

Best Practice Principles of Corporate Governance for Crown Corporations



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1 | INTRODUCTION

This report provides an overview of recommended best practice principles for corporate governance arrangements of Crown corporations, government-owned enterprises with mixed commercial and public policy objectives.¹ The first federal Crown corporation was the Canadian National Railway Company, which was established in 1922 following government purchases of bankrupt private railway companies in order to protect critical transportation infrastructure within the country.² Today, Crown corporations play an important role in Canada's economy, accounting for approximately 3.4% of national GDP, employing more than an estimated 195,000 workers, and controlling net assets valued at more than \$220 billion.³ There are more than 40 federal Crown corporations and more than 180 provincial Crown corporations operating in a broad range of sectors from economic development (e.g. Export Development Canada and Alberta Investment Management) to transportation (e.g. VIA Rail Canada and BC Transit), culture and media (e.g. Canadian Broadcast Corporation and Manitoba Film and Music), and utilities and power generation (e.g. BC Hydro and Nalcor).⁴

Unlike government departments, Crown corporations are designed to operate at greater arm's length from government since it is deemed that their objectives are best implemented through a corporate model, which affords more autonomy and flexibility in operations and strategic planning. At the same time, as public sector organizations, Crown corporations are accountable to the government and are required to comply with legislated mandates, regulations, and policies.

While Crown corporations are often expected to operate in a manner akin to private sector commercial businesses, and in many instances provide substantial financial income streams to government, government ownership presents a number of challenges and constraints that can affect performance.⁵ First, since the potential for bankruptcy or hostile takeover is absent for government-owned enterprises, the incentives for management to operate as efficiently as possible can be dulled relative to their private-sector counterparts. It is also more difficult for stakeholders to monitor the performance of Crown corporations since market-based indicators such as stock prices are not available, and benchmarks based on profit performance are less informative when corporations have diverse policy goals. Developing effective monitoring mechanisms and oversight capacity within government requires dedicated resources, which government may not sufficiently budget for.

¹ This paper is an abbreviated version of a report written for the Commission of Inquiry Respecting the Muskrat Falls Project.

² See Martin, J. 2006. *Irrational Exuberance: The Creation of the CNR, 1917-1919*. Rotman School of Management, University of Toronto.

³ These figures include federal and provincial Crown corporations and are based on data reported in Crisan, D. and McKenzie, K. 2013. *Government-Owned Enterprises in Canada*. School of Public Policy, University of Calgary. <https://www.policyschool.ca/wp-content/uploads/2016/03/government-owned-enterprises-final.pdf>

⁴ For an overview of *Crown corporations in Canada*, see Crown Corporation Governance, Public Policy Forum, August 2016.

⁵ For a discussion of efficiency incentives in Crown corporations, see Iacobucci, E. and Trebilock, M. 2012. *The Role of Crown Corporations in the Canadian Economy*. School of Public Policy, University of Calgary.

Second, political factors can impact efficient operation of Crown corporations. For example, political sensitivities around public sector compensation levels may restrict the ability of Crown corporations to attract and retain suitably qualified management. Or government appointments of senior executives or directors may partly reflect patronage motivations rather than the specific needs of the corporation. Uncertainty about future political elections and government priorities can cause Crown corporation management to shorten their planning horizons at the expense of long-term performance.⁶

Although Crown corporations operate under different incentive and ownership constraints than privately-owned enterprises, corporate governance arrangements play an important role in shaping performance outcomes in the same way that corporate governance affects the performance of private enterprises. In fact, increased attention has been paid to improving the standards of corporate governance in the private and public sectors over the last two decades, motivated in part by a series of high-profile corporate failures that were attributed to governance flaws.⁷ Carefully designed corporate governance structures and practices have the potential to mitigate the challenges of government ownership for Crown corporations and to improve organizational performance. The next sections introduce and review research and literature on recommended best practice principles for governance of Crown corporations.

2 | CORPORATE GOVERNANCE OF CROWN CORPORATIONS

Corporate governance is the set of organizational processes by which strategic and operational decisions are identified, evaluated, approved and executed. In other words, corporate governance structures and practices determine *how* organizational decisions are made rather than *what* is decided. However, there is a correlation between the *how* and the *what*: corporate governance has a central role in driving long-term performance since high quality decision-making processes improve the likelihood that organizations will identify, select and implement strategies that enable them to effectively meet their mandates, creating value for stakeholders, including customers, employees, shareholders, governments, and local communities, and also act in an accountable and transparent manner. Ineffective or dysfunctional corporate governance, on the other hand, increases the odds that organizations will veer from their mandates, inefficiently manage operations and investments, or fail to adapt to changing external circumstances.

⁶ There is a large academic literature that explores how government ownership affects enterprise performance. Megginson and Netter (2001) provide a comprehensive survey published in the *Journal of Economic Literature*. Under weaker incentives and monitoring, management may exert less effort to control or reduce operating costs than they would under private sector ownership, or they may pursue long-term strategies with inefficiently high capital expansion and growth plans, contributing to increased long-run costs – senior management may regard larger organizations and budgets as a source of enhanced prestige, perks and career benefits. Managers of government-owned corporations may also propose and pursue

more risky projects and strategies than would otherwise be supported in the private sector where there is the risk of bankruptcy.

