

# Chapter 10

## Crown Corporation Governance

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# Crown Corporation Governance

## Background

10.1 Why is the Office of the Auditor General interested in corporate governance at New Brunswick Crown corporations? As you know from reading our mission statement or reviewing our past Reports, we feel that promoting accountability is the most important part of our mandate. Crown corporation boards, properly employed, are the accountability link between management of the individual Crown corporations and the government. To fulfil our mandate of promoting accountability for Crown corporations, we need to assure ourselves that Crown corporation boards are effectively fulfilling the governance role that has been assigned to them by the government of the Province of New Brunswick.

10.2 But what is corporate governance? Corporate governance for Crown corporations can be defined as the process and structure used to direct and manage the business and affairs of a Crown corporation with the objective of achieving the corporate mandate, which includes ensuring the financial viability of the business. The process and structure define the division of power and establish mechanisms for achieving accountability between the government, the board of directors and management. The direction and management of the business should take into account the impact on other stakeholders such as employees, customers, suppliers and communities. (See The Toronto Stock Exchange Committee on Corporate Governance in Canada, "Where Were The Directors? Guidelines for Improved Corporate Governance in Canada," December 1994.)

10.3 CCAF/FCVI Inc. (formerly the Canadian Comprehensive Auditing Foundation) has developed a list of the characteristics of effective boards. If a board truly exemplifies these characteristics, it will be providing effective governance and accountability. According to CCAF/FCVI Inc., effective boards

- are comprised of people with the necessary knowledge, ability and commitment to fulfil their responsibilities;
- understand their purposes and whose interests they represent;
- understand their objectives and strategies of the organization they govern;
- know and obtain the information they require to exercise their responsibilities;
- once informed, are prepared to act to ensure that the organization's objectives are met and that performance is satisfactory; and

- fulfil their accountability obligations to those whose interests they represent by reporting on their organization's performance.

10.4 Why is corporate governance important to Crown corporations? Unlike private corporations, Crown corporations often have service-related mandates. Even where their main objective is to create profits for public use, they are often assigned conflicting public policy goals that restrict their ability to meet their primary goal. Measurement of the degree of success in achieving their missions, then, is much more difficult than for profit-driven private corporations. Crown corporation boards that are serious about accurately assessing and communicating the degree of success of their organizations in achieving their missions must ensure that effective governance structures, processes, and accountability reporting arrangements exist to allow them to do this.

10.5 What difference does it really make to the Legislative Assembly and the public? Where Crown corporations are effectively governed, they will be providing the Legislative Assembly with the information it needs to determine the degree to which they have achieved their mission, an important legislative control. On the other hand, when governance and accountability structures are weak, the Legislative Assembly must question the validity of assertions made concerning the results achieved by a Crown corporation.

## Scope

10.6 We have two goals for our work on Crown corporation governance. The first is to evaluate and recommend improvements related to specific Crown corporation boards. Our second, a more long-range goal, is to develop a suggested governance model which may be applied to New Brunswick Crown corporations. The work required to accomplish our goals will be conducted over the next few years.

10.7 We had two goals for our work on this project during this past year. First, we wanted to do a general review of the state of governance for Crown corporations in the Province of New Brunswick. Second, we wanted to develop criteria to be used in assessing the effectiveness of governance structures and the level of accountability within specific Crown corporations. Therefore, our review this year was purposely broad and arranged to allow us to evaluate the validity and utility of the criteria developed for this project. A list of those criteria follows.

- Boards of Crown corporations should be comprised of people with the necessary knowledge, ability, commitment, and level of independence to fulfil their responsibilities.
- Boards of Crown corporations should have a clear understanding of their roles, responsibilities and duties, and the accountability structure within which they operate.
- Boards of Crown corporations should develop and maintain sufficient expertise relative to the Crown corporation which they govern including a working knowledge of the environment in which the corporation operates and the needs of its customers.

- Boards of Crown corporations should provide strategic direction to their corporation, along with a policy framework within which management may operate.
- Boards of Crown corporations should monitor the performance of the Crown corporation by obtaining appropriate governance information from management. This information should allow the board to assure itself that board policies have been complied with and to enable it to assess the degree to which the corporation has achieved its mission and strategic goals.
- Boards of Crown corporations should ensure that sufficient, relevant information is reported, through the Minister responsible, to allow the government and the Legislative Assembly to determine the degree to which the corporation has achieved its mission.

