and be more accountable for their actions. Further, given that a smaller percentage of public services are now delivered directly by ministerial departments, a re-examination of accountability is called for if the public sector is to slow, and perhaps even reverse, the public's loss of confidence.

Several changes in politics and public administration are driving changes in accountability. First, accountability as a form of democracy is increasingly important because of the decline of other forms of democracy. Participation in elections and membership in political parties have been declining steadily over the past several decades, and citizens appear to have lost much of their faith in the input institutions of democracy (Pharr and Putnam, 2000; Nye, King and Zelikow, 2000), such as voting. Thinking about democracy, by both political leaders and scholars, has shifted to some extent towards "output legitimation," emphasizing the role of policy and administration in building the foundations of a legitimate state. In that setting, accountability, as well as the ability of citizens to participate in controlling organizations that deliver their services, becomes crucial to democratic politics.

Public sector reforms also have emphasized participation by clients, and by the public in general, in the decisions of public organizations, so that accountability now is being exercised downward as well as upward. In some instances, the ability of clientele to exert influence over, and demand accountability from, public organizations has been formalized through advice and consultation institutions, while in other instances the relationships with the stakeholders are more informal and subtle. In all these relationships among clientele and service providers, however, it is clear that the public expects direct accountability from public organizations, and that representative institutions no longer are considered sufficient means of control.

Further, public organizations must find ways to deal effectively with other organizations in their environment that are necessary for the success of their programs. Very few, if any, public sector organizations can now deliver services effectively without cooperating with other organizations, public or private. Even if they could ignore other actors in their policy-making environment, public organizations would probably be ill-advised to consider acting as a “single, lonely organization” and not attempt to work cooperatively with programs and organizations that can make their program more effective (Peters, forthcoming). Thus, public organizations must now respond to pressures coming from a range of political and social actors, and some of those pressures may conflict with traditional forms of control coming from ministers and Parliament. In particular, coordination may diffuse both financial and programmatic lines of control and make it difficult for traditional accountability organizations to assign responsibility for actions.

The complexity involved in delivering contemporary public services now also affects accountability because of the problem of “many hands” (Mulgan, 2000). The long chains of action involved in delivering services, and the number of actors involved in them, makes it difficult to identify the source of any administrative or policy failure, should one occur. As well, the capacity to track the utilization of public money involved in contracts, coordinated service delivery systems and partnership arrangements makes it more difficult to maintain fiscal accountability. Further, and central to the concerns of this paper, contracting powers granted without close supervision by Parliament, a Minister, or a board of directors may also make maintaining substantive accountability for policy decisions more difficult. These problems, arising from the involvement of multiple actors in the delivery of services, occur as policies are formulated and as the purposes for which contracts and other instruments of governing are being devised, as well as when the programs are being implemented with the contracts or cooperative mechanisms. Much of the focus on accountability of policy instruments such as

contracts has been placed on implementation, but greater concern needs to be raised about the purposes for which these instruments are used and the content of the policy that is being implemented.

Although the above-mentioned changes in patterns of governance are relevant, the most significant change affecting accountability in the public sector has been the increasing use of autonomous and quasi-autonomous organizations to deliver public services. A dominant pattern of reform in the public sector has been the creation of “agencies” to deliver public service (Pollitt, Talbot, Caulfield and Smullen, 2004). The Organization for Economic Cooperation and Development (2002) referred to these structures as “Distributed Public Governance,” meaning that tasks that once were housed within Cabinet departments have now been widely dispersed. The public sector has as a consequence become more complex organizationally, with a large number of structures responsible for individual segments of policy, each having varying degrees of connection to public authority. A central justification motivating these reforms has been to separate policy-making and administration, with the presumption that greater managerial freedom would enhance the efficiency of the organizations (see Polidano, 1999).

The slogan “let the managers manage” is used to justify the increasing power of managers in making decisions within the public sector and consequent weakening of the hierarchical control of ministers over the activities for which they are nominally responsible. The argument in favour of creating agencies and analogous organizations has also been to some degree accountability, at least financial accountability. When a program is located within a larger department, it may be difficult for Parliament or auditors to assess the real costs for that program (see Niskanen, 1971), because of cross-subsidization and shared overheads. Having each organization as a “tub on its own bottom” makes tracking costs and financial accountability more feasible, although the separation from direct ministerial authority may limit the mechanisms for enforcing accountability.

Although separating ministries into numerous separate organizations providing a single service may have improved one aspect of accountability, it appears to have had a negative impact on other aspects. In addition to the complexities identified already, the problem of coordination and the linking of services has been exacerbated by the development of the dispersed model of service delivery. Coordination and coherence have always been difficult in the public sector, but disaggregating ministries has only increased the problems (Mountfield, 2001). In accountability terms, the diffusion of responsibility for programs makes it difficult to trace authority and financial flows when managers attempt to overcome the internal divisions of government. Further, to reach its governance potential, the public sector must develop more coherent policy goals and integrated visions of the future; having multiple poorly coordinated organizations only increases the difficulty in governing in a coherent manner.

To some extent, the use of these autonomous organizations is not new in the public sector, and analogous organizations have been used in the past. The logic of the contemporary changes is not dissimilar to that frequently used to justify the creation of agencies, public corporations, “quangos,” and a host of other organizations. Even from the initial use of these formats, there have been significant concerns (Smith and Hague, 1971) about the ability of conventional public sector processes to maintain acceptable levels of control over the processes and performance of those organizations. All of these formats involve organizations operating at arm’s length from government and therefore having greater latitude for action; as a result, they also present accountability problems.

Most problems of accountability for autonomous organizations have been assumed to be rather familiar ones of “shirking” responsibilities in order to retain budget funds, or perhaps pursuing their own policy interests. The issues at the root of this Commission’s investigation are different,

and seemingly more difficult for governments to cope with in the case of organizations such as Crown corporations. The problem encountered in this Inquiry has been an extreme case of “moral hazard” in which the agent pursues its own interests (in this case, contracts that are clearly outside the bounds of propriety) rather than the goals of the principal. When autonomous or quasi-autonomous organizations are granted the latitude to make operational, and even strategic, decisions with minimal external supervision, the possibility for actions of this sort will always exist, and so accountability becomes an issue of ensuring conformity to the core policy and administrative values in the public sector, while still maintaining the autonomy considered necessary for efficiency.

