

Introduction

The Yukon Workers' Compensation Health and Safety Board (YWCHSB) is an organization managing complex issues – providing a no-fault injury compensation system for workers, a collective liability insurance system for employers and occupational health and safety education and enforcement for territorially regulated workplaces. The system and the organization are governed by a Board of Directors, the composition of which is defined in the *Workers' Compensation Act* (the Act).

In Section 106(2) of the Act, the Board of Directors is comprised of:

- (1) One (1) neutral chair;
- (2) One (1) neutral alternate chair;
- (3) up to three (3) members (no less than two (2)) representative of employers;
- (4) up to three (3) members (no less than two(2)) representative of workers;
- (5) the chair of the appeal tribunal, and
- (6) the president.

All but the members representative of workers and employers are non-voting.

Currently (August, 2006), the Board of Directors consists of the Chair, Alternate Chair, two (2) members representative of workers, two (2) members representative of employers, the Chair of the Appeal Tribunal and the President/CEO. The Chair of the Appeal Tribunal does not attend by choice.

Scope of YWCHSB Board of Directors' Work

(1) POLICY

The Board of Directors is responsible for approving policies which interpret various sections of the Act. At the YWCHSB, the Board of Directors identifies policies for development or amendment based on strategic requirements, YWCHSB experience, appeal outcomes, stakeholder requests and recommendations from the President/CEO and Administration.

In order to do this, Board members must have both a breadth and a depth of knowledge (or be willing and capable of attaining same in a short amount of time) in the following areas:

- Compensation benefits (entitlement and procedures)
- Health care services
- Classification of employers
- Investment strategies
- Funding
- Employer rates
- Administration
- Auditing
- Collections
- Actuary and pension

When reviewing policies, Board members receive a comprehensive submission from the President/CEO outlining the background of the policy, providing alternative approaches and analysis of same as well as recommendations.

Board members also have access to stakeholders through regular stakeholder consultation meetings to assist in policy making.

(2) FINANCIAL MANAGEMENT

The Board has an annual operating budget of \$140M, claims expenditures of \$21M and assessment revenue of \$12M (as at December 31, 2005).

The Board approves these budgets annually and reviews them quarterly via variance reports. Further, the Board is responsible for presenting an annual report, including audited financial statements, to the Minister. The YWCHSB is audited annually by the Office of the Auditor General of Canada and financial statements are prepared by the YWCHSB Chief Financial Officer.

(3) INVESTMENT MANAGEMENT

At the end of 2005, the YWCHSB held \$135M in its Investment Fund. Investments in the YWCHSB are used to fund the future costs of current injuries/diseases, to pay for an operating deficit and to fund reserves (e.g. Adverse Events) and special funds (e.g. Prevention Fund).

The Board of Directors monitors the long-term Investment Fund on a monthly basis via two Fund Managers and an Investment Consultant. The YWCHSB invests in bonds and equities and considers foreign placements as well as the overall asset mix.

(4) GOVERNANCE

The Board of Directors is the governing body for the YWCHSB and as such operates strategically with respect to setting the direction and priorities for the organization. The Board of Directors only plays a role in administration via its sole employee – the President/CEO. The distinction between governance and administration is often a difficult one since most people are more familiar with, and therefore more comfortable in, administrative management. However, in order to fulfill its critical role, the Board of Directors must strive to maintain a

governance focus. The Board of Directors operates via a Governance Guide which outlines its roles and responsibilities etc.

(5) HUMAN RESOURCE MANAGEMENT

The Board of Directors is responsible for the recruitment, evaluation, performance management and succession planning for the position of its employee, the President/CEO and to ensure full succession management for all key positions within the organization.

(6) LEGISLATION

The Board of Directors is responsible for administering the *Workers' Compensation Act* as well as the *Occupational Health and Safety Act* and regulations. Further, the YWCHSB must operate subject to the *Financial Administration Act* and several other pieces of federal and territorial legislation.

(7) APPEALS

Under legislation, the Board of Directors is the final level of administrative appeal for employer assessment issues as well as for decisions made under the *Occupational Health and Safety Act* and regulations. Therefore, Board members need basic understanding of Administrative Law and a working knowledge of the Rules of Natural Justice. This type of appeal work is infrequent with perhaps an average of three (3) per year.