⁷ See Cheffins, B. 2013. *The History of Corporate Governance in The Oxford Handbook of Corporate Governance*, eds. Wright, M. et al; and Agrawal, A. and Chadha, S. 2005. *Corporate Governance and Accounting Scandals. Journal of Law and Economics*.

In Crown corporations, corporate governance is centred on the board of directors, which is authorized through enabling legislation to oversee the corporation and its management, based on the assumption that a board is better qualified and positioned to govern than the responsible Minister or senior department officials. The board of directors is accountable to the responsible Minister who acts as the representative of the shareholder (the Crown), and is responsible “for the oversight of a Crown corporation’s business activities and other affairs, and has the duty to act in the best interests of the corporation and to exercise due care and diligence”.⁸ This separation of powers logic is designed to advance the interests of the corporation by restricting the executive discretion of Ministers and delegating it to an independent, professional board and CEO. Day-to-day operations are the responsibility of the Chief Executive Officer (CEO), who is accountable to the board for the overall management and performance of the corporation. In fulfilling their duties, boards of directors exercise their judgement in four main areas:⁹

- Establishing the corporation’s strategic direction
- Safeguarding the corporation’s resources
- Monitoring corporate performance, and
- Reporting to government.

Ministers still retain important powers, however, to direct and control Crown corporations and to hold boards and CEOs to account. Ministerial control may be exerted through several mechanisms:

- 1. Appointments:** while there is variation among Crown corporations, the Governor in Council or the responsible Minister generally appoints Board directors, the Chair of the Board, and the Chief Executive Officer, and sets their remuneration.
- 2. Approval of corporate plans and budgets:** the Minister responsible for a Crown corporation reviews annually its corporate plan and budget and recommends it for approval to the government.
- 3. Policy directives:** the Minister can convey the government’s expectations for Crown corporation performance and targets through mandate letters and meetings with the Board Chair, thereby ensuring the direction of the organization aligns with government policy. The Minister or Governor in Council may also have authority, defined in the corporation’s enabling legislation, to issue policy directives on specific issues.

⁸ Trudeau, J. 2015. Open and Accountable Government. Available at https://pm.gc.ca/eng/news/2015/11/27/open-and-accountable-government#Portfolio_Organizations (section H.3. Crown Corporations).

⁹ See Treasury Board of Canada and Department of Finance, 1993. *Directors of Crown Corporations: An Introductory Guide to Their Roles and Responsibilities*. Prepared by The Crown Corporations Directorate in collaboration with the Conference Board of Canada and the Canadian Centre for Management Development. Available at http://publications.gc.ca/collections/collection_2016/fin/BT77-1-1993-eng.pdf

The tension between organizational independence and accountability of Crown corporations to government has led to a long-standing debate on the appropriate roles and purposes of Crown corporations in modern economies, the rationale for government ownership, and governance arrangements that satisfactorily balance independence and accountability goals. As the economic importance of Crown corporations has grown over time, concerns have been raised about the ability of governments to effectively control and monitor them, leading to periodic pressures for reform of ownership and governance arrangements.¹⁰ Since the 1980s, following the examples of governments in other OECD countries, federal and provincial governments have fully or partially privatized various Crown corporations, including Air Canada, Petro Canada, Canadian National Railway, Saskatchewan Potash Corporation, Nova Scotia Power, and Hydro One.

Also consistent with policy agendas in the other jurisdictions,¹¹ there have been concerted attempts to modernize and improve standards of corporate governance of Crown corporations and other government-owned enterprises.¹² At the federal level, in 1984 the government amended the *Financial Administration Act* (FAA) to strengthen the accountability and control framework for Crown corporations and to clarify the responsibilities of shareholders and executives. In 2005, the Auditor General of Canada published a report on the governance framework of Crown corporations that identified major areas of weakness and made specific reform recommendations for federal Crown corporations. Provincial governments have also instituted periodic reviews to improve governance of Crown organizations and other government bodies, and provincial Auditors General regularly report publicly on the status of governance arrangements for Crown corporations within their jurisdictions.¹³ As such, much has been written about how governments can strengthen governance arrangements for Crown corporations in order to improve organizational performance.

The next section synthesizes the central insights from a large volume of studies and reports on Crown corporation governance, summarizing the recommendations for best practice. Details of the specific recommendations and source reports are contained in the Appendix section and Bibliography.

¹⁰ See Public Policy Forum report on *Crown Corporation Governance: Three Ways to Manage the Tension between Autonomy and Control*. August 2016.

¹¹ The OECD has published best practice guidelines for corporate governance of state-owned enterprises (SOEs), meaning corporations and entities that are owned by municipal, provincial or federal governments. Broadly, these guidelines recommend that governments should clearly establish the public policy rationale for government ownership and the objectives of the enterprise, while delegating operational autonomy to SOE management and independence to SOE boards. See Organization for Economic Cooperation and Development, 2015. *Guidelines on Corporate Governance of State-Owned Enterprises*.

¹² In addition to Crown corporations, there are other types of government-owned enterprises in Canada, such as Ontario's local electricity distribution companies, which are private business corporations solely owned by municipal governments.

