

Chapter 6

Crown Agency Governance

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Crown Agency Governance

Background

6.1 Our Office has performed five governance reviews over the past number of years. These have included:

- A general review of various Province of New Brunswick Crown agencies (1996)
- The Atlantic Lottery Corporation Inc. (1997)
- The eight regional hospital corporations (1998)
- The New Brunswick Liquor Corporation (1999)
- The Department of Finance - Pension Funds (2000)

6.2 At 31 March 2002 major New Brunswick Crown agencies held over \$4.7 billion of government assets. Related liabilities were over \$4.3 billion. Some \$904.2 million in provincial funding was provided to those Crown agencies during the year ended 31 March 2002. During that year major Crown agencies generated an additional \$1.9 billion in external revenues and their total expenditures exceeded \$2.7 billion. The financial significance of New Brunswick Crown agencies, combined with many recent changes in best practices associated with good governance, and the lack of any overall support or guidance being provided to New Brunswick Crown agencies or their boards, led us to become heavily involved in the area.

What is effective governance?

6.3 Governance can be defined as the process and structure used to direct the business and affairs of a corporation with the objective of achieving the corporate mission. The process and structure define the division of power between the board and management. They also establish mechanisms for achieving accountability between management, the board of directors, and corporate shareholders. Putting it simply, governors (i.e. boards of directors) are to look out for the interests of the corporate shareholder (i.e. the Province of New Brunswick).

6.4 CCAF/FCVI Inc., a research organization focussing on public sector governance and accountability, 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, 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 the objectives and strategies of the organization they govern;
- understand what constitutes reasonable information for good governance and obtain it;
- 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.

6.5 We feel that effective Crown agency boards, as defined above, are best able to look out for the interests of the Province of New Brunswick and its citizens and act as major contributors to the success of their corporation.

Why is it important that governance be effective?

6.6 Ultimately governance is about performance. Boards of directors are set up in legislation to improve, in all respects, the performance of the Crown agencies they govern. Consequently, their activities as directors must be geared towards promoting appropriate corporate activities (i.e. those that move the Crown agency towards achieving its mission). If they are not achieving this goal, there is no reason for a board to exist.

6.7 The Conference Board of Canada made the following statement in their September 1997 Members' Briefing.

There is a widely held perception that good corporate governance leads to good corporate results. ... This subject has now taken on a much higher profile as shareholders ... and directors alike are putting the governance practices of our corporations under close scrutiny.

6.8 The Canada Deposit Insurance Corporation included the following comments in the preamble to its own governance guidelines for financial institutions.

... The care, diligence, skill and prudence exhibited by ... directors has a critical influence on the institution's viability, safety and soundness, its ability to execute its business strategy and achieve its business objectives and its ability to engender confidence ...

Good governance is not only essential to the operating effectiveness of any organization – it is good business. Studies show not only that ... institutions with good governance processes operate more effectively and respond more quickly to changes in the marketplace, but also that stakeholders

increasingly recognize the relationship between governance and performance ...

6.9 The following comments came from a study of seventy-nine major U.S. and Canadian pension funds, and a Dutch pension fund, as previously quoted in our 2000 Report chapter on pension plan governance.

We were able to find a statistically significant link between organizational performance and organizational design. Interestingly, and more specifically, we found the most important driver of organization performance ... to be the quality of the board...

6.10 Conversely, there can be significant negative impacts when a Crown agency board is not governing effectively. These include:

- A lack of board strategic leadership in ensuring that the mandate for which the organization was created is being carried out.
- The losses and related political fallout that may occur because significant risks are not being managed appropriately due to lack of board scrutiny in this area.
- The loss of opportunity to improve services and/or financial performance because the board is not involved in an ongoing discussion of corporate strategy and ways to advance the corporate mission, and is therefore not encouraging management to constantly look for ways to improve performance.
- The failure of the board to provide a full accountability link between the Crown agency and the responsible Minister.
- The failure of the board to adequately monitor the performance of senior management and hold it to account for that performance.
- A lack of value for money from the direct corporate administrative costs associated with operating and supporting a board of directors if the board is not fulfilling its roles and responsibilities.

6.11 In our opinion, the Legislative Assembly, which is a forum composed of representatives of the citizens of New Brunswick, needs to ensure that New Brunswick Crown agencies are governed effectively.

Objective and scope

6.12 Our objective for this project was:

To summarize the results of our governance reviews over the past five years, review practices in other jurisdictions, and make major overall recommendations on steps the Province can take to improve Crown agency governance.

6.13 In completing this work, we reviewed findings and documentation from our previous governance reviews and followed up where necessary. We also completed extensive research on best practices in governance in the private and public sectors both inside and outside New Brunswick. Additionally, we interviewed representatives of selected New Brunswick Crown agencies and the New Brunswick Executive Council Office. Finally, we reviewed various Crown agency documents and did some limited testing of recent appointments to New Brunswick Crown agency boards.

6.14 Recommendations in this chapter are directed to two distinct groups: central government (Executive Council, departments, and/or other organizations as applicable); and Crown agency boards of directors. The recommendations directed towards Crown agency boards of directors are primarily applicable to boards that have been assigned at least some responsibility for decision-making and therefore have some commensurate accountability for results achieved (i.e. Governing or Administrative Management boards as described in paragraph 10.12 of our 1996 Report). Where a board's activities are entirely advisory in nature, recommended practices may not be of value.

Summary of recommendations

Recommendations for central government (Executive Council, departments, and/or other organizations as applicable)

Appointments

Corporate mandates and performance expectations

6.15 Processes should be established to ensure that the expiry dates of board appointments are staggered to ensure continuity on Crown agency boards.

6.16 The level of compensation currently provided to board members should be reviewed to ensure it is sufficient to attract the best candidates to directorial positions and to adequately reward board members for their efforts.

6.17 Selection of a Crown agency board member should be primarily based on the demonstrated ability of a candidate to contribute to improved outcomes for the organization, and not their membership in a particular stakeholder or demographic group.

6.18 Responsible departments should develop memoranda of understanding with Crown agencies to ensure that there are common understandings of the mandate and performance expectations government has set for the Crown agencies.

6.19 As a minimum, government (represented by Board of Management, the Policy and Priorities Committee, or a similar body) should review all Crown agency strategic and business plans on a regular basis to ensure that Crown agency interpretations of legislation, mandate and government expectations are consistent with its own understanding.

6.20 Responsible departments should monitor Crown agency compliance with their own enabling legislation and other pertinent acts to reduce the risk of inappropriate actions being taken.

*Guidance and support for
Crown agencies*

6.21 All Crown agency boards should be given responsibility for recruiting and hiring the CEOs for their agencies.

6.22 The Executive Council Office's coordinating role should be expanded to include providing guidance and support to Crown agencies in some or all of the following areas:

- setting and periodically updating governance standards for use by all New Brunswick Crown agencies;
- monitoring compliance with those governance standards;
- providing guidance to Crown agencies in the application of those governance standards;
- providing governance training opportunities for Crown agency directors;
- communicating the shareholder's perspective, government priorities, and emerging issues to Crown agencies;
- providing independent advice to Cabinet, Ministers, Boards and/or CEOs on Crown agency mandates, direction, plans, and performance, as requested; and
- identifying and coordinating major Crown agency policy issues and projects as required.

Accountability reporting

6.23 The Executive Council Office should be monitoring Crown agency annual reports to ensure that the government annual report policy is being complied with.