10.8 We selected a number of New Brunswick Crown corporations for preliminary review. These included the New Brunswick Geographic Information Corporation, the New Brunswick Liquor Corporation, the New Brunswick Power Corporation, the New Brunswick Research and Productivity Council, the Workplace Health, Safety, and Compensation Commission, Provincial Holdings Ltd., and the Regional Development Corporation.

10.9 We conducted interviews with the Chief Executive Officer(CEO) of each of these entities. During those interviews we asked a series of questions related to governance and accountability structures and processes within the organization. We reviewed recent board minutes and other pertinent documentation for each of the entities. In addition, we sent governance surveys to three directors from each of the first five entities listed above in order to obtain their input.

## Results in brief

10.10 **The criteria as developed and listed above appear to be sufficient to allow for the effective evaluation of governance structures and processes within New Brunswick Crown corporations. They will be used in evaluating individual Crown corporations.**

10.11 **Our general review of the state of Crown corporation governance and accountability in the Province of New Brunswick indicated a great deal of variance in governance structures, processes, and accountability reporting arrangements in the Crown corporations under review. Additionally, directors have indicated through their survey responses that there are some changes that could be made to improve Crown corporation governance and accountability.**

## Findings

### *Classification of Crown corporations*

10.12 Through a review of pertinent Canadian and international literature on governance, we have determined that Crown corporation boards may be classified into three basic groups. These classifications are based on the degree to which the board has the power to direct and set policy for its Crown corporation. Determining the identity of the

“directing mind” of the corporation is necessary in order to properly classify a board. Very simply, the “directing mind” of a Crown corporation is the individual or group who has the power to set key policies for the Crown corporation. The three classifications of Crown corporation boards follow.

- “Governing boards” are boards that have total authority and total accountability for all corporate activity, within the organizational framework. Such boards are the true “directing minds” of their Crown corporations. Crown corporation boards classified as governing boards are the equivalent of private sector boards of directors.
- “Administrative management boards” are boards whose function is to oversee the efficiency of delivery of decided services. Although they may make binding resolutions in certain areas, they are also responsible for implementing policy decisions made by the “directing mind” of the corporation. Also, in some cases they may be required to consult with the “directing mind” of the Crown corporation when making decisions on certain key matters. The “directing mind” for administrative management boards is usually the responsible government Minister.
- “Advisory boards” are boards whose function is to give counsel, not to govern. These can be distinguished from administrative management boards in that they are not normally able to make binding resolutions. They simply make recommendations to decision-makers.

10.13 As mentioned above, we chose seven Crown corporations for an initial review. Review procedures included an interview with the president/CEO and a review of documentation for each organization. At that point, we chose to classify selected boards before surveying directors. Our classifications could not be exact based upon our limited review. We found that five of the seven boards fit somewhere in the continuum between “administrative management boards” and “governing boards”. While each of those five boards do have some degree of autonomy, we also noted that they are all, in some measure, under the direction of a responsible government Minister. The other two boards appeared to be advisory in nature. They are discussed below.

10.14 Provincial Holdings Ltd. (PHL), upon review, appears to be simply a satellite of the Department of Economic Development and Tourism. All decisions made by the PHL board must be ratified by Board of Management prior to action being taken, and the staff of PHL is simply staff of the Department of Economic Development and Tourism acting on behalf of the PHL board. Therefore, we feel the PHL board is properly classified as an advisory board.

10.15 The board of the Regional Development Corporation(RDC) is composed entirely of departmental deputy ministers who are acting on

behalf of their departments, mainly in an interdepartmental coordination role. In addition, there is a minister accountable to the Legislative Assembly for the activities of RDC. It would therefore appear that the RDC board is also an advisory board.

10.16 Since this project is concerned with governance issues, we have limited the discussion of our findings to the five boards we consider to have at least some governance responsibilities. Provincial Holdings Ltd. and the Regional Development Corporation have been excluded from the information that follows. Our final review procedure for this year was to send a board governance survey to a sample of three directors from each of the five boards. The eleven anonymous replies that we received have been incorporated into our findings. All survey responses were destroyed after tabulation was completed.