¹³ For example, see Finances Quebec, 2006. *Modernizing the Governance of Government Corporations: Policy Statement*. In 2010, the Government of Ontario appointed a former Secretary of the Cabinet to review board-governed agencies (available at <https://dr6j45jk9xcmk.cloudfront.net/documents/2031/burak-report-on-agencies.pdf>)

3 | BEST PRACTICE PRINCIPLES OF GOVERNANCE FOR CROWN CORPORATIONS

3.1 | Corporate Purpose and Mandate

3.1.1 | The purpose of the Crown corporation should be clearly stated in enabling legislation

Clarity of organizational purpose is a central feature of well governed institutions. The statement of a Crown corporation's purpose should set out in legislation the broad terms of the corporation's goals, responsibilities and authorities, and identify the power of its Board. In essence, the Crown corporation's legislated purpose provides the clearest level of policy guidance and the basis for strategic planning.

3.1.2 | Government should clearly state performance expectations for Crown corporations

The government should discuss with the Chair of the Board, and clearly articulate, its expectations for Crown corporation performance. This may come in the form of a Memorandum of Understanding or Mandate letter that includes operating principles and performance objectives in addition to the parties' mutual understanding of the responsibilities of the ministry and the Board. Such agreements help the government and corporation to align objectives, and should be publicly reported. In Ontario, some Crown corporations have a Memorandum of Understanding that states commercial and policy objectives, governance responsibilities, reporting requirements, performance expectations, and communication protocols between the Ministry, the Board Chair, and the CEO. In the case of British Columbia, Service Level Agreements set out each ministry's performance expectations and reporting requirements.

3.1.3 | Crown corporation mandates should be regularly reviewed and updated

Clarity of organizational purpose is a central feature of well governed institutions. The statement of a Crown corporation's purpose should set out in legislation the broad terms of the corporation's goals, responsibilities and authorities, and identify the power of its Board. In essence, the Crown corporation's legislated purpose provides the clearest level of policy guidance and the basis for strategic planning.

3.1.4 | A central government agency should provide advice on governance arrangements for Crown corporations

The application of good governance at Crown corporations often requires central government administrative capacity to provide assistance and direction. These administrative functions may be fulfilled by Treasury Board or special purpose organizations (e.g. Manitoba's Crown Corporations Council or British Columbia's Crown Agencies Secretariat) to establish the frameworks, policies, and procedures to classify and govern Crowns. These entities ensure that Crown corporations and their boards have a clear understanding of roles, responsibilities, and the accountability structure within which they operate. This includes, but is not limited to, developing clear mandates, statements of purpose and criteria for performance measurement, supporting the appointments process, and offering relevant training.

3.1.5 | Crown corporation Boards should ensure that strategic plans are consistent with corporate mandates

A Crown corporation's strategic goals and objectives should be consistent with, and flow logically from, its mandate, vision and mission statements. The Board is responsible for approving the corporation's goals, objectives, and strategic direction, which should also be discussed with the responsible Minister.

3.2 | Board Selection and Appointment Process

3.2.1 | Director appointment processes should be open, transparent, and merit-based

The process for making public appointments to the Boards of Crown corporations should be open, transparent, and merit-based in order to select the most qualified individuals.

- i. Merit Based:** Appointments should be governed by the principle of selection based on merit – an objective assessment of the fit between the skills and qualifications of the prospective candidate and the needs of the organization.
- ii. Transparent:** Appointment process guidelines should be clear and understandable, and available to the public. A central government office should maintain a public inventory of all appointment vacancies and advertise for applications.
- iii. Consistent:** The appointment process should be applied consistently in respect of all appointments to organizations.
- iv. Probity:** Appointees should be committed to the principles and values of public service and perform their duties with integrity.

3.2.2 | Crown corporation Boards should prepare a skills matrix outlining the experience and competencies required of individual directors and the Board as a whole

Boards of Crown corporations should be comprised of directors with the necessary knowledge, ability, commitment, and level of independence to fulfill their responsibilities. A Board competency profile, grid or matrix should be developed to identify directors' skills and attributes that will add value to the leadership of the corporation. In addition to specific attributes such as knowledge of the industry, directors should possess adaptability, sound judgment, collegiality, and financial acumen. The skills profile should also recognize the need for the Board to be representative of the population and diverse geographic regions. The particular skills and experience sought can change, depending on the issues facing the corporation and the needs of the Board. The profile should be used to identify gaps on the Board and assist in the search for new qualified candidates. The competency profile may be developed by the Board's Governance Committee and should be discussed with the responsible Minister's office and any central government agency responsible for Crown corporations.

3.2.3 | Director remuneration should be structured to attract quality applicants and should be commensurate with the nature of public service and time commitments

Directors should be compensated for their services at a level that attracts sufficiently qualified and experienced candidates. The level of compensation should reflect the time commitments required of directors to fulfill their responsibilities to the corporation. Director compensation should not, however, be so high or structured in such a way that it interferes with a director's ability to be independent or forthright in his or her views, or willingness to challenge management. Because an element of public service is implied in any appointment to a Crown corporation, the compensation that public appointees receive may be less than the compensation for the same type of work in the private sector. As part of public sector transparency, Crown corporations should annually disclose the amount of compensation paid to each individual director for the preceding year.