6.24 The government annual report policy should be amended to include the following two additional requirements.

- That Crown agency annual reports include, where applicable, reference to the Crown agency's involvement in supporting the success of current government priorities and initiatives.
- That Crown agency annual reports include a statement of governance practices similar to that shown in the 2002 NB Power Corporation annual report.

**Recommendations for
Crown agency boards of
directors**

Appointments

6.25 Crown agency boards of directors should be providing the responsible departments with selection criteria against which to evaluate candidates for board appointments.

Best practices for boards of directors

6.26 All Crown agency boards should ensure that ethical standards have been established for their agency and that there is a system in place to monitor compliance with those standards.

6.27 All Crown agency boards should seriously consider establishing an audit committee to provide additional focus to the board's review of the integrity of the agency's internal control and management information systems.

6.28 All Crown agency boards should prepare a governance statement for their agency that describes:

- the governance and accountability structure of the Crown agency;
- governance processes and standards that are being followed, including the requirements made of individual board members; and
- the roles and responsibilities of government, the board of directors, and management.

6.29 The governance statement should be reviewed regularly and updated as necessary.

6.30 All Crown agency boards should negotiate and document a memorandum of understanding between their Crown agency and the responsible Minister as to how important aspects of governance are to be handled, the relative responsibilities of key governance players, etc.

6.31 All Crown agency boards should conduct regular self-evaluations of their board's effectiveness. They should also consider conducting regular reviews of the performance of individual board members.

6.32 Periodically, all New Brunswick Crown agency boards of directors should look critically at reporting they receive regularly from management. Specifically, each board should ensure:

- that reports presented are useful and sufficient to allow the effective discharge of all of the board's roles and responsibilities as Crown agency governors (For example, information used by the board to monitor corporate performance should address both financial and service goals and be clearly linked to approved plans.);
- that information that is not used by the board is deleted from management reporting; and

- **that reports are organized for ease of reference by board members in their deliberations.**

6.33 All Crown agency boards should review the performance of their CEO on a regular basis.

Keys to effective governance

6.34 From the start, the goal of our work on Crown agency governance has been to try to improve the effectiveness of governance provided by the boards of New Brunswick Crown agencies. Based on five years of work in the area, we believe that there are a few key priorities that must be considered to ensure that governance is effective. They are:

- Ensure that members appointed to the board have the necessary skills to contribute to effective governance.
- Ensure that boards are renewed regularly while at the same time maintaining sufficient continuity of membership to allow a consistent knowledge base to be maintained.
- Ensure that the mandate of each Crown agency is clearly documented and agreed upon by both central government and the Crown agency.
- Ensure that the relative roles and responsibilities of Executive Council, Board of Management, responsible departments, Crown agency boards, and Crown agency management are clearly documented and agreed upon by appropriate parties.
- Ensure that board members get sufficient, appropriate training and guidance to understand and be able to apply current best practices of governance.
- Ensure that board members get sufficient information about the operation of their Crown agency to allow them to fulfil their roles and responsibilities.
- Ensure that board members understand to whom they are accountable and how that accountability obligation is to be discharged.

6.35 Central government (i.e. responsible departments, Executive Council and Board of Management), Crown agency boards, and corporate management all have important roles to play in the achievement of these seven priorities. We feel that if these key players keep the seven listed priorities in mind on an ongoing basis, it will result in Crown agencies that have well-qualified boards, armed with the right knowledge to be effective. It is then up to the boards to make the necessary efforts to govern effectively. Once this has been

accomplished, central government's primary role becomes one of monitoring Crown agency boards to ensure that they are adequately discharging their accountability obligations.

Board appointments

6.36 “They say the best companies have board members who ask the tough questions. In Crown corporations this is especially important because balancing public policy and commercial objectives is the toughest part of the job.” (Annette Verschuren, former member of the Board of Directors of Cape Breton Development Corporation and President, Home Depot Canada.)

6.37 It is well recognized in current governance thinking that to have effective governance, you must have the right people in place, people who are willing and able to ask the right “tough questions”. This means that you must have a group of directors in place that can provide strong strategic leadership. However, the way in which appointments are made in both the public and private sectors is often not effective in appointing the best people to boards. John Carver, author of the key governance reference book “Boards That Make a Difference” said:

In twenty years' experience working closely with boards, my impression is that we are pretty sloppy about filling board seats, often putting people on boards for all the wrong reasons. Let's face it. The reasons board members are selected often come down to who has time, who fits some preset demographic description, or - in the case of politically appointed boards - who is owed a favor. Sometimes the only requirement is that a potential board member care about the organizational mission. Often the persons chosen are very accomplished in their fields but skilled in ways that may have little to do with proper board behavior. Most boards would fire their CEOs for filling staff positions as haphazardly as ... recruits for board positions....

6.38 He goes on to say,

It has become politically correct to maintain that everyone is equally capable of discharging board responsibilities, but that is simply not true.

6.39 The Conference Board of Canada, a leader in promoting effective corporate governance, has stated:

There ought to be a clear understanding of the corporation's and board's needs, then a proactive search for the right fit. Recruiters should be testing for independence of mind, common sense, collegial working, diversity and depth of experience.

What happens in New Brunswick

6.40 The vast majority of directorial appointments to New Brunswick Crown agency boards are made by the Lieutenant-Governor in Council as specified in the legislation of individual Crown agencies. In practice, such appointments generally follow the following process.

1. The department responsible for a specific Crown agency identifies and approaches a candidate to fill a vacant position. The department may or may not consult with the current board of the Crown agency, stakeholder groups, or other interested parties when identifying and evaluating that candidate.
2. The department then prepares a Memorandum to the Executive Council as specified in the Procedures Manual for Executive Council Documents. It requires that departments include:
 - The address and qualifications of the individual(s).
 - The circumstances under which the position(s) became vacant... (e.g., resignation, death, dismissal, expiration of term.)
 - The names, addresses and dates of expiration of the terms of all other members of the board or commission.
 - A statement that the person(s) proposed for appointment meets all statutory requirements for the position.
3. Executive Council uses the information provided and other relevant input from members of Cabinet to determine whether the person being recommended is suitable for the position to be filled.
4. Once the appointment has been approved by Executive Council, as signified by the issuance of an Order in Council, the department is responsible for notifying the candidate of their appointment and providing them with any other necessary information.

6.41 There are no specific documented requirements provided by Executive Council to departments covering how to identify or evaluate potential directors, nor is there any requirement to identify the needs of the board in question. However, a representative of Executive Council indicated that it is understood by all departments that appointments should consider quality of the people, gender, linguistic balance, and geographic balance.

6.42 Each piece of enabling legislation provides a slightly different framework for recruiting new directors. It may specify the groups from which candidates are to be chosen, the terms for which individuals may be appointed, etc.

Best practices in appointing board members

6.43 A report prepared in 1998 by the Public Policy Forum entitled Protecting the Shareholder – A Review of the Governance Structure of Canadian Crown Corporations noted:

One place to improve Crown corporation governance is the process through which directors are appointed to serve on Crown boards. The issue is not whether the government should exercise the right to appoint individuals to these boards. Nor is the real issue the political affiliation of individuals appointed Competence and relevant experience must be the over-riding criteria for appointments to Crown corporation boards. ... Crown boards should communicate to their responsible ministers ... the areas of expertise lacking on the existing board.

