



Treasury Board of Canada Secretariat
Crown Corporation Policy and Information Division
400 Cooper Street, 8th Floor
Ottawa, Ontario
K1A 0R5

July 6, 2005

Dear Sirs:

The Issues and Policy Advisory Committee (“IPAC”) of Financial Executives International Canada (FEI Canada) is pleased to provide feedback on the “Review of the Governance Framework for Canada’s Crown Corporations.”

FEI Canada is an all-industry professional association for senior financial executives, with eleven chapters across Canada and approximately 1,700 members. Membership is generally restricted to senior financial officers of medium to large corporations, as well as senior financial officers in public sector organizations. The following remarks are made on behalf of the Committee and do not necessarily represent the views of FEI Canada or its members.

The committee welcomes the efforts that the public sector is making in increasing financial transparency and accountability. The document speaks of the need for best practices in the face of recent scandals to restore public confidence. However, there are some areas that the Committee believes are lacking in depth or are unnecessary given the nature of these businesses.

What this framework does not say and, in fact, what it perpetuates is the amount of political interference that was involved between the politically appointed CEOs of the Crown Corporations and politicians. And while the six findings are very good, under “Principles of a Sound Governance System” (2.1) it speaks of the responsibility of the Minister to ensure good governance with the power to issue directives. It is this relationship which has caused the problems in the past and will do so as long as politics is allowed to interfere in the legislative mandate of the Crown Corporation.

Section 4: Clarifying Accountabilities & Roles and Responsibilities

While we appreciate it is impossible to disassociate the agencies from government, the role and the relationship between the Minister and the Crown Corporation should be clearly spelled out in a Memorandum of Understanding between the Board of the Crown Corporation and the Minister. This would be more detailed in the amendments to the Financial Administration Act and should clearly lay out what non-directive control the Minister has over the operation of the Crown Corporation and through what channel that direction should flow i.e. the Board or the CEO. This should help strengthen governance and give the Boards clear guidelines as to where the Minister’s authority ends and their accountability begins. This is particularly needed in the process of approving corporate plans, appointing key personnel and funding. The Board of Directors, in order to be accountable, need to have greater control over these key governance areas. While input from the Minister should be considered the final approval should be with the Board, except for an agency that requires direct funding from the government.

4.2 The Role of the Minister

Measure # 2

This clarification is essential. A part of a proposed MOU should also spell out the formal communication channel between the Crown Corporation and the Minister to prevent information being lost in the bureaucracy.

While the role of the Minister is to recommend the appointment of directors, there should also be within this process a review of the effectiveness of the current appointments and the Chair of the Board. There should also be a process to seek input from the Board as to what types of skills are needed before recommendations on appointments are made. The Board has a much closer understanding of what skills would augment the Board's effectiveness.

The last point in the call-out box on page 19 deals with the Minister's responsibility to review reports on material developments in a Crown Corporation and to answer questions in Parliament. There is nothing in Section 7: Reporting dealing with timely disclosure of material events. For larger Crown Corporations, a public company timely disclosure model may not be appropriate. Some formalized reporting mechanism should be adopted.

4.3 Role of the Board of Directors

Measure #4

This is an area that definitely needs to be clearly defined. Past problems seemed to have stemmed from direct dialogue between government staff and the CEO, with the Board seen as a non-entity. This process needs to be corrected by clearly articulating that the relationship between the government and the Crown Corporation is with the Board.

Section 5: Boards of Directors – Building Solid Foundations

The move towards Board independence from government and management is a very positive step and in keeping with the private sector. However, this does not make sense for all Crown Corporations. The Treasury Board needs to more precisely identify exemptions and criteria for exemptions.

Measure # 5 and # 6 and # 7

This measure proposes to severely limit or eliminate Public Servants from the Boards of Crown Corporations. This would exclude all public servants from all levels of government as well as MPs, MPPs etc. Is the key to not have these groups dominate the Board rather than to exclude these people altogether? The term public servant is too broad and very discriminatory. It excludes good people just because they hold a public office in another area of government. It would be inappropriate to exclude civil servants completely. A better approach would be to draft independence rules to cover who can sit on Boards and voting procedures in the case of conflict of interest or perceived conflict of interest. Under this scheme, such individuals would need to meet the general criteria for inclusion.

The rules should cover such matters as whether former public servants can be Board members of a Crown Corporation in which they were a senior officer. Former auditors of the entity or legal counsel should not be permitted to sit on the Boards, nor should relatives of the prohibited or restricted individuals. A member of a lobby group, such as a union, who is a Board Member of a Crown Corporation, should also be subject to the independence guidelines.

The split of the Chair and CEO in Measure #6 is a best practice and should be supported. The separation of the Chair and CEO roles is also a best practice in the private sector.

The CEO should be a member of the Board and the CFO should be a member of the Audit Committee, which gives them direct access to at least some Board members.