3.2.4 | The size of Crown corporation Boards should be appropriate for the scope of roles and responsibilities

Crown corporation Boards should be comprised of directors with a variety of experiences, capabilities and backgrounds which, to the extent possible, reflect gender, ethnic, cultural and other characteristics of the communities in which the corporation operates and sells its goods or services. The size of the Board should allow for adequate representation of alternate viewpoints, but not be so large as to be unwieldy or to make decision-making cumbersome. Board size should encourage the appropriate Board culture where all members feel free to participate, contribute, and challenge assumptions without hesitation, and where conflicts can be resolved in a timely manner. The ideal Board size depends on the organization's unique context, however, governance literature recommends the preferred size is in the range of 8-12 members.

3.2.5 | Orientation and training programs should be provided to all Board members

Upon appointment, new Board members should be provided with sufficient and appropriate orientation, including information on the organization's mandate, its nature and operations, the role of the Board, and expectations for individual directors. The orientation's objective should be to help new directors become as effective as soon as possible. Orientation and continuing training programs may involve in-person and online sessions for both new appointees and renewed directors.

3.2.6 | Appointments should be appropriately staggered to maintain continuity of experience

Boards of Crown corporations require a degree of continuity in their membership to benefit from the experiential knowledge and organizational understanding that accumulates over time within individual directors. Best practice guidelines recommend that appointments of Board members should be staggered and that there should be set term limits with options for renewal. Such practices can balance the Board's need for continuity and experience, with the need to refresh the Board and bring on new skills and expertise to appropriately reflect the needs of the organization. For instance, at the federal level the FAA requires that no more than 50 percent of a Board's director positions should expire in any one year.

3.2.7 | Board vacancies should be filled on a timely basis

Appointments to the Board of Directors at Crown corporations should be completed in a timely manner. Deficiencies or delays in appointments may have significant consequences for governance of the organization and for the public shareholder. The quality and timeliness of the appointment process is important so that delays in appointments do not impair the Board from carrying out its duties effectively. As a result, Boards should have a clear succession plan for the orderly turnover of directors.

3.3 | Board Functioning and Independence

3.3.1 | Directors of Crown corporations should be independent

Appointees to Crown corporation Boards should be individuals with the necessary knowledge and ability to fulfill their duties but who are independent of management and have no material interest in the organization. Ensuring that a majority of Board members are independent from management supports the realization of an independent Board that functions in the best interest of the corporation. “Independence” means a director is independent of management, does not have a material relationship with the corporation and, except for director fees, does not financially benefit from his or her relationship with the corporation. A material relationship is any relationship that could interfere with a director’s ability to exercise independent judgment or inhibit his or her ability to make decisions about management and the business.

3.3.2 | The Board should not involve itself in day-to-day management of the Crown corporation

An effective Board holds management accountable for organizational performance, while maintaining a respectful and trusting relationship. The Board should not stray from its governance role and function into micro-management of operational matters. Adequate processes, functions, and structures should be put in place to ensure that individual directors and the Board as a whole maintain an independent perspective in oversight of the corporation.

3.3.3 | There should be separation between the role of Chairperson and CEO

The roles of Chair and Chief Executive Officer should be separate, thereby providing a check and balance for each other’s authority. Governance experts further recommend that the CEO not be a voting member of the Board. As a result of this division, the Chair is accountable to the shareholder and the CEO is accountable to the Board. Combining the two positions creates inherent conflicts of interest and obscures accountability. At the federal level, most Crown corporations currently have statutes or practices that respect this distinction.

3.3.4 | There should be limits around the appointment of public servants to Crown corporation Boards

Public servants and elected officials, while bringing knowledge of government priorities and processes, may inhibit effective functioning of the Board, and at times, may be in a conflicted position. Public servants may not be—or be perceived to be—in the same position as an independent director in developing and approving corporate plans. In addition, other members of the Board may perceive that directors who are also public servants speak more authoritatively as representatives of the government. Boards with such members should develop a clear understanding of oversight conflicts, guidelines on voting eligibility, and involvement during in camera sessions.

3.3.5 | The Chair is responsible for facilitating the Board’s debate and decision-making process

Given the specific expectations of Crown corporations to meet both public policy and commercial objectives, good governance requires an effective Chair to lead the Board of Directors. The Chair should have the capability to manage meetings effectively, work towards consensus, communicate persuasively with colleagues, management, the public and government, and establish a culture of active and constructive Board engagement. The Chair is responsible for setting the agenda for Board meetings, and should work in conjunction with management and other Board members in determining agenda topics.

3.3.6 | Board decision-making and deliberation should be designed to embrace the challenge function required of independent Boards

Board processes should facilitate constructive director engagement, and Board meetings should occur on a regular basis. Directors are expected to attend all Board and applicable committee meetings. It is standard practice to publish the record of individual director attendance at Board meetings every year. Directors should have equal status in discussions and should recognize their collective responsibility for Board decisions. The Board should keep meeting minutes and supporting documentation of meetings. However, to ensure that the Board may deliberate freely, and exercise the challenge function expected of directors, Board proceedings should remain confidential.