6.44 Based upon our governance work, we believe there should be three distinct steps in selecting candidates for board membership:

- identify the skills required of new appointees (i.e. prepare selection criteria);
- identify the available individual(s) who best meet the requirements laid out in the selection criteria; and
- recommend their appointment to Executive Council.

6.45 The first step in selecting board members is to define and document exactly what general and specific skills are needed in new board members. Not surprisingly, individual Crown agency boards are in the best position to do this for their own board.

6.46 The second step is the identification of candidates who can provide the needed skills. Stakeholders, Crown boards, senior Crown agency management, and central government can all potentially take part in the identification of candidates. However, it is critically important that there be a process in which candidates are evaluated against selection criteria before they are recommended for appointment.

6.47 Having Crown agency boards prepare written selection criteria and then evaluating candidates against those criteria seems a logical way to select new board members. A Crown agency would not hire an employee without having some idea what skills they are looking to add. But perhaps more importantly, responsible departments should not recommend the appointment of a particular person to a board without knowing in advance that the person will provide the skill sets needed to be an effective member of the board in question. However, based on our previous work, our opinion is that Crown agency boards in New Brunswick have not been proactive in providing such selection criteria to decision-makers, nor have they been asked to do so by decision-makers.

6.48 We did note one case where a Crown agency board is providing useful information to aid in the selection of new board members. Most new appointees to the Workplace Health, Safety and Compensation Commission (WHSCC) board are recommended by stakeholder groups

and automatically approved by central government. To aid stakeholder groups in selecting good candidates, the directors of WHSCC have developed a document covering the duties and responsibilities of board members. The board does not provide selection criteria to the Department of Training and Employment Development at present but may do so in the future.

Remuneration

6.49 In general, serving on the board of directors of a New Brunswick Crown agency is seen as a public service. Remuneration is nominal and not an inducement to accept a board appointment, while duties are not dissimilar to those in the private sector, where directors are typically paid. We have been told by various representatives of Crown agencies that the lack of remuneration paid to directors does make it somewhat more difficult to attract people. It must be recognized that there is a trade-off between remuneration and the ability to attract the best available people to serve on Crown agency boards.

Representational appointments

6.50 As previously noted, one of the principles of selecting appointees for Crown agency boards in New Brunswick is that there be adequate regional, linguistic and gender representation on boards. This principle seems to be common in many jurisdictions we looked at during our work. However, we would caution that there is a trade-off in adopting this principle. Consider the following statement from John Carver.

... While gender, color, and ethnicity have a role to play in selection of members, choosing the "best" people has less to do with our ways of dividing up the human race than with the skills, personality and life experience that qualify a person for board leadership.

6.51 We feel that the primary reason for appointing an individual to the board of a Crown agency must be because it is believed that individual will contribute to improved outcomes for the organization. New Brunswick citizens should expect no less. Inclusion for the sake of inclusion should not be a priority. Limiting particular appointments to specific groups of New Brunswick residents means limiting the field of potential appointees, thereby decreasing the chance that you will get the best person for the position being filled.

6.52 On the other hand, the inclusion of board members who represent particular stakeholder groups does bring important perspectives to the board table and may help boards better understand the needs of those groups. But this approach also means that the groups represented on the board are being given special status in comparison with other corporate stakeholders. In such a situation, boards must be careful to actively seek out the perspectives of unrepresented stakeholders, and not just assume that all important perspectives are already represented at the board table.

6.53 A related concern is created by the stipulation in certain enabling acts that some board members be selected by particular interest or stakeholder groups. The difficulty arises at the board table. Is the board member representing the best interests of the Crown agency (i.e. accountable to the responsible Minister) or the best interests of the group that appointed them (i.e. accountable to the appointing group)? Further, how can these conflicting accountabilities be reconciled? Board members might feel obliged to represent stakeholder interests rather than the best interests of the organization they serve. Consequently, these boards of directors may not be acting in the best interests of New Brunswick taxpayers.

6.54 A more qualifications-based, less representational, approach to selecting board members would put the onus on the board to get input from all stakeholder groups in governing the Crown agency. And indeed one of the key roles of any board of directors is developing a communication strategy for its organization, including strategies for getting feedback from stakeholders. In other words, a board that is governing effectively, no matter how its members are selected, will be reflecting stakeholder perspectives in the decisions it makes.

**Recommendations -
appointment of directors**

6.55 We make the following recommendations related to the appointment of directors to Crown agency boards in New Brunswick:

- **Crown agency boards of directors should be providing responsible departments with selection criteria against which to evaluate candidates for board appointments.**
- **The level of compensation currently provided to board members should be reviewed to ensure it is sufficient to attract the best candidates to directorial positions and to adequately reward board members for their efforts.**
- **Selection of a Crown agency board member should be primarily based on the demonstrated ability of a candidate to contribute to improved outcomes for the organization, and not their membership in a particular stakeholder or demographic group.**

**Timeliness and continuity
of appointments in New
Brunswick**

6.56 As previously discussed, there is no central agency in New Brunswick that initiates Crown agency board renewal. Rather, individual departments must monitor the status of Crown agency boards for which they are responsible and take steps to fill board positions when necessary.

6.57 In our 2001 Report, paragraph 1.25, we noted that:

there were four government agencies that did not have a properly constituted Board of Directors. We found that the terms for the Directors of the New Brunswick Crop Insurance

Commission and Kings Landing Corporation had expired. The Kings Landing Corporation Board however continued to operate. And the Boards of the Youth Council of New Brunswick and the New Brunswick Public Libraries Foundation did not have sufficient members to constitute a quorum.

6.58 With so many departments involved in the appointment process, and in light of our previous observation, we decided to check to see whether current board appointments were up to date and whether the expiry dates of current directors' terms had been staggered to ensure continuity on the boards. In effect, we were checking for consistency between departments. We selected nine of the largest Crown agency boards for testing and were able to make a number of observations.

6.59 On a positive note, we found four Crown agency boards for which appointments were completely up-to-date and for which expiry dates had been adequately staggered to ensure continuity at the board table. (New Brunswick Investment Management Corporation, NB Power Corporation, the Workplace Health, Safety and Compensation Commission, and Service New Brunswick).

6.60 However, two of the nine Crown agencies had members sitting on their boards whose terms had expired. In one case, a member's term had expired in 2002. In a second, more serious case, there were only seven up-to-date appointments. Full complement for that board was fifteen members. Of the additional eight board positions, three were being covered by members whose terms had expired (one in 2000 and two in 1998). The other five positions were vacant.

6.61 The enabling legislation for one of the Crown agencies stated, "a member of the Board shall remain in office, notwithstanding the expiry of the member's term, until the member resigns or is reappointed or replaced." The other Crown agency had an equivalent clause. However, we feel that it is important to ensure board appointments are up to date, even where current members are willing to be re-appointed. Board renewal gives Executive Council the opportunity to review appointments to consider whether they continue to be appropriate.

6.62 In relation to board continuity, we noted that four of the nine Crown agencies will have all board members' terms expiring at or near the same time. Establishing a continuity of process and knowledge base within these boards will likely be difficult in the circumstances. The wholesale turnover of boards tends to reduce the effectiveness of governance, for instance through a loss of continuity where best practices have been established, and is a situation to be avoided if possible.

6.63 Our understanding is that the results we found actually represent an improvement over the situation in the past. There has been a conscious effort on the part of the Executive Council Office and responsible departments to improve the timeliness of board appointments. We also note that the Executive Council Office is in the process of developing an enhanced tracking system for board appointments that, among other things, will provide reminders to departments when expiry dates are approaching.