2 Ideas About Accountability

To this point, the discussion has dealt with accountability as if the meaning of the term were agreed upon. In fact, the term accountability is used in at least four ways, each with rather different implications for public administration (Thomas, 2003). We should understand the differences among these concepts and be more careful when discussing accountability, both in academic and practical discourse. Indeed, if one conception of accountability is stressed, then performance on the other dimensions may be undermined. In addition to distinctions among the four versions of accountability, it is important to differentiate accountability from other controls over public organizations, and especially differentiate *ex ante* controls used to shape behaviour from accountability that tends to be largely *ex post*. In general governments have been shifting from *ex ante* to *ex post* controls, allowing greater latitude for organizational leaders, especially for organizations such as the Crown corporations designed to have greater latitude for action, but which must still be held accountable for their actions.

2.1

Answerability

The simplest concept of accountability is “answerability,” or the notion that all an organization must do to satisfy its obligations is to answer for its actions. This obligation may be met simply by issuing an annual report, or making a statement to a legislative committee. If the statement is complete and truthful, then the obligation is discharged. The operational factor is transparency, and fear of public exposure of malfeasance may be sufficient to produce appropriate behaviour. This minimalist form of control, or lack thereof, is most commonly used for organizations that either operate primarily in the market or have relatively little public money, as is true for some Crown corporations. Answerability also is appropriate for organizations that are controlled primarily through competitive or mutuality pressures (Hood et al., 2004). Universities, for example, are controlled through peer review and competition for research money and for students, and hence have a relatively light accountability regimen. Further, organizations such as research laboratories and again universities that rely on expertise are generally more capable of escaping direct controls and stringent accountability.

2.2

Accountability

Accountability *per se* takes answerability one step further and demands that the individuals or organizations in question not only render an account of action, but that they be judged by some independent body on that action. In particular, accountability has come to mean that the public bureaucracy reports to a political organization, generally the legislature, and that it and the political officials in charge of the organization are scrutinized on their exercise of the public trust. That scrutiny also involves the possibility of sanctions being imposed on the

managers or on the organization as a whole. In Westminster systems, the tradition has been that individual public servants would not be held to account in such a manner, although that practice is changing.

As noted, however, the conduct of public organizations is now scrutinized by numerous actors in addition to the legislature, and even the legislature itself has been tending to utilize more instruments to exercise its oversight. For example, auditing organizations serving the legislative branch have been invigorated and have added substantial capacity in performance auditing as well as conventional financial auditing. There also has been a proliferation of inspectorates responsible for supervising particular organizations or areas of public policy, with power to sanction as well as simply exposing malfeasance (Power, 1997; Hood et al., 1999). For legislatures, the principal mechanism involved in producing compliance is hierarchy and the associated authority. Bureaucratic organizations, as agents of these legislative organizations, are mandated by law to perform certain acts and are constrained by rules of procedure. The actors involved in oversight therefore have legal standards against which to compare performance; they also have the legal resources to attempt to enforce conformity with the standards.

2.3

Responsibility

The term “responsibility” is also often used synonymously with accountability, but its meaning should be differentiated. While accountability is based upon a hierarchical and external relationship, responsibility involves a more inward source of control being exercised over the actions of public servants (see Bovens, 1998). The individual public servant is expected to remain responsible to his or her own conception of the law being administered, as well as to an internalized set of values.¹ In this view, the public servant must exercise some personal judgment about appropriate behaviour and may be called

upon to make an independent assessment of the legality of the actions that she or he is being mandated to undertake by the Minister.

This difference in standards of behaviour in the public service raises the difficult question of whether the public servant, and the public organization, is indeed the servant of the Minister or the servant of the public. The answer to that question in most traditional models of accountability is clearly that the public servant is primarily, or even totally, the servant of the Minister. To the extent that there are judgments made about the public good, those judgments are to be made by the Minister, and a “willing suspension of judgment” may be enshrined in formal statements of constitutional principles.² That having been said, however, both changes in the ethos of public servants as members of society and the increased transparency of most political systems have made maintaining internal control over public servants less viable than in the past.

The changes in Government resulting from the New Public Management have attenuated the links between the Minister and the public servant (Pollitt and Bouckaert, 2004). Civil servants may have been more willing to accept the control of their Minister so long as they were in a career structure separated from the outside and the two sets of actors were closely dependent upon one another. As managerial positions in the public sector have been opened to outside competition, senior public managers may no longer share the values of their ministers, or of their colleagues who have spent an entire career in government, and they therefore may be less committed, not only to obedience to their Minister, but also to the ethical principles that have been common within the public service in countries such as Canada.³

2.4

Responsiveness

Finally, the concept of responsiveness presents perhaps even more complex problems of control for the contemporary public sector. The

opening of government and the spread of concepts such as citizen engagement in the industrialized democracies means that citizens feel that public services, and public servants, should be more responsive to them and to their demands. As well as responding to the demands of clients as individuals, public organizations are involved with networks of other public and private organizations, the now famous “stakeholders” in the policy process, that also require the public sector organization at the centre of the process to negotiate over both the formulation and implementation of its policy (Klijn, 1996; Sorenson and Torfing, 2003).

2.5

Conflicts Within Components of Accountability

These various components of accountability have the potential to operate differently, and may in practice be antithetical to one another. Perhaps most obviously, if the civil servant wishes to be responsive to his or her clients, then it may be more difficult to be strictly responsible to the laws being administered. The professional dilemma of the street level bureaucrat (Meyers and Vorsanger, 2003) often is which of those two dimensions of accountability should be pursued with the greater vigour. On the one hand, the civil servant may sincerely wish to serve the clientele to the greatest extent possible, and many civil servants bend the law to provide the best possible service, or the most desired outcomes, for their clients. On the other hand, however, he or she knows that there is a legal mandate that must be pursued, and for which he or she is indeed responsible.