Qualities of a YWCHSB Board Member

(1) REPRESENTING A PERSPECTIVE

Board members representative of workers and employers share personal knowledge and present their constituent's perspective – they do not take on a constituents' position. This distinction is absolutely imperative in the consensus-

based group that must make decisions affecting the short and long-term viability and direction of the system as a whole.

Board members must be able to communicate the rationale for wholistic decisions to constituencies who are looking for clear evidence their concerns have been considered.

(2) CONSENSUS-BASED DECISION MAKING

The YWCHSB Board of Directors makes decisions using a consensus-based approach. The view is that decisions which must be made based on a 'for and against' vote will not be decisions that best serve the system as a whole.

Board members must be ready to work in a consensus-based model where decisions may take more discussion time and will involve, when appropriate, a move from the position of constituent groups on an issue to what best serves the system. Typically in this process, a Board member will put the employer or worker perspective on the table and then step back from that perspective. Issues must be depersonalized in order for consensus-based decision making to be most effective. By depersonalizing issues, decisions can be made for the system as a whole by the Board of Directors working as a team.

(3) ONE TEAM – ONE VOICE

While differing views may be expressed by Board members in Board meetings during the consensus-based decision making process, once consensus is reached, those differing opinions never leave the Boardroom. This secure environment is critical in order for Board members to feel free to express their opinions and provide their perspectives openly without fear that their comments will go beyond the Board meeting.

Board members must be willing to leave the Boardroom with unified decisions that are communicated publicly by the Chair of the Board on behalf of all members.

(4) LONG-TERM VIEW

The workers' compensation and OHS systems in Yukon are long-term – there are long-term promises to injured/ill workers and dependents as well as long-term solutions to most problems. Short-term decisions/solutions may make short-term gains; however, in a long-term system, long-term impacts must be considered. Board members must sustain much pressure from stakeholders who support those short-term gains (e.g. short-term assessment rates versus long-term benefit liabilities).

(5) STAKEHOLDER CONSULTATION

Board members regularly consult with stakeholders through committees and groups established by the Board of Directors, such as:

- Stakeholder Advisory Committee
- Policy Working Group
- Prevention and Safety Advisory Group

In these forums, worker and employer representatives and organizations meet together, sharing views, perspectives and positions on issues and policies affecting the system. In addition to these groups and committees, Board members representing workers and employers may meet with constituency groups separately (in accordance with guidelines established by the Board of Directors).

Training and Resources

YWCHSB Board members receive a one-day orientation to the system. Further, training in the areas of Administrative Law and the Rules of Natural Justice is also provided.

The YWCHSB employs a full time Board Manager who, among other duties, is available to all Board members to answer questions or provide information.

As a member of the Association of Workers' Compensation Board of Canada (AWCBC), the YWCHSB has access to annual training opportunities for Board members which include governance training, issue discussion, best practice workshops etc.

Legal advice is available to the Board of Directors via its Corporate Secretary who is present at all Board meetings and provides legal opinions on various decisions, policies and issues.

Financial advice is available on a regular basis via the YWCHSB Chief Financial Officer, annually via the Office of the Auditor General of Canada and via the Actuary. Investment advice is available through the contracted services of an Investment Consultant. Finally, the YWCHSB Medical Consultant is available for medical advice when required. All of these resources, with the exception of the Board Manager and the Corporate Secretary, are available to the Board of Directors via the President/CEO.

Each decision put to the Board of Directors is accompanied by a comprehensive submission by the President/CEO, which is designed to provide the information the Board of Directors needs to make the decision before it. Where additional necessary information is identified, the Board of Directors refers the item back to the President/CEO to acquire the necessary information.

The Ideal YWCHSB Board Member

Is there such a thing as the ideal Board member? In the small jurisdiction of Yukon, Board member profiles that may have been developed in large jurisdictions are not practicable. Such profiles outline requirements for someone with a financial background or investment or medical background etc.

Appendix A contains applicable excerpts from the Auditor General of Canada's 2005 report regarding Board Governance.

With a small 'incidental' Board of Directors, such profiles are not realistic. YWCHSB Board members, including the Chair, are not full-time positions in the Yukon – they are incidental. Board members usually have other positions or interests outside their Board of Director duties. On average, Board members will spend four (4) days per month on Board business including Board meetings, committee meetings, preparations, administration (e.g. completing honoraria forms etc), conferences and training. A position on the YWCHSB Board of Directors demands a commitment from Board members to prepare for meetings, attend Board meetings and work with fellow Board members for the good of the system as a whole.