Recommendation – timeliness and continuity of board appointments

6.64 We make the following recommendation related to the timeliness and continuity of Crown agency board appointments in New Brunswick:

- **Processes should be established to ensure that the expiry dates of board appointments are staggered to ensure continuity on Crown agency boards.**

Corporate mandate and performance expectations

6.65 Regardless of how well qualified the members of a board of directors are, they cannot be effective if they do not have a thorough understanding of the mandate of their organization, the expectations of those to whom they are ultimately accountable (i.e. the corporate shareholder), and the enabling legislation that established their Crown agency in the first place. In particular, organizational mandate and shareholder expectations will be the basis for strategic leadership provided by the board of directors. In approving corporate strategies and priorities, boards of directors of Crown agencies must strike a balance between public policy and business objectives. Without a clear understanding of what they are being asked to achieve, selecting strategies and priorities can easily become an exercise in guesswork.

Shareholder's role in establishing mandate and performance expectations

6.66 So who are the shareholders for Crown agencies? Ultimately, they are the citizens of New Brunswick. The citizens of New Brunswick are represented by the Legislative Assembly. Ministers of the Crown are assigned responsibility for holding specific Crown agencies to account for their performance. Those Ministers, who are also representatives of the government of which they are a part, are in turn accountable to the Legislative Assembly for that performance.

Enabling legislation

6.67 Enabling legislation sets general guidelines for a Crown agency as well as detailing what services it is to provide and in some cases how it is to provide them. It also establishes some parameters around how the Crown agency is to be governed including the relationship between the Crown agency and central government. It also assigns responsibilities, and identifies the means through which accountability obligations are to be discharged.

Corporate mandate

6.68 The mandate of an organization is quite simply its reason for being. What business is it in? What products and services must it provide? Who are its customers? What level of performance is expected from it? What limitations are imposed on it? We feel that government

should ensure that a clear statement of corporate mandate has been developed for each Crown agency, ensuring that the needs and interests of New Brunswick citizens are adequately reflected in each case.

6.69 Some would argue that enabling legislation provides sufficient guidance to Crown agency boards relating to mandate. However, we feel that enabling legislation cannot provide a comprehensive guide in this area. For example, enabling legislation:

- is typically quite general;
- in many cases was drafted a number of years ago and so may not be completely up to date;
- makes no mention of key requirements from other provincial legislation; and
- usually does not contain an explicit purpose statement.

6.70 We therefore feel that additional direction is needed to ensure that the mandate statement is current and sufficiently detailed.

6.71 For example the *New Brunswick Liquor Corporation Act* states:

The purposes of the Corporation are to carry on the general business of manufacturing, buying, importing and selling liquor of every kind and description.

6.72 It goes on to say:

The Board shall administer the affairs of the Corporation on a commercial basis and all decisions and actions of the Board are to be based on sound business practices.

6.73 So, while the enabling legislation clearly states what the corporation is to do, it is lacking in some areas. For instance, it doesn't specify limitations on New Brunswick Liquor Corporation's (NBLC) ability to accomplish its purposes as defined in its enabling legislation even though some such limitations may be appropriate (e.g. acceptable promotional activities or marketing techniques). Also, the enabling legislation does not specify the performance expected. (e.g. Is NBLC intended to provide a net return to the Province from its operations?) We would also note that despite the purposes section of the Act quoted above, NBLC is not involved in the manufacture of liquor. The board of directors needs a thorough understanding of what the government expects of it in order to develop appropriate strategies. We feel that this understanding is best obtained from a single, comprehensive mandate document.

6.74 We feel that government has another responsibility in terms of mandate. Specifically, government should ensure that Crown agency mandates are regularly reviewed for continued relevance, including their public policy and financial objectives. In our opinion, there must be a strong rationale for why a program or group of programs is being managed separately by a Crown agency. For example, there is no clear language in the *New Brunswick Liquor Corporation Act* explaining why the four activities listed must be performed by the public sector. For instance, one might question why a Crown agency needs to be involved in the manufacture of liquor, a business in which there are many private-sector participants.

6.75 We are pleased to note that the current government of New Brunswick recently conducted a review of the mandates of all existing agencies, boards and commissions in the Province (i.e. the Agencies, Boards and Commissions (ABC) Review). The ABC review led to the windup of certain Crown agencies whose mandates were no longer considered relevant or did not fit into the framework established by current government strategies and priorities. However, we understand that it was a one time review and there are no plans to conduct regular, periodic reviews of the mandates of established New Brunswick Crown agencies in future. This creates the risk that some Crown agencies that have no relevance to public priorities will again be operating and using scarce public resources.

Government expectations

6.76 When we refer to government expectations, we are referring to the outcomes government expects Crown agencies to achieve. Government expectations may reflect such factors as government policies and priorities, service levels to be achieved and financial performance targets. Again, if government is to fulfil its role as the representative of New Brunswick citizens, it should regularly specify what outcomes are expected of Crown agencies. Setting performance targets cannot be left to the Crown agencies alone and it is not covered in any enabling legislation that we reviewed. For example, the government of New Brunswick has created a Prosperity Plan. One of the pillars of that plan is innovation, an area in which the New Brunswick Research and Productivity Council (RPC) has been involved since it was set up in the 1960s. So, an important step for the government to consider in order to ensure the successful implementation of that plan would be to provide organizations like RPC with the government's specific expectations relating to their involvement in achieving that Plan.

Ensuring compliance with legislation

6.77 We feel that government, and in particular responsible departments, has a responsibility for ensuring compliance with Crown agency enabling legislation. However, to the best of our knowledge, no one in government is monitoring compliance with Crown agency enabling legislation at present. Therefore, there is a risk that inappropriate actions could be taken by Crown agencies and not picked up by government. We believe that government should take steps to manage this risk.

***Board of directors’
understanding of mandate and
government expectations***

6.78 It is very important for the central government to ensure that Crown agency boards of directors understand and accept the mandate and performance expectations that have been developed for their Crown agency. A practical way to do this, and one that has been utilized by a number of public sector organizations across Canada including the New Brunswick Workplace Health, Safety and Compensation Commission (WHSCC), is to develop a memorandum of understanding between the Crown agency and the department responsible for that Crown agency.

6.79 Despite the WHSCC example, the Province of New Brunswick has traditionally not done particularly well in communicating its understanding of the corporate mandate and performance expectations. Many representatives of Crown agencies we talked to indicated that communication with central government for purpose of determining government priorities has long been a problem area. In one case, a Crown agency representative indicated that they try to “read the tea leaves” to determine what government expects of them both in terms of mandate and performance.

***Review of strategic and
business plans***

6.80 The development of a common understanding of mandate and government expectations by itself may not be effective in ensuring that government wishes are carried out by Crown agencies. Government should also ensure that Crown agency interpretations of legislation, mandate and government expectations are consistent with its own understanding. This may be done by reviewing and approving corporate strategic and business plans.

6.81 We feel that a review of Crown agency plans should include at least thorough consideration of the answers to the following questions:

- How has the agency interpreted its mandate and is it consistent with central government’s understanding?
- Are the agency’s objectives, strategies and targets appropriate?
- Have the agency’s plans adequately reflected government policies and priorities?
- Does the agency’s mandate still appear to be relevant in light of current government plans and priorities?
- Does the plan comply with Crown agency enabling legislation and other pertinent Acts?