One important potential conflict for civil servants in these various forms of control is between responsibility and ministerial accountability. Traditional notions of the role of the civil service, and of accountability, involve a certain amount of suspension of individual judgment by civil servants in favour of following ministerial direction. The defence of “an order is an order,” however, is no longer sufficient, and civil servants are expected to be responsible to their own sense of the law and of ethics

when administering the law. Few public service systems, however, have provided individuals with adequate means of coping with what they consider illegal or immoral directions from a superior, nor have they provided those individuals—the “whistleblowers”—adequate protections from subsequent persecution.

Further, individual public servants may believe that their primary accountability is to the public and to Parliament, rather than to the Minister. The difficulty in such a conception of accountability is that it is open to individual interpretation. Directions from the Minister should be clear, while the public interest is at best vague and perhaps unknowable in any definitive manner. The instructions and wishes of Parliament may be somewhat less obscure, but those wishes may be less immediate than those of a Minister. In autonomous organizations, such as Crown corporations, the multiple responsibilities of public employee may be even more difficult to untangle, given the existence of a board of directors, and the need to make the organization conform to market principles.

2.6

Accountability and Many Hands

When public organizations are operating within institutionalized networks of interests and must bargain with those interests, while being to some extent at least responsive to the wishes of those social partners, it may become difficult to maintain the sense of the public interest (Kearns, 2003). This difficulty in pursuing their own definition of the public interest may be especially apparent when the public servants are involved with other public and quasi-public organizations, all of whom may also claim to speak for the public as a whole. One of the major management and accountability issues for the contemporary public sector, therefore, appears to be balancing a sense of the public interest at a broad level with the particular responsibilities and demands of individual organizations.

The expansion of the number of actors involved in accountability also means that public servants and their organization may be pressured to account for their actions and to defend them from different directions. Most importantly, adequate performance for one of those actors may be malfeasance or nonfeasance for another. One rather egregious example of multiple accountabilities occurred in the recent tsunami disaster in Asia. Immediately after the tsunami struck the resorts in Thailand, it appeared that thousands of vacationing Swedes had been killed or injured. The government did not, however, respond immediately because some public servants (being responsible to law) said that there was no authorization to spend public money for the purpose of sending relief planes. Responsiveness to public demands quickly defeated that position (once ministers returned from the Christmas holidays), but at least 36 hours were lost.

The possible dilemma between responsiveness and responsibility was in fact expressed very well by the authors of the Treasury Board Secretariat's 2005 report on the Crown corporations. They raised the crucial 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 operation for all public institutions?

In other words, how can these organizations be at once responsive and responsible in the context of these requirements being imposed upon them?

The OECD's discussion of accountability of "distributed public governance" (Larkin, 2002) identifies three fundamental criteria for establishing proper accountability—external governance in the report—for the organizations created with greater autonomy from direct public control. These three criteria are:

- the roles in external governance of the various branches of government;
- a framework for external governance in terms of the direction, control and review of the operations of the organizations; and,
- specific provisions for each organization for its powers and operations.

Keeping those points in mind, I will now examine the report of the Treasury Board Secretariat, which addressed the question of the accountability and control of Crown corporations in Canada directly. Although organized more in a corporate format, these organizations are one of several forms of distributed public governance in Canada (another example being the Special Operating Agency), and the three criteria above can be applied to good effect in examining the management of Crown corporations.

3 The Crown Corporation

Although Canada did not follow the path of several other Westminster political systems and invest heavily in the “agency model” for organizing the public sector, it has had, and continues to have, its own version of the quasi-autonomous public organization—the Crown corporation. This means of providing important public services has a significant history within the Canadian public sector, beginning in the first quarter of the 20th century (Ashley and Smails, 1965). Initially, these organizations were, in essence, public corporations performing economic tasks, notably running the railways, but, over time, the format was extended to other areas of public activity, notably in the arts and in other activities that may be performed outside the mainstream of government responsibility and control.⁴

The distinction between those types of activities can be identified in part through the distinction made between Schedule III, Part 1, and

Schedule III, Part 2, Corporations. The latter organizations are engaged in more clearly public sector activities, and hence the form of accountability that is exercised over them (most proximately by the Auditor General) is somewhat akin to that exercised over other organizations within the public sector. That similarity to conventional forms of public accountability is less true for Part 1 Corporations. Part 1 Corporations are treated more like commercial enterprises, and therefore the forms of control are more like those one might expect for a private corporation, including a dividend plan and a plan for trading revenues. In addition, there are nine Crown corporations exempt from provisions of the Act that are subject only to their own individual constitutive legislation. These are primarily in the arts and in areas, such as broadcasting, that perhaps require even greater separation from government control in order to ensure objectivity.

Although the basic organizational format for the Crown corporation has been in place for some time, questions of accountability have been raised with greater urgency recently. The report from the Treasury Board Secretariat differentiated among several patterns of accountability and control for Crown corporations and made a number of recommendations for improving the relationships between political authority and these organizations. This report from the TBS will be assessed in this paper, followed by a more general discussion of patterns of control for devolved organizations of this type. I will look at the experience of several other countries, and particularly at their attempts to cope with the problem of accountability for agencies and analogous structures.

The report issued by the Treasury Board Secretariat identified some 46 Crown corporations existing in 2005. These corporations vary markedly in their employment levels, budgets, and purposes. They also appear to vary in the manner in which they are governed internally, and hence also in the formats available for enforcing accountability. The term “corporation” implies a certain pattern of management and governance,

and, at least in terms of the formal existence of structures such as boards of directors, they do assume a corporate form. Further, many of the more important of these organizations, in terms of their employment and revenues, are self-financing and require little or no direct public funding. That fact provides these organizations greater autonomy and eliminates one of the most important of the mechanisms for parliamentary control—the budget.

The Treasury Board Secretariat report also identifies the extent to which some of these organizations deviate from what might be considered a common management and administration framework, and especially from the corporate framework for governance. These differences, in turn, raise the question of whether the single rubric of the Crown corporation is the best way to approach the perceived need of ministers and Parliament to separate some aspects of government from direct control by ministers. Most countries with agencies and similar devolved public bodies have adopted several different formats for these organizations, and those alternative formats perhaps better match the structure and operations of the organizations with the tasks for which they are responsible. For example, as Belgium has created any number of new agencies, they vary markedly in the extent to which they depend upon goals, direct connections with a sponsoring ministry, or consultative structures linking them with their stakeholders in their operating environments.⁵

The model for accountability of the Crown corporation expressed in the existing legislation, and in the report of the Treasury Board Secretariat, can only be said to be less than completely unambiguous. Peter Aucoin and Mark Jarvis (2005, p. 86) recognized this lack of clarity when they wrote:

By creating a separate zone of executive authority for the administration of some aspects of public affairs in these agencies, Parliament has established a two-dimensional accountability regime.