3.3.7 | The Board should conduct periodic self-evaluations of performance

Boards should annually assess performance against their mandate and terms of reference. This is commonly performed by a Governance or Ethics Committee of the Board, producing a report of activities over the year and an assessment of the Board’s performance. Such reports should be communicated to the Board Chair and to the appropriate Minister. In addition, an appraisal and performance review of individual directors can identify the contributions of individuals and identify development needs to enhance the Board’s effectiveness.

3.4 | Board Committee Structures and Responsibilities

3.4.1 | The Board should establish committees with specific roles and responsibilities

Boards should establish committees of directors to facilitate fulfilment of the Board's functions and to ensure effective oversight and accountability. The specific committees can vary depending on the context of the organization and the specific requirements of the Board. Committees typically undertake detailed reviews and provide in-depth supervision in key areas of Board responsibility. Ad hoc or special committees may also be established to address unique or major projects. Leading governance practice identifies four main committees that can assist the Board in fulfilling its governance function:

- i. Audit Committee:** Provides oversight of internal and external audit, financial statements, internal controls, and financial risk assessment.
- ii. Corporate Governance Committee:** Oversees development of corporate strategy and organizational responses to evolving risks and opportunities. Formulates governance arrangements and code of ethics. Manages director and Board evaluation process.
- iii. Nomination Committee:** Responsible for developing director and Board skills profiles, and recommending candidates for appointment by government.
- iv. Human Resources / Executive Compensation Committee:** Oversees performance evaluation and compensation of the CEO, and succession planning.

3.4.2 | Board committees should have written terms of reference

For committees to function effectively, their mandates should be specified in a charter or terms of reference that defines their purpose, composition, working procedures and any authorities that are delegated to the committee. A comprehensive and well-articulated committee charter, which should be approved by the whole Board, is a key contributor to developing effective relationships for the committee as it ensures clarity for all parties about the committee's responsibilities and processes. Committee charters promote accountability and should be reviewed on a periodic basis to ensure that they accurately reflect the current context and needs of the corporation.

3.4.3 | Committee members should have relevant skills, qualifications, and competencies

Committee members should be selected by the Board based on the director's interest and expertise. Best practice requires that the Audit Committee include independent directors who are financially literate and have accounting or financial experience or qualifications. For instance, in Quebec it is legislated that at least one committee member must be a member of the professional order of accountants governed by the Professional Code. New committee members should be provided with orientation or training specific to the role of the committee.

3.4.4 | Boards should constitute an Audit Committee that fulfills the oversight roles and responsibilities required for effective financial accountability

The Audit Committee is a central element of corporate boards with primary responsibility for safeguarding the corporation's resources. Activities generally charged to the Audit Committee include:

- i. Ensure the integrity of the Crown Corporation's financial statements and reporting.** Critically review interim and annual financial statements, the external auditor's report, and the management discussion and analysis, ensuring that the presentation of financial statements is fair, appropriate, and clear, and that they meet standard accounting principles.
- ii. Assess the Crown corporation's risk management program.** Review and make recommendations on the corporation's risk policy, assessment framework and overall risk appetite. Oversee the processes employed by management for identifying and assessing principal risks. Review management assessments of the principal risks to achieving the corporation's strategic and business plan objectives, and the strategies for monitoring, managing, and responding to risks.
- iii. Appoint and assess the performance of the external auditor.** Review and make recommendations to the Board with respect to appointment and compensation of the external auditor (where relevant). Evaluate the work and report of the auditor, ensuring clarity of financial disclosure and accounting principles adopted.
- iv. Ensure the integrity and adequacy of internal controls and standards of codes of conduct and ethics.** Review scope of internal control over financial reporting, findings, and management responses to weaknesses. Review compliance with legal and regulatory requirements, and with standards of conduct and ethics. Review procedures for receipt and management of complaints regarding accounting, audit, fraud or other violations.
- v. Assess the performance of the organization's internal audit function.** Review and approve the annual internal audit plan, including the organizational structure, budget, and assess the adequacy of the resources. Assess the results of internal audit reports - significant findings, adequacy of the control processes, management's responses, and implementation of actions to correct weaknesses.
- vi. Review and make recommendations on financial planning.** Evaluate the corporation's business strategy and overall financial plan in support of capital expenditures and forecasts. Assess corporate financing vehicles, credit facilities, and plans to access capital markets and other related financing activities.

3.4.5 | The Board should ensure that an overall risk management process is in place

Crown corporation Boards should oversee and review organizational systems for risk identification, risk management, and internal control. These systems should be integrated into the business planning process and be recognized as an important aspect of a Board's accountability role and oversight of the organization. Systems and processes should be designed to identify, assess, monitor and manage enterprise risk throughout the organization. Processes should be established to ensure breadth of capability on the Board to understand and oversee different types of risks and, if appropriate, utilize independent experts to advise the Board. Board and committee meetings should involve constructive discussions of major risks confronting the corporation.

3.4.6 | The Board should conduct periodic evaluations of the performance of each of its committees

Boards should annually assess the performance of each committee against their respective terms of reference. In addition, there should be an annual review of committee charters to amend or confirm mandates and procedures based on information received from the Board and committee evaluation processes.