6.82 There are a number of advantages to reviewing Crown agency plans on a regular basis.

- It allows government to have an ongoing dialogue with Crown agencies, thereby reducing the risk that a Crown agency will

misinterpret government priorities. A representative of the Executive Council Office indicated that the government advocates a top down approach to strategic planning within government. In other words departmental, and by extension Crown agency, strategic plans are to be based on provincial strategic priorities. The Executive Council Office also believes that performance measurement should primarily address government priorities like the Prosperity Plan. Therefore, it makes good sense for government to review Crown agency plans to ensure they reflect government priorities.

- It gives government an opportunity to revisit Crown agency mandates periodically to determine if they are still relevant.
- It may encourage Crown agencies, led by their boards of directors, to do a better job of corporate planning. In our governance work over the past number of years, we noted that some Crown agencies had strategic and business plans that were out of date and/or inadequate to meet their needs.

6.83 In our governance work, we have noted that while some Crown agency business plans were reviewed by the Board of Management, many were not. Crown agency strategic plans are not reviewed by Board of Management nor anyone else in central government.

6.84 Other governments are more proactive in reviewing the plans of their Crown agencies. For example, the federal *Financial Administration Act* includes the following requirement:

Each ... Crown corporation shall annually submit a corporate plan to the appropriate Minister for the approval of the Governor in Council. ... The corporate plan ... shall include a statement of

- *the objects or purposes for which the corporation is incorporated, ...*
- *the corporation's objectives for the period to which the plan relates ...*

6.85 We feel that government review of Crown agency plans is a necessary step in order to ensure that Crown agencies have properly interpreted government priorities, and have therefore planned activities that will adequately address current public policy and financial objectives.

Recommendations - corporate mandate and government performance expectations

6.86 We make the following recommendations related to mandate and government performance expectations for Crown agencies:

- **Responsible departments should develop memoranda of understanding with Crown agencies to ensure that there are**

common understandings of the mandate and performance expectations government has set for the Crown agencies.

- **As a minimum, government (represented by Board of Management, the Policy and Priorities Committee, or a similar body) should review all Crown agency strategic and business plans on a regular basis to ensure that Crown agency interpretations of legislation, mandate and government expectations are consistent with its own understanding.**
- **Responsible departments should monitor Crown agency compliance with their own enabling legislation and other pertinent Acts to reduce the risk of inappropriate actions being taken.**

Governance roles and responsibilities

Roles and responsibilities of government

6.87 In order to have effective Crown agency governance, it is important that key governance players clearly understand their roles and responsibilities, as well as other aspects of the governance regime within which they are working.

6.88 The following is a list of the key duties of the shareholder of Crown agencies (i.e. the government of New Brunswick as represented by responsible Ministers) based upon best practices observed in other jurisdictions.

- Passing enabling legislation to set up Crown agencies and establish their mandates.
- Ensuring that appropriate Crown agency governance structures are in place.
- Recruiting and appointing board members.
- Maintaining ongoing dialogue with Crown agencies with regards to government policies, priorities and performance expectations.
- Ensuring that enabling legislation is being complied with.
- Ensuring that Crown agency boards and management are appropriately interpreting government direction in their plans and strategies.
- Ensuring that the directors of Crown boards understand the government's expectations of them.
- Ensuring that directors are given the training, guidance, and support to be effective Crown agency governors.

- Ensuring that accountability obligations of Crown boards of directors are being adequately discharged.

6.89 These roles and responsibilities are discussed in greater detail elsewhere in this chapter.

Roles and responsibilities of Crown agency boards of directors

6.90 We feel that effective boards of directors will have a clear sense of what they are trying to accomplish. An important step in focusing their efforts is to establish their roles and responsibilities as a board and clearly document them.

6.91 The following list is a summary of what we believe should be the key roles and responsibilities of Crown agency boards of directors in New Brunswick. This list was developed by referring to related documents prepared by organizations such as the Toronto Stock Exchange (TSX), the Canada Deposit Insurance Corporation, the Conference Board of Canada, CCAF/FCVI, and others, along with our knowledge of New Brunswick Crown agencies.

- To approve corporate strategic and business plans and monitor management's progress in achieving them.
- To ensure that principal risks to the Crown agency have been identified and are being adequately managed.
- To recruit, hire, monitor, and evaluate the performance of the CEO.
- To approve and monitor compliance with the organization's ethical standards.
- To ensure the integrity of the corporation's internal control and management information systems.
- To measure Crown agency performance and report regularly to the government and other stakeholders on that performance.
- To prepare and maintain documents that explain key aspects of governance for their Crown agency.
- To continuously strive to improve the effectiveness of governance being provided by their board.

Best practices in corporate governance

6.92 Performance of Crown agency boards of directors in New Brunswick in fulfilling the roles and responsibilities listed above has been somewhat mixed. There are some improvements that we feel are warranted.

6.93 In the sections that follow we discuss a number of best practices that we feel should be followed by all New Brunswick Crown agencies.

Crown agency boards' relationship with CEOs

6.94 The recruiting and hiring of CEOs for Crown agencies is a bone of contention in most jurisdictions in Canada, and New Brunswick is no exception. Many of the CEOs for New Brunswick Crown agencies are recruited and hired by central government.

6.95 The appointment of Crown agency CEOs by central government makes establishing normal accountability relationships very difficult. If a board cannot hire or fire their CEO, is the CEO really accountable to the board, or is that person accountable directly to government? And, if a board of directors is excluded from the accountability chain, does it really have any relevance in the decision-making process? We believe that all Crown agency boards should be responsible for hiring and, if necessary, firing their CEO.

6.96 Further, we do not feel that CEOs should be voting members of Crown agency boards of directors, as currently occurs in some cases. CEOs with voting rights at the board table are essentially being asked to be both managers and directors, effectively putting them in a conflict of interest situation. If CEOs are to be truly accountable to their board of directors, they must be entirely separate from that board.

6.97 We also feel that, to ensure management accountability, Crown agency boards should be evaluating the performance of their CEO against preset performance objectives on a regular (e.g. annual) basis. Again, this is not the case for all Crown agencies in the Province.

Crown agency ethical standards

6.98 One of the recognized responsibilities of boards of directors is to ensure that ethical standards (e.g. conflict of interest) are in place and being complied with. Typically, this means the approval of a code of ethics and the ongoing monitoring of compliance with that code. In our reviews of various Crown agencies, we noted that not all boards of directors had approved ethical standards for their agency.

Audit committees

6.99 One of the key responsibilities of Crown agency boards of directors that we identified above is ensuring the integrity of the corporation's internal control and management information systems. This responsibility has also been described as a board's stewardship responsibility. In other words, Crown agency boards of directors have been entrusted by government with valuable assets for which they must be good stewards.

6.100 In order to act as good stewards, boards of directors need to assure themselves that management controls effectively reduce key risks (e.g. loss of assets) to an acceptable level. They must also assure themselves that the management information systems that produce the information on which they base their decisions are reliable. Finally, they must assure themselves that the third-party information and assurances on which they are relying are truly being developed independent of management.

6.101 A tool used by many boards of directors in both the public and private sectors is the audit committee. In fact, the federal *Financial Administration Act* requires that most federal Crown agencies have an audit committee. Also, TSX listing standards require that all publicly-traded companies have an audit committee in place, and further that all members of that committee be “financially literate.” An audit committee allows for a more in-depth review of the effectiveness of controls in place than is possible at meetings of the full board.