The report calls very clearly for a clarification of these responsibilities, but the subsidiary recommendations do not appear to accomplish that important task. The model that is developed makes the management of these corporations responsible at once directly to the Minister and also to a board of directors. That board is itself also connected to the Minister, and is expected to be accountable to the Minister its collective “stewardship” of the corporation. The Minister, in turn, is answerable to Parliament for all the activities of the corporation, even the day-to-day operational decisions of management and lower-level employees. At the same time that these formalist arrangements are argued to be operative, the corporation is also meant to be a commercial enterprise, or in some cases a foundation, that is making its own decisions and functioning in a competitive environment.

The ambiguity of the accountability relationship in place for Crown corporations is expressed by the Treasury Board Secretariat’s document when it states (p. 17):

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.

These two sentences taken together appear to place the Minister in a difficult situation. On the one hand, she or he appears to be expected to permit the management of the corporation a great deal of latitude in day-to-day management decisions. On the other hand, the Minister is expected to answer to Parliament and to the public for those decisions. Thus, the Minister may be in the awkward position of having to take responsibility for actions over which she or he had little or no operational control.

The apparent ambiguity of the Minister’s situation with regard to Crown corporations has been identified in other countries that have

been attempting to enforce ministerial forms of accountability on agencies and similar organizations. One of the clearest cases of these problems has been the United Kingdom, with the difficulties being typified by the case of Derek Lewis. Mr. Lewis was the chief executive of the HM Prison Service, an agency created as a part of the Next Steps reforms of the 1980s. Following several well-publicized prison breaks, Derek Lewis was fired. He then sued for unlawful dismissal, arguing that the Minister had meddled in the operations of the prisons and had prevented him (Lewis) from having the autonomy needed. The Minister argued that he could not afford to allow autonomy while being held to account in Parliament. Lewis won his case.

While the Minister may be in a difficult position when accountability is defined ambiguously, so too is the public manager (as was Mr. Lewis as noted above). The management arrangements for managers of Crown corporations makes those managers accountable to the Minister *and* to the board of directors. Even though the board is itself responsible to the Minister, the fact that it exists as a distinct entity from the ministry means that it must be expected to make some different decisions and to have different priorities. If so, then the chief executive of the corporation may well be receiving contrary directions and advice, and will have to exercise his or her own judgment about what directions to take the organization. While the presumed difference between the roles of the Minister and the board are those of policy and operations, again I would argue that in practice the two cannot be separated clearly, and therefore the manager is placed in a difficult position.

3.1

Mechanisms for Control

The ambiguous nature of accountability and control for the Crown corporation pervades other components of the discussion of the basic “vehicles” for policy guidance to the Crown corporation in the Treasury

Board Secretariat report. The three vehicles mentioned in the report (p. 17) are law, a corporate plan, and direct control. Of the three, law may be the least ambiguous, although some of the corporations are incorporated under a general Act that requires little specificity in control, and hence provides little real assistance to a manager (or Minister). Even the more specific legislation establishing particular Crown corporations give little more than general direction on goals and policy and even less on daily operations. To some extent, that is appropriate; it permits these organizations to evolve in response to changing conditions and demands, but still that minimal guidance may be of little help to managers or to boards. Clearer framework legislation, therefore, might well be one vehicle for clarifying to a board, and to officers of the Crown corporations, if a proposed contract or other action is *intra vires*, and therefore might be able to trigger scrutiny if inappropriate actions were proposed or undertaken.

The second instrument for control—the corporate plan—is developed at the initiation of the corporation itself and only reviewed by the Minister. Although the Minister has the opportunity to make suggestions and comments, the capacity for control is relatively weak compared to when an organization is under direct ministerial control. Without some means of formal influence over the corporate plan, it appears quite unlikely that the Minister can really influence the way in which the corporation operates. While the separation of quotidian concerns from corporate strategy and policy development reflects a general concern in the document to separate policy and administration, it does not follow that the separation will make for effective corporate management.

The third instrument for control of Crown corporations—the capacity to assume direct control of the organization—presumably will be exercised only when alternative forms of control fail. The use of that particular instrument, therefore, should be envisioned only in extreme cases, although perhaps there could be better specification of its

appropriate use. That specification might at once enhance the autonomy of managers in the corporations and also ensure that Ministers (and Parliament) knew when more radical forms of intervention would be appropriate. Given the genesis of this review of the Crown corporations and their management, this more extreme form of intervention may appear more appropriate than in the past, but some criteria for invoking it may be needed to prevent its being used too freely for political rather than management reasons.

The ambiguous nature of control and accountability that appears inherent in the structure established for the Crown corporations raises the question of whether government policy-makers responsible for these organizations want them to be as autonomous as similar bodies found in other countries. This ambiguity about control may be in part because other types of organizations are filling the niche for the evolving agency model in Canada (see Fyfe and Fitzpatrick, 2002), and Crown corporations are left from earlier attempts at creating arm's length organizations that did not have as much autonomy. Further, most of the recent recommendations for reform of management of these corporations have been for a stronger ministerial hand in their management and especially in specifying their fundamental policy goals, indicating that there is little interest in greater autonomy.

The apparent desire to strengthen the role of the Minister points to the basic problem in all arrangements of this sort, as identified by many commentators on contemporary accountability (Polidano, 1999; Gregory, 1998). Executives in corporations, agencies and similar bodies believe they are empowered to manage those organizations, all the more so if the ethos of New Public Management is accepted widely in the public sector in question. At the same time, Ministers are held politically responsible for the actions of these organizations, and their overall direction. Although the distinction between strategy and operations can be made, it is inevitably blurred at the margins. Even if those margins

could be defined clearly, however, Ministers might still not be willing to deny themselves attempts at intervention in operations, knowing that Parliament and other control organizations might not be willing to accept that distinction in the case of policy failure.⁶

At the same time that there appears to be an interest in strengthening the role of the Minister in accountability, the Treasury Board Secretariat report also calls for strengthening the role of the board of each corporation in management. That enhanced role for the board does conform to the presumed practice in the private sector and with many recent recommendations for improving corporate governance in the private sector.⁷ It further conforms to the pattern of control in one of the longest running experiences with autonomous organizations (Sweden, see below) in the public sector. What this recommendation does not do, however, is to clarify the apparent ambiguity in the locus of accountability and control over management.