YWCHSB Board members must be able to deal with the scope of work and have the qualifications outlined in this document. Further characteristics include:

- High literacy level
- High numeracy level
- Decision-making skills

Ideally, at least one Board member should have a financial background; however, the characteristics and qualifications outlined in this document are the most important requirements (see summary on page 9).

Finally, representatives of workers and employers should have some type of relationship with their respective constituency.

Conclusion

The YWCHSB Board of Directors plays a pivotal role not only within the YWCHSB but for the entire Yukon. When considering persons for service on the Board of Directors, it is strongly suggested stakeholders consider the issues raised in this document when recommending potential Board members to the Minister.

Characteristics and Qualifications

- High numeracy level
- High literacy level
- Ability to make decisions
- Team player
- Ability to communicate decisions to stakeholders
- Willingness to take required training (including travel when necessary)
- Willingness to provide an average of four (4) days per month to Board business (range: two (2) day minimum to ten (10) day maximum)
- Ability to represent a perspective without representing a position
- Long-term view of the system
- Willingness to put the needs of the system first
- Must be willing to be accountable to stakeholders and to the Minister
- Must recognize the need for additional information or expert advice and be willing to ask for same
- Must be willing to meet with stakeholders as a full group, listen to and consider feedback
- Ability to learn quickly and assimilate large amounts of information
- Ability to take a governance versus administrative role
- Respect for confidentiality of all Board materials and discussions
- Willingness to work towards consensus
- Quickly available

APPENDIX A

1. 2005 Report of the Auditor General of Canada – Status Report,
Chapter 7 – Governance of Crown Corporations (excerpts)



2005 Report of the Auditor General of Canada – Status Report – Chapter 7 – Governance of Crown Corporations

Observations

Appointing directors, board chairs, and chief executive officers

7.22 In a "board-centered" model of governance, the board of directors is responsible for the affairs of the corporation. For good governance, it is essential that the process of selecting and appointing people to the board gives it the right combination of skills and abilities to carry out its mandate and responsibilities effectively.

7.23 Our audit in 2000 found that the government needed to strengthen its appointment process to address the following weaknesses:

Crown corporations needed to define more clearly the skills and capabilities required on their boards, and the government needed to act on those requirements.

Although board membership reflected Canada's diversity, it lacked some of the key skills and capabilities needed to oversee the corporation's affairs effectively.

New directors were given orientation training but were not briefed adequately on their duties and responsibilities, the corporation's relationship to the government, policies on the compensation of Crown corporation executives, and board procedures.

Boards of directors were not engaged enough in the renewal of the board and the selection of its chair.

Appointments to boards were not timely and directors' terms were unevenly staggered, a serious problem that undermined the continuity and stability of boards.

We also advocated a "board search" model for the selection of the chief executive officer, in which the board would play a key role.

Despite some improvements, weaknesses in the appointment process remain

7.24 In our follow-up audit, we reassessed the appointment process in place before the government announced the revised process in March 2004. We found a number of improvements; however, some key concerns we raised in 2000 had not been resolved.

7.25 Following our 2000 audit, the Privy Council Office (PCO) issued a guide to assist Crown corporations in preparing directors' profiles. It subsequently requested all Crown corporations to develop/update their profiles. We noted that most Crown corporation boards now have in place director profiles, most of which reflect the diversity of Canada and the skills and abilities needed to oversee the affairs of the corporation. The expected skills and abilities include, among others, financial and human resources expertise, industry-specific knowledge, and personal and other qualities. Boards use the profiles to identify gaps in the needed mix of skills and communicate in writing to responsible ministers and the PCO. There are now more directors who have the skills and abilities expected by board profiles, especially financial expertise and financial literacy.

7.26 In 2003, the PCO established an orientation course for new directors in response to our 2000 recommendation. The new course covers board procedures, compensation policies, the director's fiduciary responsibilities to the corporation, and the corporation's relationship to the government. The PCO informed us that, so far, 80 percent of Crown corporations have participated in the training program.

7.27 However, some key concerns we noted in 2000 had not been resolved. We noted difficulties in bringing people onto boards with the needed skills, abilities, and experience. It took one corporation two years, and repeated requests, to have the government appoint a member to its board with the proper financial expertise.