6.102 There are a few New Brunswick Crown agencies that have audit committees including NB Power and Kings Landing Corporation. There may also be other Crown agencies with alternately-named committees that fulfil the same function. Most New Brunswick Crown agencies are required to have annual financial audits performed by independent auditors, and it is our belief that most Crown agency boards of directors in the Province rely heavily, and in many cases exclusively, on the assurances of their financial auditor in attempting to fulfil their stewardship responsibility. However, because of the limited effectiveness of external audits in identifying control weaknesses and other serious problems such as fraud and exposure to risk, additional steps should be taken.

6.103 Some Crown agencies, for example the New Brunswick Liquor Corporation, do have internal auditors that report directly to boards of directors, providing a more in depth look at control systems than would otherwise be the case. However, many Crown agencies do not have internal auditors on staff.

6.104 Consequently, we feel that Crown agency boards of directors should seriously consider establishing audit committees to provide additional focus on the boards’ stewardship role. The initial focus of those audit committees might well be to find solutions to deal with the lack of stewardship information currently being provided to New Brunswick Crown agency boards, as discussed in the “Governance and Accountability Information” section later in this chapter.

Governance documentation

6.105 Most of the Crown agencies we examined in our governance work over the past number of years shared a common weakness: corporate documentation describing the following key aspects of Crown agency governance was weak or did not exist.

- The governance and accountability structure of the Crown agency.
- Governance processes and standards to be followed, including the performance requirements set for individual board members.
- The relative roles and responsibilities of government, the board of directors, and management.

- An agreement between the Crown agency and the responsible Minister as to how important aspects of governance are to be handled.

6.106 We feel that documenting these key aspects of governance is critical to the effectiveness of the board, as well as that of government and management in carrying out their respective roles and responsibilities for the Crown agency. There are several reasons for our opinion. First, there is constant and often rapid turnover of board members, government representatives and management of Crown agencies. Consequently, it is very important for continuity purposes to document understandings that have been achieved for the reference of newly appointed individuals. Second, the documents provide clarity to all key governance players. Third, documented understandings can become de facto performance contracts against which responsible parties can be held accountable.

6.107 We are aware of at least one Crown agency within the Province, the Workplace Health, Safety and Compensation Commission (WHSCC), that has created a comprehensive governance document. WHSCC also has a two-part agreement with the Department of Training and Employment Development that establishes the division of roles, responsibilities, and accountabilities between WHSCC and central government. However, to the best of our knowledge, most New Brunswick Crown agency boards have not developed such documentation.

Ongoing dialogue on governance issues

6.108 It is very important that boards of directors have an ongoing focus on governance issues at the board table. Further, we feel that it is critical that directors be very familiar with the documents on which board governance is based and consider their continued applicability often. The Bank of Montreal has provided the following advice:

*Ensure frequent dialogue on governance with the full board.
Continuously recognize that governance must constantly evolve, as the corporation changes and new stakeholder expectations arise.*

6.109 A WHSCC representative also advised that it is not enough to create governance documents. A board has to “live” the documents and review them regularly to ensure they still meet the needs of the board. We would note that there appears to have been more attention paid to governance practices at some New Brunswick Crown agencies over the past few years. However, it is our belief that few boards focus on governance issues as part of their regular deliberations.

Board evaluation

6.110 An area in which best practices have evolved significantly in recent years is in the area of board evaluation. Not only are boards of directors starting to perform regular self-evaluations of their effectiveness, but they are also starting to perform regular evaluations of

the performance of individual board members, i.e. peer reviews. The Conference Board of Canada recently indicated that “evaluating the performance of boards as a whole and the contribution of individual directors” is an emerging issue in the roles and responsibilities of directors.

6.111 We were pleased to note that the WHSCC is currently doing board effectiveness evaluations. However, most Crown agency boards have not yet begun to self-assess the performance of either their board as a whole or individual board members.

***Recommendations -
governance roles and
responsibilities***

6.112 We make the following recommendations related to governance roles and responsibilities:

- **All Crown agency boards should negotiate and document a memorandum of understanding between their Crown agency and the responsible Minister as to how important aspects of governance are to be handled, the relative responsibilities of key governance players, etc.**
- **All Crown agency boards should be given responsibility for recruiting and hiring the CEOs for their agencies. They should also review the performance of their CEO on a regular basis.**
- **All Crown agency boards should ensure that ethical standards have been established for their agency and that there is a system in place to monitor compliance with those standards.**
- **All Crown agency boards should seriously consider establishing an audit committee to provide additional focus to the board’s review of the integrity of the agency’s internal control and management information systems.**
- **All Crown agency boards should prepare a governance statement for the reference of board members that describes:**
 - **the governance and accountability structure of the Crown agency;**
 - **governance processes and standards that are being followed, including the requirements made of individual board members; and**
 - **the roles and responsibilities of government, the board of directors, and management.**
- **The governance statement should be reviewed regularly and updated as necessary.**

- **All Crown agency boards should conduct, as a minimum, regular self-evaluations of their board's effectiveness. They should also consider conducting regular reviews of the performance of individual board members.**

Guidance and support for Crown agency boards of directors

6.113 David Golden, the former Chairman of the Board of Telesat Canada, has related the following story about the difficulties that can be encountered by new board members:

One major shareholder asked a very experienced, very capable engineer who was part-owner and senior manager of a very successful privately owned construction company to become a director of a corporation. As an engineer and a successful businessman, everything was going just great. He came up to me after the first meeting and said, "I haven't the faintest idea of what is expected of me as a director of a company, and I am either going to have to brush up on it or maybe you will tell me what is expected of me. I am lost."

6.114 We suspect that for many new appointees to New Brunswick Crown agency boards, this is also the case. It is not that they are not competent. It is simply the case that most people do not have any knowledge about what is required to be an effective director.

6.115 Serving as a member of a board of directors is not something that most appointees are prepared for by their previous experiences. As Crown agency directors, they must have a good understanding of their organization's mandate, business, and the needs of its shareholder, customers and stakeholders. They must clearly understand their roles, responsibilities, and accountabilities as directors. And they must have a good working knowledge of the principles of good governance, an area where many of the recognized best practices have changed a lot in recent years. If directors do not have adequate knowledge in all three areas, the effectiveness of governance they can provide is likely to be compromised. Appropriate knowledge of these three areas provides a basis for everything else that they will be doing as governors of the organization.

6.116 We have covered the ways in which directors inform themselves about the needs of their shareholders and their roles and responsibilities as directors. In the following sections, we cover the other types of knowledge they need.

Governance standards

6.117 Boards that have developed a comprehensive governance statement have often set most of the governance standards their board members need to know about. However, few New Brunswick Crown agency boards have governance statements. The situation is the same in many other jurisdictions.

6.118 In a number of cases outside of New Brunswick, governments and other organizations have tried to fill the void by establishing multi-organizational governance standards upon which board governance practices are to be based. Their goal is to provide a higher overall standard of governance by setting standards based upon accepted best practices. It is perhaps also an attempt to do some of the development work for boards of directors, thereby making it easier for them to adopt appropriate governance standards.

6.119 The Treasury Board of Canada recently published a document, *Directors of Crown Corporations: An Introductory Guide to Their Roles and Responsibilities*. This document was specifically developed for the benefit of new directors. It states:

This Guide addresses an important aspect of corporate governance – the roles and responsibilities of the Crown corporations director. As a Guide, it presents an introductory overview of a director’s role and other general information primarily intended to meet the needs of new appointees to the boards of federal Crown corporations.