The report from the Treasury Board Secretariat places a great deal of reliance on the board of directors as a mechanism for control of the corporations, and those structures can certainly be important for oversight of management and operations. The report further calls for improving the procedures for vetting and appointing members of these boards. What does appear to be lacking, however, is a clear mechanism for holding the boards and their members accountable for performance of the corporations. The assumption appears to be that the boards will act responsibly and appropriately, but if that assumption is incorrect then there may be significant problems for the Minister and Parliament in exerting control. The recommendations for strengthening selection and training of board members certainly should help to improve the quality of the service of the board members, but some sense of the possibility, and rationale, for dismissal from the position should perhaps be considered.

The report from the Treasury Board also argued for minimizing the role of civil servants on the boards of Crown corporations. Given the concerns with accountability, this minimizing might be a retrograde step. Civil servants have been socialized into values of public responsibility and probity to a greater extent than the average outsider in the public sector. Further, they have knowledge of the limits of appropriate public action, and hence may be better able to advise managers on what their scope of action should be.

The most specific issue for what sort of guidance should come from the board, in terms of the work of this Commission, is contracting, and especially the possibility that contracts may be entered into by the executive of the Crown corporation that are “out of the ordinary or hold the potential for embarrassing the corporation.” This issue appears to raise some familiar questions about accountability. The most obvious is that individuals will disagree about whether a particular contract meets those criteria, and hence an executive may in good faith chose not to consult about a contract that may go horribly wrong. Similarly, if the executive is not operating in good faith, then having a stipulation of this sort may not help. Some cases from the private sector, notably WorldCom and Enron, also indicate the need for a mechanism that can provide a board with the capacity for continuous and close supervision of executives, that capacity being balanced against the need of the executive for discretion and some managerial autonomy.

Examining the experience of other countries as they have attempted to deal with public contracting and accountability does not provide a great deal of assistance for considering the problems associated with contracting, especially in autonomous public bodies (see especially Schick, 1996, 24ff). In the cases examined, contracting appears to be a management prerogative in these organizations, with the results being reviewed largely after the fact. To the extent that there are *ex ante* controls over contracting, they tend to be procedural (bidding,

publication of specifications, etc.) rather than over the purpose of the contract and whether that is an appropriate undertaking. There also tend to be numerous *ex post* controls, especially over the financial aspects of contracts and the specific performance of the contractor, but little more than routine controls over the purposes for which the contract was let originally.

The primary emphasis on controlling contracting authority in the public sector appears to be the familiar “principal agent” issue of ensuring that the individual or firm delivering the (product) for which the contract was let actually performs as intended. The assumption in most of the literature is that the contract itself is appropriate. The principal mechanism mentioned for controlling the way an executive uses contracts is the performance contract of that executive, with the assumption being that the primary failures of contracting would be in efficiency and fulfilling the mission of the organization, rather than a subversion of the contract device as a means of achieving other ends.

As part of the attempt to enhance control of the Crown corporations, the Treasury Board Secretariat has emphasized the need to enhance the transparency of the selection of members of their boards and to increase the involvement of stakeholders in the decisions of these organizations. Transparency is an important instrument for accountability and can be used in a variety of ways to enable external actors—whether members of other formal institutions or the public in general—to understand what is occurring in the organization, and some greater public visibility for the boards of these organizations is desirable.

Transparency concerning appointment of the leadership of the Crown corporations could certainly be a benefit to the accountability of these organizations, although even more extreme versions of transparency may be used to cope with the types of contracting problems at the centre of the current issues. Some countries, for example, South Korea and

Romania, that have had extreme problems with corruption in public procurement have put all contracts on a website, showing the specifications of the contract and all the bids (after the closing date). These systems were designed to prevent favouritism in granting the contracts, but the same principle could be extended to the content of the contracts; that is, if the content of the contracts had to be made public, managers would have to be more circumspect.⁸ Similar openness is being fostered in other countries for public personnel issues.

3.2

Alternative Patterns of Governance and Accountability

As noted, the pattern of governance advocated for the Crown corporation in Canada represents an attempt at a compromise between direct ministerial control and a more autonomous style that utilizes boards to control the management of the organization, much as the board of directors might be expected to exercise control over the executives of a private corporation. This hybrid model is but one of a number of alternative structures for control of autonomous organizations that have been developed. Each of these represents an attempt to strike a balance between autonomy and control. Further, each of these governance structures represents a set of choices about which aspects of the behaviour of organizations control should be exercised over. For example, although almost all governance structures tend to maintain controls over spending public money, personnel and management decisions often are delegated to the executive of the organization.

3.2.1 The Swedish Model

When the British government undertook the Next Steps reform in the 1980s and thereby launched its interest in agencies and similar organizations, it believed it was copying the Swedish model of the agency or “board” (*styrelsen*). This model of policy administration has been in place for several centuries and was designed originally to limit

the power of the monarch, and his Ministers, by giving an autonomous organization control over the implementation of policy, and hence most contacts with citizens. This model has persisted into the democratic era, with the ministries responsible for setting policy, but most implementation still done through these largely autonomous organizations.

There are several alternative models for organizing these autonomous agencies. In all the models, the central management figure in a Swedish agency is a director general, appointed by the government, often with the advice of the board. In some agencies, the director general is fully responsible for the actions of the organization, and answers to Parliament for his or her actions. In other cases, a board of some sort, generally thought of as being expert, and/or composed of worthy public figures, is a central actor. The task of the board is to provide general direction to and control of the organization, and to serve as the principal locus for accountability. In this model, the director general is responsible to the board for the operations of the agency. The director general is himself often a civil servant, although a number of political figures have also been appointed to these positions, bringing into question in some people(s) minds the autonomous and depoliticized character of the agencies.