3.5 | Board Relationship with Corporation's Executive

3.5.1 | The Board should be involved in the selection and appointment of the Chief Executive Officer

Private sector standards of corporate governance stipulate that the Board selects and appoints the corporation's CEO, thereby establishing a strong accountability relationship between the CEO and the Board. OECD corporate governance guidelines similarly recommend that state-owned enterprises adopt this Board-led model. In the case of British Columbia Crown corporations, the Board is responsible for hiring and dismissing a Crown's CEO, unless otherwise specified in the organization's enabling legislation. Among many federal and other provincial Crown corporations, government retains the authority to appoint and dismiss the CEO, which can weaken the accountability relationship with the Board. In such instances, it can be perceived that the CEO is more responsive to government and less responsive to the Board's input and influence. When the government has ultimate appointment authority, it is recommended that the Board play a central role in identifying and nominating preferred candidates, who may then be formally appointed by the responsible Minister or Cabinet. This 'Board Search' model places the Board as a central party in hiring the CEO, and helps create a stronger accountability relationship between the Board and the CEO.

3.5.2 | The Board should develop clear performance expectations for the CEO

Boards are expected to assume an active role in overseeing the CEO and holding management accountable for meeting performance expectations. The Board should develop clear CEO performance criteria and measurable metrics, and monitor performance and results achieved in implementing the organization's strategy. Monitoring the performance of the CEO is a significant responsibility of the Board, and the Board should ensure an appropriate evaluation of the CEO's performance is conducted regularly. It is typical for the Board to annually establish and review performance expectations for the CEO and assesses performance against the position description and expectations.

3.5.3 | The Board should develop with senior management the corporation's vision, strategy and values

Directors are responsible for oversight of the corporation's strategy and approval of the vision, objectives and long-term strategy of the corporation. Effective governance requires the Board to be an active participant in the strategic planning process of the organization. The development of the strategic plan is a joint activity and the Board should be actively involved throughout the strategic planning process in debating future direction and organizational risks, in reviewing and discussing draft plans created by management, and in approving the final strategic planning document. Management is responsible for developing an implementation plan that is designed to realize the corporation's vision and achieve its objectives while managing associated risks.

3.5.4 | The Board should hold in camera sessions without the presence of the CEO and senior management on a regular basis

Board meeting agendas should regularly include time reserved for an in camera session, in which the Board meets without the presence of the CEO or any management. In camera sessions allow Board members to explore freely and candidly any issues they wish to raise privately, such as performance of senior management and their impact on the corporation. After such meetings, the Board chair should give the CEO feedback on the contents and results of the discussion.

3.6 | Monitoring and Reporting

3.6.1 | The Board should publicly report on Crown corporation performance each year

Crown corporations are generally required by legislation to prepare annual reports with information on the corporation's mandate, strategy, business plans and financial statements, as well as information on the organization's outcomes and achievements. Performance reporting is an important ingredient in maintaining accountability, and Boards should ensure that salient information is provided to stakeholders, including the public, in a transparent, understandable and unbiased fashion. Information on governance arrangements, corporate codes of conduct, and compliance with policies on ethics and corporate values should also appear in annual reports and on corporation websites.

3.6.2 | The Board should communicate regularly with government

There should be regular communication between Crown corporation Boards, management and government officials to ensure two-way information flows on important issues. In order to improve mutual understanding, there should be regular interactions between Crown corporation CEOs and Deputy Ministers and, less frequently, between Crown corporation Chairs and responsible Ministers. Communication protocols may be detailed in memorandums of understanding or mandate letters. In addition, the legislature may ask Ministers or Board Chairs or CEOs to report on the activities of Crown corporations.

3.6.3 | The Board should ensure that it receives sufficient performance information on a timely basis

Boards require accurate, timely, reliable, concise and complete information to discharge their duties. Information on operations, financial status, safety, environmental impacts and other salient dimensions facilitates monitoring of organizational performance and risk management, and allows the Board to ensure that the corporation's policies are implemented. Though management has responsibility for providing internal information, Boards must be satisfied that it is complete, reliable and tailored to their needs. Boards may also retain external professional advice on legal, financial and other matters where appropriate.

3.6.4 | The Board should ensure that it receives appropriate financial and accounting information

A core role of Board governance and risk management is oversight of financial matters, led by the Audit Committee. The Audit Committee should seek input from the internal audit group and the external auditor and report regularly to the Board to help the Directors fulfill their responsibility for the accuracy and integrity of the corporation's financial reports. The Audit Committee reviews, and advises the Board of Directors with respect to the financial accounts, records, and statements of the corporation.