#### Presentation of findings

10.17 We have arranged the discussion of our preliminary findings by criteria. In attempting to evaluate the utility of these criteria in carrying out a governance assessment we have included sub-headings under each criteria as appropriate. We have not attempted to interpret the information presented. That will be done for selected individual Crown corporations as part of the second phase of this project.

10.18 At the time of our interviews with the CEOs, we became aware of some ongoing governance initiatives in certain of the Crown corporations under review. Our findings reflect only information presented to us by May, 1996.

#### Criteria #1

10.19 **Boards of Crown corporations should be comprised of people with the necessary knowledge, ability, commitment, and level of independence to fulfil their responsibilities.**

#### Characteristics of directors

10.20 All eleven directors responding to our survey indicated that they had had previous experience serving on a board of directors in either the public or private sector.

10.21 When asked to evaluate the current composition of their boards, respondents gave the following feedback.

## Exhibit 10.1

*Characteristics of directors*  
(Source: directors' survey)

<b>On our board there is a good mix of:</b>	<b>Agree</b>	<b>Disagree or not sure</b>
Experience and knowledge	ten	one
Length of service	ten	one
Skills and abilities	nine	two
Demographic representation (age, gender, ethnicity)	six	five
Special-interest group representation	three	eight
Geographic representation	ten	one

**Independence of directors**

10.22 Unrelated directors can be defined as directors who are not members of management of the corporation or employees of the Province of New Brunswick. Among the directors of the five Crown corporations we surveyed, forty-six of forty-eight board members were unrelated. This excludes the five CEOs who are ex-officio members of their respective boards. All committees were also composed of a majority of unrelated directors.

**Directors' involvement in the appointment process for new board members**

10.23 In some of the corporations reviewed, we were informed that the chair of the board was involved in the appointment process. However, eight of the nine directors who responded to the statement, "Our board has an adequate role in the selection of new board members," either disagreed with it or were not sure if it was the case. One director stated, "*Given that the board will be held accountable for its actions, I believe we should have significant input. If we do not have absolute authority we should be asked for recommendations with supporting rationale.*" Other respondents supported the view that directors should have at least some input into who is appointed to their boards.

10.24 Directors also indicated some concern regarding their involvement in the selection of board chairs. In the survey, directors were asked to evaluate the statement, "Our board has an adequate role in the selection of the board chair." Five of the nine directors who responded indicated that they felt they should have a greater role in the selection of their chair. Suggestions ranged from, "*We should definitely be selecting the chairperson*" to "*...If the board does not have some input on selection, then once appointed the board should provide feedback annually so as to have the ability to get rid of {the chair}.*"

**Development of potential board member profiles by current directors**

10.25 Because the five boards reviewed have not traditionally had much input into the appointment process for new members, such model profiles have never been developed. However, responses to our survey indicate that directors have strong opinions as to what personal attributes good board

members should possess. “General business knowledge” was considered the most important attribute, followed by “prior board experience” and “related industry experience.” “Known political affiliation” was rated “not important” by all eleven directors. Respondents also mentioned “good judgment” and “a sincere interest in the business of the Crown corporation” as important. The comment was made that *“although {many of the personal attributes} are more or less important it is essential that there is a proper mix of expertise.”*

**Board vacancies**

10.26 Board vacancies did not seem to be a problem for the boards we reviewed.

**Board size**

10.27 The boards of the five corporations with governing boards ranged in size from seven to fifteen members including the CEO. All eleven directors indicated that the size of their board was about right.

**Director conflict of interest**

10.28 Conflict-of-interest guidelines vary between the five corporations from explicit coverage in the enabling Act, to coverage in a code of ethics, to an informal understanding among board members as to what is acceptable.

**Board self-assessments of performance**

10.29 Ten of the eleven directors felt that “Evaluating the performance of the board” was either somewhat important or very important. However, from our interviews it seems that the boards’ self-evaluation is currently limited to general discussions at the board table. No formal, documented self-evaluations have taken place.