During the 1980s there was a shift towards greater involvement of the stakeholders in public policy areas in the boards of agencies, and “lay boards” became more common. This shift towards a more inclusive style of control structure for the director general also provoked some criticism, with the sense among critics that the agencies were becoming too responsive to their clients, and perhaps not enough to the general public interest. This debate continues, and the general model of the agency itself is under some reconsideration, with ministers often believing that they need more influence over the decisions being made as policies are implemented.

In this model of administration, the Minister and the ministry are not major players in the actual delivery of services, and constitutionally the

ministerial level is forbidden to interfere in the administration of programs. That having been said, however, the formal separation of policy and administration implied in this model is difficult to maintain in practice. First, the budget process is an opportunity for ministers to influence administration. Further, in a small country with a relatively homogenous elite and a tradition of effective governance, cooperation among the various actors in a policy area is assumed as a part of the policy process. Finally, the boards develop, quite naturally, considerable expertise in their policy areas and are a crucial source of advice for the ministries when they prepare new policy. Indeed, the process of administering the policy often involves their making decisions that in effect make policy.

The Swedish model of administration is a clear attempt to separate policy and administration, similar to the idea that has been a cornerstone of Anglo-American theory of public administration (Flinders, 2004; Schultz and Maranto, 1998). By separating the two, however, this model also places the Minister in the difficult position of having his or her policies administered by organizations that may not agree with the Minister's priorities. The boards may even be opposed to policy changes that go against their established patterns of delivering policy, and perhaps even sabotage those changes. The Minister may have little means of controlling the agencies except through the budget process. In part for those reasons, the Swedish government is considering altering the role of the boards and perhaps creating implementation systems more integrated into the ministry (SOU, 2003).

When the British government attempted to copy this model of agencies from Sweden, it apparently could not accept the full independence of these organizations from the ministry. This lack of acceptance apparently was in part a function of the Westminster model of governing, in which ministers are assumed to be responsible (in principle) for everything that transpires in their department. That having been said, other

autonomous organizations in British government have appointed boards with substantial responsibility for the conduct of their affairs (Skelcher, 1998) with minimal difficulties. The British model of the agency is an attempt to marry the Swedish model with the Westminster system of accountability, but this marriage has not necessarily been a happy one.

3.2.2 The Dutch Experience

Although not so deeply ingrained as in Sweden, the Netherlands also has extensive experience in using agencies and other forms of autonomous organizations to deliver public services. Rather than an attempt to limit royal prerogative, the Dutch experience has been built on concerns for efficiency, and the desire to involve interests from the society in the administration of public programs. In social welfare and education, the concern has been in part to involve religious communities, while in economic policy the concern has been with unions, employers and farmers.⁹ Although largely autonomous, agencies were directly linked to the ministries, and the Minister was directly responsible for their actions.

During the 1980s and 1990s, the Dutch created a new class of organizations, called ZBOs, that were more distant from government and from ministerial authority. Some were organized under public law and some under private law, but all had a (long) arm's-length relationship with government, and many were self-financing. Most of the ZBOs had some form of stakeholder board, with a senior official responsible for day-to-day management. These boards, by virtue of being composed almost entirely of stakeholders did not have much detachment from the policy area and did not serve as effective checks on the actions of the organizations. In practice, these organizations were too removed from ministerial authority for comfort, and most have been either abolished or converted into more conventional agency structures with a more direct connection to the Minister. As might be expected, the

major issue was the capacity of the Minister and Parliament to hold these organizations accountable for their actions (Van Thiel, 2003).

It must be noted here that both the Swedish and the Dutch experiences are in a context of ministerial responsibility that is substantially different from a Westminster system. Although Ministers, and the government as a whole, is responsible for actions, the individual civil servant or executive may be expected to have substantially more personal responsibility than in a Westminster system. Civil servants have been and continue to be more personally responsible for their actions and their decisions, and this fact is especially true when they are in more autonomous organizations and agencies, as in Sweden. That said, however, these cases do demonstrate alternatives for structuring autonomy.

3.2.3 Involvement of Social Partners

The discussion of the Swedish and Dutch experiences raises a more general point about the nature of boards for organizations such as the Crown corporations. The Swedish boards tend to be composed of experts in the policy field and to contain a significant number of representatives from social groups who benefit from, or are in other ways involved with, the organization in question. Some other countries moving to the agency model for implementation, for example, the Netherlands, have created boards composed almost entirely of representatives of those social partners, conceiving of this as a complement to traditional representative democracy in the control of programs delivering important public services.

The corporatist thinking inherent in the composition of boards from social partners is not widely accepted in Westminster political systems, which rely more heavily on representative institutions. Still, this format does raise the more general question of how best to constitute the boards for the Crown corporations. The report from the Treasury Board Secretariat spends a good deal of time on the training of board

members—certainly a crucial element in improving their performance—but other than attempting to exclude civil servants has relatively little to say about the composition of the boards. It would seem that some attention should be given to developing criteria for the representativeness of boards, and even of means of selecting members that permitted greater involvement of the affected interests. Although this composition might create some conflicts among the affected interests, it could also be a means of enhancing democratic control.

The report from the Treasury Board Secretariat, and a good deal of other thinking about the structure of Crown corporations and analogous bodies, assumes that one form of structure is appropriate for all. That is almost certainly not the case, and one contribution to developing a model of accountability for these organizations is to consider what alternative may be available for composing the boards, and the relationships between the board and management. For example, a Crown corporation that has primarily economic responsibilities may be governed differently than one concerned with social policy issues or the arts.

3.3

Performance Management

Although implied in the reports from the Auditor General and the Treasury Board Secretariat, and certainly a mode of control that is increasingly important in Canada and in other industrialized democracies, performance management may be a crucial mechanism of accountability and control for the Crown corporations. Performance management is a managerial technique, but it also should be conceptualized as a means for enforcing accountability that can be especially important for autonomous organizations. For many Crown corporations, engaged as they are in economic activity, the assessment of performance may be somewhat less difficult than it is for many

other organizations in the public sector (Hatry, 1999; Varone and Knoepfel, 1999). Profit and loss is not the only means of assessing the performance of these organizations, otherwise they probably would not be in the public sector, but their balance sheets are more important than those of public sector entities not clearly engaged in economic activity.