7.28 The *Financial Administration Act* requires the responsible minister to consult with the board prior to the appointment of a chair or CEO. However, we found that the government's consultation with boards on the selection of a chair had been uneven.

7.29 Crown corporations were still not making systematic use of a "board search" model to ensure that the board plays a key role in selecting a new CEO. A selection process that does not involve the board weakens the accountability relationship between the board and the CEO. If CEOs are not appointed or selected by the board, they may believe that they are accountable to the organization or individual that selected and appointed them. As discussed later in the chapter, the revised appointment process announced in March 2004 provides for board involvement in the appointment of chairs and CEOs.

Appointments are not timely, and terms are still not evenly staggered

7.30 The timeliness of appointments of directors, board chairs, and CEOs is still a major issue. In fact, the length of time that board members continue to serve after their terms as directors have expired has increased by 20 percent since we raised this concern in 2000. As shown in [Exhibit 7.1](#), at September 2004, over one third (56) of directors (excluding CEOs, chairs, and directors from the public sector) of the 15 largest Crown corporations were still sitting on boards while their terms had expired. In 9 corporations, the average length of time that directors had served since their term expired was more than six months.

7.31 At the time of writing this chapter, four major Crown corporations (Via Rail Canada Inc., Business Development Bank of Canada, Export Development Canada, and Canada Post Corporation) had CEOs who had been acting in the position temporarily, in some cases, for more than eight months. These four Crown corporations represent some of the largest corporations in Canada, managing assets totalling \$37.3 billion and employing 51,000 people. In our view, these senior positions need to be filled by permanent CEOs on a high-priority basis.

7.32 Appointments to the board are still not staggered evenly, increasing the risk that continuity of expertise and corporate memory will be lost. For example, one Crown corporation was in the process of replacing or renewing the appointments of 8 of its 12 directors during 2004. In addition, we have identified 12 corporations in which the terms of the majority of their directors will expire in the same year. The *Financial Administration Act* sets the terms of directors of Crown corporations to up to three years. In our view, increasing this limit could facilitate the staggering of appointments.

The revised appointment process could improve Crown corporation governance

7.33 In March 2004, the government announced important changes to the process for appointing directors, chairs, and CEOs of Crown corporations. Following the announcement, the process was further refined. In April 2004, the President of the Treasury Board advised individual Crown corporations that their organization was required to follow this process in the future for appointment of the CEO, board of directors, and chairperson, unless the enabling legislation of their organization provided otherwise (see [Appendix B](#)).

7.34 At the time of writing this chapter, the government had appointed only a small number of new directors to boards of Crown corporations since the March announcement. In early October 2004, the Privy Council Office informed us that the revised appointment process was still being refined—for example, parliamentary committees were still looking at the positions that would be subject to their review. The Treasury Board Secretariat advised us that its review of Crown corporation governance will also address the appointment process.

7.35 In our view, the revised process has the potential to address many of the issues we raised in 2000. It reflects some of the best practices in Canada and in other jurisdictions. For example, boards of directors, through their nominating committees, would play a significant role in board renewal by screening and recommending suitable candidates for director positions; that should contribute to removing any remaining gaps in skills and abilities. In screening those candidates, the nominating committee will need to pay particular attention to their personal and other qualities, such as being independent-minded, that could have an impact on board dynamics and the board's effectiveness in challenging management.

7.36 There are only a few Crown corporations where the CEO is appointed by the board of directors. In most cases, CEOs are appointed by the Governor in Council. For the latter corporations, the revised process gives the board of directors a larger role than previously in identifying potential candidates for the CEO positions and recommending them to the minister. This is a significant step in enhancing the involvement of the board, although it differs from practices in the private sector. There, the board of directors is responsible for the selection, appointment, and termination of the CEO. In our view, having the board of directors play the lead role in selecting the CEO will contribute to enhancing his/her accountability to the board.

7.37 However, the problems of timeliness and staggering of appointments may not necessarily be corrected by the revised process. It will be important for the government to ensure that these issues are properly addressed.

7.38 The appointment process for senior executives of Crown corporations provides that some steps do not necessarily have to be followed. In our view, exceptions to the process need to be well supported and their rationale made public.

7.39 Although the revised process has the potential to improve Crown corporation governance, it will not be possible to assess its effectiveness until the process operates for some time.