Criteria #2

10.30 **Boards of Crown corporations should have a clear understanding of their roles, responsibilities and duties, and the accountability structure within which they operate.**

**Orientation sessions for new directors**

10.31 Seven of the eleven directors indicated that they had received some form of orientation when they were appointed to their board. Four indicated they had not. Topics covered during those orientation sessions are detailed in the table below.



## Exhibit 10.2

*Orientation session topics covered  
(Source: directors' survey)*

Topic area presented	Number of times mentioned
Government policies and practices affecting Crown corporations	five
The relationship of the Crown corporation to government	six
Your conduct as a director (e.g. fiduciary duties, duty of care, conflict of interest)	five
Your role and responsibilities as a director	six
The business operations of the corporation	seven
Background on the industry the Crown corporation operates in	seven
How the board is structured and how it operates	five
Other (e.g. information on governance, major development issues, etc.)	four

### Knowledge of general governance issues

10.32 When asked to identify governance-related literature with which they were familiar, the respondents noted the following documents.

## Exhibit 10.3

*Known governance documents  
(Source: directors' survey)*

Governance document	Number of times mentioned
CCAF/FCVI Inc. - Six Principles of Effective Governance	one
Toronto Stock Exchange - Guidelines for Improved Corporate Governance in Canada	three
Canadian Institute of Chartered Accountants - Guidance for Directors: Governance Processes For Control	three
John Carver's governance model as documented in "Boards that Make a Difference"	four
Other documents	two

10.33 Some directors also noted that they have attended presentations related to corporate governance.

**Enabling legislation**

10.34 We reviewed enabling legislation for each of the five Crown corporations. Generally, legislation is very broad and does not clearly define roles and responsibilities in any detail. In some cases, boards have taken steps to try to clarify their roles and responsibilities through by-laws or policies. In other cases, board roles and responsibilities have not been documented. We did not note anything in the enabling legislation we reviewed that would unduly restrict the board in fulfilling its key roles as defined in the previous section.

**By-laws**

10.35 All five corporations either have adequate by-laws and/or policies covering administrative aspects of their board's operations or are in the process of drafting them.

**Job descriptions for the board and individual directors**

10.36 Job descriptions have been prepared in certain of the corporations we reviewed and we noted at least one additional case where job descriptions were being prepared at the time of our review. Other corporations had no documented job descriptions for board members.

**Terms of reference for board committees**

10.37 The five corporations we reviewed had a total of sixteen board committees between them. Of those, fifteen had documented terms of reference and the one that did not had been assigned a very simple mandate by its board. The majority of directors responding to our survey indicated that, in their opinion, each committee understands what is expected of it.

**Directors' understanding of their roles, responsibilities and accountabilities**

10.38 Directors provided the following feedback with regard to their understanding of the roles, responsibilities and accountabilities of their board through their survey responses. Of the eleven directors, nine agreed with the statement "I have sufficient information as to my duties and personal responsibilities as a director."

10.39 A majority of the directors responding felt that the following items are very important to the role of their board in overseeing the direction of the corporation.

- Setting strategic direction and goals
- Selecting the CEO
- Evaluating the performance of the CEO
- Setting significant policies by which the corporation operates
- Ensuring that the corporation has adequate resources
- Monitoring the achievement of goals and objectives
- Ensuring effective management information systems are in place
- Bringing an external viewpoint to the corporation's attention
- Evaluating the performance of the board
- Ensuring accountability obligations are discharged

10.40 Directors responding to the survey felt the top three interests they must represent as board members were those of the corporation,

those of the customers of their corporation, and those of the public at large.

10.41 Regarding accountability relationships, directors most often mentioned stakeholder groups, the Minister responsible, Cabinet, the public, and the Legislative Assembly as being individuals or organizations to whom they are accountable. Many indicated that they have multiple accountabilities.