5.5 Audit Committee

Measure # 14

This measure is too weak and should comply with the private sector requirement that all members of the audit committee be competent to understand financial reporting. The government must be accountable to the Crown Corporation to provide this skill set. The terms “financial literacy” and “financial expertise” should be carefully defined. ‘Financial literacy’ is too general a term and does not imply a depth of financial knowledge and experience. If the definitions of these terms as used in provincial securities Acts is intended, this needs to be precisely specified; for example, does “financial expertise” require an accounting or financial designation, or a post secondary degree in accounting or commerce?

Measure # 15

The Committee agrees that the auditors should report to the Board. However, just because the internal and external auditors report to the audit committee does not mean the CEO cannot work with these groups or request that they perform services. The ability of both the external and internal auditors being able to meet with the Audit Committee, on which the CEO does not sit, is protection enough without having the CEO have staff that they are responsible for paying, but not in working with. Improvement in systems can come from internal audit and management working together, with the safety valve for controversial issues existing with the Audit Committee

It is a clear statement of accountability that if these groups report directly to the CEO and their future is dependent on this position they are in a conflict since there may be the appearance that they will be influenced not to review certain things that could negatively impact the CEO. It is the Auditor General’s clear reporting relationship to the legislature that makes it so influential as well as giving it the public perception of integrity that needs to be copied in the governance model.

Section 7: Reporting – Making Transparency and Accountability Come to Life

7.1 Reporting

There is intent to develop disclosure mechanisms for “whistle blowers”. This is difficult for public servants who are bound by oaths of secrecy. The government will need to consider how it can provide a system that satisfies both.

7.2 Certification

There are a number of governance issues that relate to Public Sector organizations that affect the comfort level of anyone asked to certify the reporting of a public sector organization. This is particularly relevant given the current public and criminal investigation going on in the Sponsorship Scandal. Certification within a climate where governance is weak and covert political manoeuvring is occurring makes certification a mine field.

Certification in the private sector is to assure that integrity of the financial controls around reporting and to certify that controls are in place, are documented and have been monitored and tested.

This section appears to have no grasp of the realities of the situation. The comment under this section that: "Certification generally does not impose new responsibilities upon signatories. Rather it is a means to confirm performance of existing responsibilities," shows a complete lack of understanding or appreciation as to what is expected.

Private sector corporations have spent millions of dollars to live up to the Sarbanes Oxley requirements to give the proper assurance before certification will be given. The benchmark is for each \$1 billion in revenue, the cost has been \$1 million to document and test.

There are no half measures. The controls around financial reporting particularly in a multi-location organization are just as important as they are in the private sector and even more so if there is a revenue component to the agency i.e. Canada Post etc.

Even if the certification is extended to Chairs of Boards for other issues, the big question will become one of liability for non-compliance. Certification is seen as an effective tool because of the penalties associated with non-compliance. If there is no liability or no consequence, then the process of certification is meaningless and does not address the accountability issue. If there is liability or consequence then the Board as well as the CEO or CFO would be foolish to certify anything that had not been fully documented and tested.

Measure # 24 Certification Process

This section makes sense but the public sector needs to adapt to the reality of best practices in accountability if they want to re-establish the credibility of public organizations in the wake of the recent scandals.

The extension of the certification regime for CEOs/CFOs similar to that required from public companies makes intuitive good sense, but cost effective processes have to be developed. This is an area where FEI could be consulted as these processes/requirements are developed for Crown Corporations.

Section 8: An Outsider's View on the Inside – Annual Audit and Special Examination

8.1 and 8.2 Annual Audit & Special Review

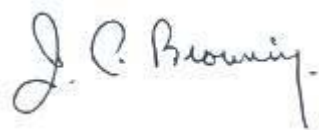
There is a need to restore the confidence in the audit function in the Crown Corporations. Without the control measures of SOX type or Bill 198 type controls and disciplines, all the issues raised around a lack of independence by the external auditors in the recent accounting scandals will continue to be applied against the Crown Corporations. However, there is concern regarding the rationale behind encouraging the employment of the Auditor General as main or joint external auditor. Why is the private sector auditor not considered? Giving the Auditor General the sole external Auditor role (Measure #26) seems to be too much to expect from this office; for example, many Crown Corporations have specialized commercial

activities that might overly strain the resources of the Office of the Auditor General. Rather, Measure #27 – The Unencumbered Right to Conduct Special Examinations, seems sufficient.

To summarize, IPAC generally agrees with the intent of the Governance Framework. However, we feel that there are some areas that merit further consideration and discussion.

IPAC hopes that its comments will be useful to the Treasury Board. If you have any questions or would like to discuss any of these matters with us, please do not hesitate to call.

Yours very truly,



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Issues and Policy Advisory Committee
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