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APPENDIX: SUMMARY TABLES OF CORPORATE GOVERNANCE BEST PRACTICE PRINCIPLES

I. Corporate Purpose and Mandate

The purpose of the Crown corporation should be clearly stated in enabling legislation

- Each Crown corporation's enabling legislation, whether a special act of Parliament or Articles of Incorporation under the Canada Business Corporations Act, sets out in broad terms its mandate, powers and objects (Auditor General of Canada, 2000).
- In order to provide an appropriate legal framework, all Crown corporations require a constituting instrument (statute, regulation, or Order in Council) setting out the corporation's mandate and authority (Ontario Management Board of Cabinet, 2010).
- The Crown corporation's mandate provides the broadest level of policy guidance. The mandate sets out the corporation's goals, responsibilities and authorities, and identifies the power of its Board (Treasury Board of Canada Secretariat, 2005).
- The overall mandate and administrative framework for a Crown corporation should be outlined in its enabling legislation and/or Articles of Incorporation (British Columbia Crown Agencies Secretariat, 2009).
- The governing body should make sure that there is a clear statement of the organization's purpose which is used as the basis for its planning (Auditor General of British Columbia, 2008).
- Each organization is given a specific mandate, which is communicated through governing legislation, its constituting documents or, where applicable, government policy (British Columbia Board Resourcing and Development Office, 2005).
- A public sector organization's purpose and goals are generally set forth in the legislative mandate of the organization (Auditor General of Manitoba, 2009).

Government should clearly state performance expectations for Crown corporations

- Crown corporations should have a memorandum of understanding that reflects the accountability framework in addition to the parties' mutual understanding of the responsibilities of the ministry and the Crown. This can include a listing of governance responsibilities, private and public objectives, reporting requirements, performance expectations, and communication protocols between the Ministry, the Board Chair, and the CEO (Ontario Management Board of Cabinet, 2010).
- Mandate direction may be provided through annual Directive Letters and/or Letters of Expectations. The Shareholder's Letter of Expectations provides a formal means of communicating direction and priorities to Crown Boards. The Shareholder's Letter of Expectations is reviewed and updated annually by the Ministry Responsible staff to ensure evolving government priorities are reflected appropriately (British Columbia Crown Agencies Secretariat, 2009).

Crown corporation mandates should be regularly reviewed and updated

- Clear guidelines should be established for conducting mandate reviews, which should follow a periodic and systematic process to ensure that the corporation's mandate is relevant to the government's policy objectives and the corporation's operating environment (Auditor General of Canada, 2005).
- At least once every 10 years, the Minister must report to the Government on the carrying out of the Act constituting an enterprise for which the Minister is responsible. The report must include recommendations based on a review of the mission of the enterprise (Government of Quebec, 2018).
- Crown corporations should have a memorandum of understanding that expires after five years from the date of the Minister's signature (Ontario Management Board of Cabinet, 2010).

A central government agency should provide advice on governance arrangements for Crown corporations

- Treasury Board and Management Board of Cabinet are accountable to the Cabinet for establishing the framework, policies, and procedures to classify and govern Crown corporations (Ontario Management Board of Cabinet, 2010).
- The Board Resourcing and Development Office will work jointly with the Crown Agencies Secretariat to support Board orientation and training (British Columbia Crown Agencies Secretariat, 2009).
- The Crown Corporations Council works with designated Crowns to develop clear mandates, statements of purpose and criteria for performance measurement (Crown Corporations Public Review and Accountability Act, 2017).
- The Public Appointments Secretariat administers and provides support to ministries on the appointment process (Auditor General of Ontario, 2016).

Crown corporation boards should ensure that strategic plans are consistent with corporate mandates

- A Crown corporation's strategic goals and objectives should be consistent with, and flow logically from, their mandate, vision and mission statements (Auditor General of Manitoba, 2009).
- A Crown's Board is accountable, through the Chair, to the Minister for establishing goals, objectives, and strategic direction for the agency consistent with the agency mandate and government policies, including Minister's directions where appropriate (Ontario Management Board of Cabinet, 2010).
- The Board should explicitly assume responsibility for stewardship of the corporation. Boards are accountable to the responsible Minister for ensuring the activities of Crown corporations are in line with their mandates. They also have ultimate responsibility for the implementation of policy guidelines provided in the statement of priorities and accountabilities (Treasury Board of Canada Secretariat, 2005).
- The Board of Directors determines the enterprise's strategic directions, sees to their implementation and enquires into any issue it considers important. The Board is accountable to the Government for the enterprise's decisions and the Chair is answerable to the Minister for such decisions (Government of Quebec, 2018).
- It is the Board of Director's responsibility to oversee the development and approve (based on review and approval by the Minister Responsible) service plans and annual service plan reports (British Columbia Crown Agencies Secretariat, 2009).

II. Board Selection and Appointment Processes

Director appointment processes should be open, transparent, and merit-based

- The Board Resourcing and Development Office (BRDO) establishes guidelines and monitors the process for Board of Director appointments and governance. The BRDO established the following principles to guide the appointment process: Merit-Based, Transparent, Consistent, Probity, and Proportionate (British Columbia Crown Agencies Secretariat, 2009).
- Saskatchewan's Crown Investments Corporation Board appointment process is described in policy (Canadian Comprehensive Auditing Foundation, 2008).
- The authority for appointments is contained in the Financial Administration Act (FAA) for corporations subject to Part X of that Act; for others it is found in the enabling statute for the corporation (Treasury Board of Canada Secretariat, 2005).
- Board members are selected and appointed in compliance with the province of BC's Board Appointment Process (British Columbia Crown Agencies Secretariat, 2009).