10.42 Eight of the eleven respondents felt the following statement applied to their board. “Compared to private and non-profit boards, boards of Crown corporations typically face a unique environment, characterized by having to share authority, responsibility and direction-setting with various government bodies, and having to work within the ambiguities arising out of this complex mix.” One director stated “*Sometimes government interference causes a credibility problem for the board with its stakeholders. Also some boards think they do not have to be accountable to government. There must be more of a partnership approach.*” Another commented “*Maybe it is naive of me but I was surprised to find out that the government would make a decision affecting {my corporation} without notifying the board first.*”

#### Criteria #3

10.43 **Boards of Crown corporations should develop and maintain sufficient expertise relative to the Crown corporation which they govern including a working knowledge of the environment in which the corporation operates and the needs of its customers.**

#### Developmental opportunities for directors

10.44 Nine of the eleven directors surveyed indicated that they had been provided with some form of developmental opportunities, for example workshops or information sessions, within the past two years. Much of the information provided related to industry-specific topics, and in certain cases was a regularly-scheduled part of board meetings. One respondent referred to having received information on the “*role of boards and board members, accountability.*”

#### Circulation of board meeting materials

10.45 From our interviews with the CEOs, it appears that the corporations we reviewed send out board meeting materials to directors from seven to ten days in advance of board meetings.

#### Criteria #4

10.46 **Boards of Crown corporations should provide strategic direction to their corporation, along with a policy framework within which management may operate.**

#### Boards’ understanding of the Province’s wishes regarding the strategic direction of their corporations

10.47 Among the eleven directors who responded to the survey, five agreed that the government’s expectations as to the strategic direction of the corporation had been provided to the board and the corporate strategic plan had been approved by the government. Three disagreed, and three were not sure.

<b>Board policy-making</b>	10.48 Boards reviewed varied widely in terms of the type and level of policies they make. Certain boards are heavily involved in setting policy for all aspects of their organization; other boards restrict themselves to setting only very high-level policies or do not set policy at all, preferring to govern through corporate by-laws.
<b>Mission statements and other strategic documents</b>	10.49 Nine of the eleven respondents agreed that the purpose of their corporation had been translated into a clear mission statement. From our review we noted that all five corporations had either a mission statement or organizational statement of principles. Certain of the Crown corporations had also developed statements of values, lists of high-level corporate objectives, and multi-year business plans.
<b>Board decision-making</b>	10.50 Respondents were divided as to the importance of their board making all critical business decisions in overseeing the direction of the corporation. Five felt it was very important for them to do this. Five more felt it was somewhat important, and one did not think it was an important role for the board.
Criteria #5	10.51 <b>Boards of Crown corporations should monitor the performance of the Crown corporation by obtaining appropriate governance information from management. This information should allow the board to assure itself that board policies have been complied with and to enable it to assess the degree to which the corporation has achieved its mission and strategic goals.</b>
<b>Information provided to the board by management</b>	10.52 From our review, it appears that a significant amount of financial and operating information is provided to the directors of all five Crown corporations. However, we will need to do further assessments to determine if the information presented is sufficient to allow directors to evaluate management's success in achieving corporate objectives, while staying within board policy guidelines.
<b>CEO performance evaluation by the board</b>	10.53 With one exception, CEOs are not subject to regular, formal evaluations of their performance by boards or their representatives.
Criteria #6	10.54 <b>Boards of Crown corporations should ensure that sufficient, relevant information is reported, through the Minister responsible, to allow the government and the Legislative Assembly to determine the degree to which the corporation has achieved its mission.</b>
<b>Accountability information provided by boards</b>	10.55 Directors were divided on whether their boards had developed guidelines on the information to be provided to each group to whom they are accountable. Five directors agreed that this had been done, four disagreed, and two were not sure. However eight of the eleven directors felt that the accountability information provided is sufficient to allow an evaluation of how well the corporation has performed. The other three directors were not sure if the information was sufficient.

10.56 From a review of the annual reports of the five Crown corporations, we noted only one is currently presenting effectiveness information as required in the annual report policy for departments and Crown agencies of the Province of New Brunswick.

10.57 Our Office continues to monitor the degree of compliance with the annual report policy for departments and Crown agencies of the Province of New Brunswick. It was reported on in detail in the Report of the Auditor General for the year ended 31 March 1994.

### **Conclusion**

10.58 The criteria as developed appear to be sufficient to evaluate the effectiveness of individual Crown corporations' governance structures and processes and the degree of accountability provided. We are now able to proceed with our evaluation of specific Crown corporations.

### **Further work**

10.59 In the coming year, we will be selecting certain of the New Brunswick Crown corporations for detailed governance reviews. Our findings will be presented in next year's Report.