Of course, not all the Crown corporations are engaged in market-type activities, and the ones that do not appear to be operating in policy areas are among the most difficult to assess for performance management. For example, the Crown corporations that operate in the arts are in areas of human life in which there may be little agreement about the standards of evaluation. Artists may have very different ideas about success for these Crown corporations operating as funding organizations, and the general public may have another set of ideas about what constitutes adequate performance for any of these organizations. The resolution of this difficult task of measurement and evaluation will involve a political process, as well as some means of gaining a complete picture of what these organizations should do, and how well they are meeting public needs.

The economic dimension of performance is important for some Crown corporations, but the altogether murkier questions about the legality or appropriateness of actions are a less clear consideration of performance. Even if the economic performance of an organization is good and other performance targets are being reached, if other extra-legal activities are part of the activities being undertaken, then assessing performance becomes a less useful, or perhaps irrelevant mechanism for judging and enforcing accountability. Thus, performance management for public organizations may need to specify what should *not* be done, as well as what should be done, to be deemed to have performed well.

Leaving aside the difficulties of actually conducting effective performance management, the basic idea of using these techniques as a major, if not

the major, mechanism for accountability is important. Performance management also represents a significant departure both from traditional forms of parliamentary accountability and from the composite measures of accountability recommended by the report of the Treasury Board Secretariat. Most traditional forms of accountability, because of their direct connection to politics and politicians, tended to focus on opportunities to embarrass a Minister before Parliament (Day and Klein, 1988). This politicization of accountability, in turn, often meant that the emphasis was on individual events and sometimes quite trivial events.¹⁰ The politicization of performance in the case at hand is a crucial example of the dangers of focusing entirely on those modes of accountability for Crown corporations.

Using performance indicators as a fundamental mechanism for enforcing accountability tends to focus on average performance rather than on individual events. The question therefore becomes not, can we find an event that can embarrass a Minister? but, what has the organization been doing on average, day after day? Further, has performance this year or this month been better than during the previous time period? Changing the focus of accountability, using performance indicators does really depoliticize accountability as much as it makes the politics involved about effectiveness rather than about attempting to avoid errors. No organization, public or private, can perform without error, at least for any significant period of time, so the question is not so much, are there errors? But, how many errors are there? and what are managers (and their political masters) doing about them?

Improving the quality of public services is another virtue of utilizing performance as the principal focus for accountability in the public sector. Although absolute standards may be used to assess performance, in many ways the most important question in performance management is, is performance improving? The related questions are, of course, why is it improving, or if not, why is it not improving, and, how can managers

move the organization and its programs forward. As some people have argued, New Public Management was about “*let* the managers manage,” but performance is about “*make* the managers manage”; that is, performance targets and the drive for improvement can be powerful weapons for energizing public managers and making them think about ways of making the organization do its job better. In this approach accountability is less about punishing individuals and organizations for poor performance than it is about attempting to learn from the past and to improve.

Although the use of performance as a mechanism for accountability does have many virtues, there are also some problems. The central problem of conceptualizing performance in operational terms and developing indicators has already been mentioned. Further, performance may not focus enough at times on real failures, and it does not offer much help for political leaders, and citizens, facing the problems caused by many hands involved in delivering services. Things do go wrong, often in dramatic ways, and multiple actors will have had some role in the failures. While assigning blame may not solve the problem per se, it too can be a means of attempting to prevent future problems of the same sort. Although risk aversion is often condemned as a pathology in the public sector, it can be a useful means of preventing serious errors in governing.

Finally, not everything that we should expect from public organizations and their programs can be specified readily in a contract or in a business plan. In the case in point, all the things that an organization should *not* do are also difficult to specify and depend on judgment. This gap between expectations and reality is a particular problem when dealing with organizations that function at arm’s length from the centre of government and therefore are not necessarily controlled directly by public officials. Some of the behaviour that is most important in social policy, in health care, or even in the arts is difficult to specify in a contract or

in a business plan. In organizations that are directly tied to ministries the control and production of services can be controlled through supervision, or through the commitment of the public servants responsible for delivering the services directly to the “customers.” On the other hand, if profit is a major goal for an organization then that hierarchy may be dysfunctional and competition is more effective in generating effective behaviours by managers and by the organization as a whole.

Some scholars suggest (see Zapico, 2000) that changes in accountability associated with the New Public Management have focused contract management more on evaluating poor economic performance, whereas traditional forms of accountability paid greater attention to avoiding malfeasance. Control agents (auditors, ministers, Parliament, the Treasury Board) have limited time and financial resources to exercise control, and therefore must choose to emphasize some aspects of accountability rather than others. The fact that apparent malfeasance on the part of the leadership of a Crown corporation could escape undetected for some time may reflect both the strengths and the weaknesses of performance management in the public sector.

4 The Public Interest

The issues raised above require some consideration of what is perhaps the most fundamental point about the use of agencies, Crown corporations, and other forms of delegated responsibility in government. Are these structures to be organizations concerned primarily with public service and the public interest, with strong public accountability structures in place from their inception, or are citizens to assume that the public interest will emerge if the organizations are as efficient and businesslike as possible? For the Crown corporations, the report prepared by the Treasury Board Secretariat appears to assume more of the latter, especially those corporations that are primarily commercial enterprises. The attempt to make their organization and performance

very similar to private corporations is a clear indication of the priority given to efficiency and management in defining their mission.

The focus on efficiency for the Crown corporations appears to have been the longstanding means of assessing their performance,¹¹ but it also appears to have been accentuated as a part of the managerialist reforms of the public sector in Canada and elsewhere. While it is difficult to argue that public organizations, whether corporate or not in form, should be as efficient as possible, it is also difficult to argue that efficiency is the only value that should be pursued in the public sector. For example, is efficiency really the central value for arts organizations? Again, using a very similar organizational framework for organizations that are engaged in a range of different activities may not in the end produce the types of outcomes desired. Most citizens and practitioners in government would assume that strong and effective mechanisms for ensuring the public interest should be in place for both formulation and implementation of policy.