Instead of addressing all of the director’s roles and responsibilities, the Guide focuses on four primary responsibilities: establishing the corporation’s strategic direction, safeguarding the corporation’s resources, monitoring corporate performance, and reporting to the Crown.

6.120 In 2002, the Treasury Board of the Government of Newfoundland and Labrador issued *Excellence in Governance – A Handbook for Public Sector Bodies*. Opening comments in that handbook included the following.

This handbook is designed to assist members of public bodies understand some of the key aspects of their role and the vital contribution boards, in general, make in all sectors of Newfoundland and Labrador society. For those who are contemplating accepting an appointment to a public body or running for election I believe this handbook will support you as you make your decision. For those who are already members this handbook should clarify the expectations of the role.

6.121 The handbook covers the following key governance areas:

- governing body - provincial government relationships;
- overview of governance;
- orientation of board members;
- roles and responsibilities of board members;
- board decision-making;

- strategic planning;
- evaluation of the board and CEO; and
- board reporting.

6.122 Other organizations that have created governance standards include:

- the Toronto Stock Exchange (TSX);
- the Department of Health of the Province of Alberta;
- the Canada Deposit Insurance Corporation (CDIC); and
- the Crown Investments Corporation of Saskatchewan (CIC).

Crown agency coordinating organizations

6.123 Creation of a governance policy or framework is a good first step. However, unless the creator of the policy has some way to ensure compliance (e.g. as a final measure, TSX may de-list companies that do not comply with its guidelines) it may not result in improved governance practices. Certain jurisdictions have assigned Crown agency coordinating organizations the responsibility for overseeing the governance function at Crown agencies. Examples and some information on their roles follow.

The Crown Agencies Secretariat - Office of the Premier - Government of British Columbia

6.124 The Crown Agencies Secretariat (CAS) has been charged, “with responsibility for strategically overseeing the system of Crown agencies (Crown corporations and agencies, boards and commissions) in British Columbia and proactively providing government and Crown agencies with the advice, information, and support necessary to promote good governance, continuous improvement and accountability for results. CAS’s goal is to develop (and maintain) a highly accountable, efficient and effective system of Crown agencies in British Columbia.”

The Crown Investments Corporation of Saskatchewan

6.125 The current mandate of the Crown Investments Corporation (CIC) was established in 1993 by the *Crown Corporations Act*.

6.126 The main duties of the corporation are to:

- *establish the strategic direction for subsidiary Crown corporations through effective governance and performance management;*
- *manage prudently its diversified portfolio of commercially viable investments; and*
- *enhance Saskatchewan’s long term economic growth and diversification through investments and Crown corporations.*

6.127 In meeting its objects and purposes, CIC is responsible to the Lieutenant-Governor in Council for all matters relating to the following:

- the review and evaluation of the objectives, goals, revenues, expenses, expenditures, investments and operating results of subsidiary Crown corporations;

- the administrative policy and management practices and systems of subsidiary Crown corporations;
- the accounting policies and practices of subsidiary Crown corporations; and
- the financial relationships between subsidiary Crown corporations and the Government of Saskatchewan.

Training – knowledge of governance best practices

6.128 In our work on New Brunswick Crown agency governance, we noted that many directors were not familiar with a lot of the new governance literature available or the best practices of modern governance. Also, in general, they were not being provided with any developmental opportunities that would have allowed them to increase their knowledge in this area. We understand that the NB Healthcare Association does provide governance training to the boards of NB Healthcare Association members (i.e. Regional Health Authorities). Also, the board of the WHSCC has access to governance training through the Association of Workers' Compensation Boards of Canada. However, in general, we feel that Crown agency board members in New Brunswick need better access to appropriate governance training opportunities and guidance to fulfil their potential as effective board members. Representatives of various Crown agency boards we have talked to have supported this opinion. In our opinion attendance at training sessions should be made a mandatory part of accepting a board appointment.

Guidance and support in the Province of New Brunswick

6.129 In New Brunswick, there is currently no central government organization providing support to, monitoring, or otherwise concerning itself with governance and accountability at provincial Crown agencies. Instead, individual Ministers and their departments are given responsibility for the governance and accountability of specific Crown agencies. As a result, consistency between Crown agencies in these areas is lacking.

6.130 The Executive Council Office has taken a coordinating role on initiatives relating to departments; for example, they recently sponsored a clinic on strategic planning that was open to all departments. They feel that this is in keeping with their role of serving ministers of the Crown. They plan to do more such sessions in the future, particularly as a communication tool for government policies and priorities.

6.131 In our opinion, given their stated responsibility of serving ministers, we feel that a strong argument could be made for extending the Executive Council Office's coordinating role to include guidance and support for Crown agencies. Some of the valuable functions they could provide might include:

- setting and periodically updating governance standards for use by all New Brunswick Crown agencies;

- monitoring compliance with those governance standards;
- providing guidance to Crown agencies in the application of those governance standards;
- providing governance training opportunities for Crown agency directors;
- communicating the shareholder's perspective, government priorities (e.g. the Prosperity Plan), and emerging issues to Crown agencies; and
- providing independent advice to Cabinet, Ministers, boards and/or CEOs on Crown agency mandates, direction, plans, and performance, as requested.

Recommendations - guidance and support for Crown agency boards of directors

6.132 We make the following recommendation related to guidance and support for Crown agency boards of directors:

- **The Executive Council Office's coordinating role should be expanded to include providing guidance and support to Crown agencies in some or all of the following areas:**
 - **setting and periodically updating governance standards for use by all New Brunswick Crown agencies;**
 - **monitoring compliance with those governance standards;**
 - **providing guidance to Crown agencies in the application of those governance standards;**
 - **providing governance training opportunities for Crown agency directors;**
 - **communicating the shareholder's perspective, government priorities, and emerging issues to Crown agencies;**
 - **providing independent advice to Cabinet, Ministers, boards and/or CEOs on Crown agency mandates, direction, plans, and performance, as requested; and**
 - **identifying and coordinating major Crown agency policy issues and projects as required.**

Information about Crown agency operations

6.133 In general, we have found that directors of New Brunswick Crown agencies are getting sufficient information about how their Crown agencies operate. Consequently, we will make no further comments in this area. However, we do have concerns about the clarity of Crown agency mandates as previously discussed. Additionally, weaknesses in the governance information provided by management to

boards of directors relating to ongoing operations of Crown agencies is discussed in the next section of this chapter.

Governance and accountability information

Accountability reporting in New Brunswick

6.134 Evaluating the quality of board members, and the resulting effectiveness of the governance they provide, is difficult. However, we feel that one good indicator of the effectiveness of governance is the quality of annual reporting.

6.135 Effective June 1991, the Province of New Brunswick adopted an annual report policy for government departments and Crown agencies. It establishes certain requirements regarding the form and content of annual reports. The policy defines the prime function of an annual report to be “the major accountability document by departments and agencies for the Legislative Assembly and the general public. It serves as the key public link between the objectives and plans of a government entity and the results obtained.”

6.136 It goes on to state:

To the degree possible, departments and agencies should give a clear account of goals, objectives and performance indicators. The report should show the extent to which a program continues to be relevant, how well the organization performed in achieving its plans and how well a program was accepted by its client groups.