The public interest is also bound closely to the need to maintain the proper use of public authority for public purposes. That principle is easy to state in the abstract, but is more difficult to apply in specific cases. As already noted, legislation defining the scope of actions of Crown corporations could be used to specify the proper use of public authority for each organization. There is a limit to how far that legislation should go, if it is to maintain flexibility for organizations placed outside direct ministerial control. The most fundamental reason for that organizational format is to provide their managers the capacity to respond to opportunities and challenges more nimbly than can organizations in “mainstream government.”

5 Conclusion

The accountability of public organizations, and of the individuals managing them, has always been a crucial question for democracy. With the decline of many other forms of democracy, such as the declining vote in elections, this connection between the public and the government is all the more important. The difficulty is that the complexity of contemporary government is reducing the clarity with which accountability can be exercised. Rather than a linear process of policy-making and implementation through public organizations, the use of the autonomous organizations, such as those serving as the focus of this paper, not to mention contracts, partnerships and other chains of interactions involved in delivering services, creates more complex chains of action.

These questions concerning accountability for organizations that operate at arm's length from government have arisen rather naturally for Crown corporations in Canada. These organizations are structured more or less as organizations in the private sector, but have complex control and accountability structures involving the Minister of the sponsoring department in government, as well as a board of directors. As the Treasury Board Secretariat report details, there is a dual pattern of control, and a good deal of ambiguity in the roles of both the Minister and the chief executive of the corporations.

Transparency is a central element of the accountability regimen that is being proposed for the Crown corporations. The fundamental assumption of the analysis of the current accountability situation of the Crown corporations is that, if many of the operations of these corporations, as well as the selection of the boards, were made more public, then these firms would operate more in the public interest and also perhaps more in line with the wishes of the Minister. Transparency is certainly key to any system of democratic accountability, but it may

be too much to hope that simply airing problems will lead them to be solved. This lack of certainty about the role of transparency is perhaps especially true given the dual lines of control and accountability that exist in the current organizations of Crown corporations.

The other element on which control and accountability for the Crown corporations is well developed is auditing and financial controls. The emphasis on financial accountability has been in place for some time and appears effective. Financial accounting, however effective it may be at dealing with questions of the proper use of funds, cannot deal with other questions about the performance of these organizations and their exercise of the public trust. This is not an argument to minimize financial accountability of Crown corporations, but it is an argument that financial accountability is not sufficient. To some extent, the Auditor General has been developing performance auditing within Canadian Government, and there are good arguments for extending this practice more fully to the Crown corporations.

The Crown corporations have been, and continue to be, important actors in the delivery of public services for Canadians. That said, they and all other organizations in government, especially those operating with substantial statutory autonomy, must consider carefully how they are governed and held accountable. Certainly the work that has taken place by the Treasury Board Secretariat helps to clarify that accountability, but perhaps even greater work needs to be done to help these organizations reach higher standards of performance and of democratic accountability.

These issues of accountability for delivering public services have now become more difficult. To the relatively easier issues of fulfilling their mandates to deliver services of one sort or another has been added the more difficult political questions of ensuring that additional activities do not exceed the proper bounds of action by the public sector. These

concerns require that the public sector reconsider the role of Ministers and perhaps especially the role of the boards. Further, opening the contracting process to external scrutiny, except when that openness may threaten commercial viability, may in itself be as important a means of control as many of the formal procedural controls that are typical in the public sector.

6 Recommendations

- *Increase the transparency of the contracting process through use of online monitoring. By making the content and amount of contracts more visible to control agents and to the attentive members of the public, abuse of this indirect and often hidden mechanism for governance can be limited.*
- *Include senior civil servants from sponsoring departments on the boards of Crown corporations. These public officials are more likely to be well-trained in issues of public accountability than are board members from outside government.*
- *Develop mechanisms for appointment to boards that are more transparent and that more closely resemble merit appointment processes in the civil service.*
- *Further clarify the relationships among the major players in accountability for the Crown corporations: the Minister, the board and the chief executive office. This clarification may entail clarification of terms such as “day-to-day operations.”*
- *Consider alternative and enhanced parliamentary mechanisms for scrutiny of the Crown corporations.*

Endnotes

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- ¹ This distinction is similar to the classic debate between Herman Finer and Carl Friedrich over control within the public sector. The former argued that control could be achieved through formal institutions of control, while the latter argued that no amount of formal control could be effective if individuals were not committed to democratic values.
 - ² Although not formally constitutional, the “Armstrong Rules” in the United Kingdom have become the operative statements of the relationships between public servants and their Ministers.
 - ³ While these shifts are certainly important for Canada, they are even more significant in transitional countries in Asia and central and eastern Europe in which the civil service itself has not developed the values of probity and service characteristic of those in Europe and North America.
 - ⁴ At times an absence of direct public control is most welcomed by political leaders, who may not want to be perceived to be responsible for potentially offensive content of arts exhibits or the continuing failure of the trains to run on time.
 - ⁵ The OECD’s study of agencies in a number of member countries detailed a large number of different control structures for agencies. Although some are almost certainly inappropriate for a Westminster government, they do provide a set of possibilities to consider.
 - ⁶ Even if Parliaments would accept the distinction, the media and the general public might not. The inability of British Ministers of Transport to distance themselves and the government from the failure of agencies responsible for rail safety in the face of accidents is indicative of that problem.
 - ⁷ One must say presumed here because the evidence from numerous corporate scandals over the past decade has been that boards appear to exercise relatively little real control over the actions of management.
 - ⁸ The commercial nature of some of the activities of Crown corporations may make putting all contracts on a public site before they are executed difficult, but means can be developed to make the content public within a reasonable time. This basic transparency could go a long way in deterring inappropriate contracts.
 - ⁹ The longest standing organizations of this type are the Water Boards, established to manage the continuing fight against flooding. These have become more representative over time, although still heavily influenced by technical considerations.
 - ¹⁰ This focus on errors is one of the causes of risk adverse behaviour of public officials, elected as well as permanent, that has been cited frequently as one of the negative features of public bureaucracy.
 - ¹¹ Examining earlier reports from the Treasury Board and the Auditor General on the management of the Crown corporations indicates that the principal focus for control has been the concern for fiscal efficiency rather than whether or not the organizations were necessarily operating in the public interest.

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