6.137 Consequently, boards of directors may discharge their accountability obligation by providing an annual report to the responsible Minister. This seems to be well understood by all parties, as demonstrated by the fact that Crown agency annual reports are signed by the board chair and addressed to the responsible Minister. Annual reports are forwarded to legislators and made available to the public.

6.138 We feel that if Crown boards do not take ownership of the corporate annual report and ensure that it does serve as a comprehensive performance report, they are not adequately discharging their accountability obligation. This in turn can lead to a perception that the board may have little relevance in the success of its Crown agency.

6.139 Some of the best practices in annual reporting among New Brunswick Crown agencies are discussed later in this chapter. It is reasonable to assume that Crown agencies like the Workplace Health, Safety and Compensation Commission (WHSCC), NB Power, and the New Brunswick Research and Productivity Council (RPC), that have developed annual reports that serve as good accountability documents, also have reasonably effective board governance. However, that is not to say that other New Brunswick Crown agency boards do not govern effectively. They may just not be putting their best foot forward with the annual reports they are currently presenting.

6.140 The Crown Corporations Committee, representing all legislators in their role as reviewer of Crown agency annual reports and financial statements, needs to scrutinize the information presented by a Crown agency thoroughly and compare it with previously presented strategic plans, business plans, and performance targets. Where accountability for performance against plans cannot be clearly established with the information provided, Committee members should request that additional information be provided. And in fact, they have done this.

6.141 Our Office has conducted a number of reviews of annual reports prepared by Crown agencies since the annual report policy was adopted. In our experience, the quality of annual reporting by Crown agencies in comparison with the requirements of the policy has been mixed. Some Crown agencies have attempted to comply with the spirit of the policy, but many have not.

6.142 The Executive Council Office has been assigned responsibility for monitoring compliance with the policy. However, it only checks to ensure that annual reports have been tabled in the Legislative Assembly. It does not review the contents of those reports or otherwise enforce compliance.

6.143 We feel that Crown agency boards could improve the value of their annual reports as accountability documents by ensuring that they are fully complying with the annual report policy. We also feel that there should be better linkage between annual reporting by Crown agencies and government priorities and initiatives. Among other things, this would speak to the continued relevance of programs and services provided by the Crown agency. For example, a Crown agency board would go a long way to establishing its continued relevance by reporting the successes of its agency in supporting the achievement of the government's Prosperity Plan.

Description of corporate governance practices

6.144 Providing information on corporate governance practices gives the reader of an annual report a better understanding of what the board of directors has committed to do, thereby increasing the value of the annual report as an accountability document. There is currently no requirement in the New Brunswick annual report policy that such a statement of corporate governance practices be included in Crown agency annual reports. By comparison, federal Department of Finance and Treasury Board Guidelines do require that:

Each Crown corporation should include a description and assessment of its corporate governance policies and practices in its annual report.

Best practices in performance reporting in New Brunswick

6.145 There are a few examples of New Brunswick Crown agencies that provide good models for other Crown agency boards wishing to improve the value of their annual reports as accountability documents.

Workplace Health, Safety and Compensation Commission (WHSCC)

6.146 The most recent WHSCC annual report appears to capture the spirit of the annual report policy as well as any Crown agency in New Brunswick. The body of the report is divided up by strategic goal, rather than the typical functional area layout, and describes performance indicators, targets and actual results within that framework. This allows the reader to assess the success of the Commission in achieving individual strategic goals and in evaluating actual versus planned performance. In fact, a Commission representative indicated that they see their current annual report as fully satisfying their responsibility to be accountable to government.

New Brunswick Research and Productivity Council (RPC)

6.147 RPC was the first New Brunswick Crown agency to adopt the annual report policy in a comprehensive manner. As with WHSCC, the reporting focuses on performance measures and success in achieving strategic goals. Of note is the honesty of the reporting. Where targets have not been achieved, this is acknowledged openly. An often-cited concern of senior Crown agency officials that is that reporting bad results will only lead to sanctions from central government. However, we are not aware of negative repercussions to RPC as a result of this honesty.

NB Power Corporation

6.148 Again, this report is quite well laid out. What is refreshingly unique is that the annual report includes an entire section detailing the board's approach to corporate governance. This section provides a good summary of many of the current "best practices" in corporate governance that we have discussed in this chapter.

Information provided to boards by Crown agency management (CEO)

6.149 Information presented in annual reports is not created by boards of directors. It is typically a summary of information captured by corporate information systems under the control of management. A somewhat broader summary of that information is provided to boards of directors by management for their use in fulfilling their role as corporate governors. So, in general it can be assumed that the board of directors of a Crown agency with a good annual report will have access to good governance information as well. However, they do have to ask for it. They cannot assume that management will necessarily know the right information to provide. And, at the board table, having access to the right information is critical in allowing boards of directors to effectively carry out their roles and responsibilities.

6.150 We have noted a number of problems with governance information being provided to New Brunswick Crown agency boards of directors by management. For example:

- Information provided by management is often purely financial. Service-related information is rarely reported regularly, even though most Crown agencies have service-related and not financial or business mandates.

- There is typically little or no linkage between corporate goals, objectives and targets created in strategic and business planning exercises, and what is reported to the board.
- There is typically little or no regular reporting relating to management compliance with board policies.
- Superfluous information is often provided to boards, sometimes drawing them into decision-making that should be left to management.
- Too much information is provided to boards to allow them to easily identify and focus in on that which should be considered “key.”

*Recommendations re
governance and accountability
reporting*

6.151 We make the following recommendations related to governance and accountability reporting:

- **The Executive Council Office should be monitoring Crown agency annual reports to ensure that the government annual report policy is being complied with.**
- **The government annual report policy should be amended to include the following two additional requirements:**
 - **that Crown agency annual reports include, where applicable, reference to the Crown agency’s involvement in supporting the success of current government priorities and initiatives; and**
 - **that Crown agency annual reports should include a statement of governance practices similar to that shown in the 2002 NB Power Corporation annual report.**
- **Periodically, all New Brunswick Crown agency boards of directors should look critically at reporting they receive regularly from management. Specifically, each board should ensure:**
 - **that reports presented are useful and sufficient to allow the effective discharge of all of the board’s roles and responsibilities as Crown agency governors. For example, information used by the board to monitor corporate performance should address both financial and service goals and be clearly linked to approved plans;**
 - **that information that is not used by the board is deleted from management reporting; and**

- **that reports are organized for ease of reference by board members in their deliberations.**

Comments from the Executive Council Office

6.152 We provided a copy of our summary report on Crown agency governance to the Executive Council Office. They provided a detailed response to our observations and recommendations. In addition, they made the following general comments:

We find that the report provides a thorough discussion of the characteristics and principles of good governance. We agree, fundamentally, with the conclusions drawn respecting the importance of good governance in the context of Crown agencies, and with the principles underlying many of the report's recommendations. In support of such principles, the Government has, already in place, a number of mechanisms intended to encourage good governance practices in Crown agencies. And, as resources allow, we continue to pursue improvements in the areas of accountability and effective board performance.

We find that some of the report's recommendations make suggestions about how certain principles of good governance might be operationalized. While we are able to support most of the objectives, we have concerns with respect to some of the recommended administrative or organizational methods for achieving the objectives. This is particularly the case as it related to recommendations for Executive Council Office to assume a more direct role in guiding and supporting Crown agency boards.

We appreciate the report's value in identifying gaps and will consider how this information can be used to continue the Government's movement towards greater accountability, effective Crown agency performance, and the protection of the public interest.