Crown corporation Boards should prepare a skills matrix outlining the experience and competencies required of individual directors and the Board as a whole

- Boards should take a proactive approach in recruitment by maintaining current inventories of Board member skills and competencies in order to identify any existing gaps or requirements for future Board membership. When Board member vacancies arise, the skills matrix can help inform the Minister of the Board's requirements and be a useful tool to assist in the consideration of appropriately qualified candidates in the recruitment process (Auditor General of Manitoba, 2009).
- A Board competency profile should be developed. This is a description of the experience, attributes, and skills that should be possessed by the Board as a whole. The profile should be based on the roles and responsibilities of the Board, and may include a set of generic attributes that all Board members must have, such as adaptability, sound judgment, collegiality, and financial acumen, as well as specific attributes such as knowledge of the industry. The profile should also recognize the need for the Board to be representative of the Canadian population and of Canada's geographic regions. (Treasury Board of Canada Secretariat, 2005).
- Once selection criteria and Board competency profiles have been completed, these should be discussed with the responsible Minister's office, the Director of appointments in the Prime Minister's Office, and the Senior Personnel and Special Projects Secretariat of the Privy Council Office (Treasury Board of Canada Secretariat, 2005).
- Boards of Crown corporations should be comprised of people with the necessary knowledge, ability, commitment, and level of independence to fulfill their responsibilities (Auditor General of New Brunswick, 1996).
- The Board has a competency matrix that is updated annually to support merit-based appointments. It is used to identify skill gaps on the Board and assist in the search for new candidates (British Columbia Crown Agencies Secretariat, 2009).

- The functions of the Governance and Ethics committee include developing expertise and experience profiles to be used in appointing Board members (Government of Quebec, 2018).
- The purpose of the competency grid is to identify a diverse array of skill sets that will add value to the leadership of the corporation. The particular skills and experience sought may change, depending on the issues facing the corporation and the skills required to complement the management team (Watson, 2004).
- Boards of Crown corporations should be comprised of people with the necessary knowledge, ability, commitment, and level of independence to fulfil their responsibilities (Auditor General of New Brunswick, 1996).

Director remuneration should be structured to attract quality applicants and should be commensurate with the nature of public service and time commitments

- Directors should be paid fees for their services at a level that is reasonable and will attract qualified and experienced candidates. Director compensation should not, however, be so high or structured in such a way that it interferes with a Director's ability to be independent, forthright in his or her views or willing to challenge management or the status quo. Moreover, Directors should recognize that when they determine their own compensation, they are in an inherent conflict of interest (Canadian Coalition for Good Governance, 2013).
- Because an element of public service is implied in any appointment, the compensation public appointees receive may be less than the compensation for the same type of work in the private sector (Auditor General of Ontario, 2016).
- In the private sector, the roles and responsibilities of Boards have increased significantly. This has resulted in a greater demand for highly qualified people. The government should consider the compensation paid to Directors to confirm appropriateness in attracting and retaining those who are best qualified (Auditor General of Canada, 2005).
- As part of public sector transparency, the organization should annually disclose the amount of compensation paid to each individual director (British Columbia Board Resourcing and Development Office, 2005).

The size of Crown corporation Boards should be appropriate for the scope of roles and responsibilities

- The size of the Board should allow for adequate representation of alternate viewpoints, but not be so large as to be unwieldy or make decision-making cumbersome. Board size should encourage the appropriate Board culture where all members feel free to participate, contribute, and challenge assumptions without hesitation, and where conflicts can be resolved in a timely manner. The ideal Board size depends on the organization's situation and unique context, however, most governance literature suggests the preferred size is in the range of 8-12 members (Auditor General of Manitoba, 2009).
- A high-performance Board is comprised of directors with a variety of experiences, views and backgrounds which, to the extent practicable, reflects the gender, ethnic, cultural and other personal characteristics of the communities in which the corporations operate and sells its goods or services (Canadian Coalition for Good Governance, 2013).
- Unless otherwise required by legislation or directed by Cabinet, the appropriate Board size is 9 to 11 members, including the Chair (British Columbia Crown Agencies Secretariat, 2009).

Orientation and training programs should be provided to all Board members

- In a Crown corporation operating environment that straddles private and public sector spheres, the orientation and training of directors is critical to ensure good governance. Ongoing professional development is equally critical to maintain the knowledge and expertise required to understand the corporation, its business conditions, and the stakeholders with which it is dealing (Treasury Board of Canada Secretariat, 2005).
- All new directors should receive a comprehensive orientation about the organization's mandate, its nature and operations, the role of the Board, and expectations for individual directors. The orientation's objectives should be to help new directors become as effective as possible as soon as possible (British Columbia Board Resourcing and Development Office, 2005).
- The Board of directors should ensure that initiation and ongoing training programs for Board members are implemented (Government of Quebec, 2018).
- All directors should be provided with sufficient and appropriate orientation when newly appointed to a Board (Auditor General of Manitoba, 2009).
- Crown corporation appointees are required to take in-person training sessions, and all new appointees and reappointees are required to complete online training sessions (Auditor General of Ontario, 2016).

Appointments should be appropriately staggered to maintain continuity of experience

- Leading practice suggests there be staggered terms for Board members, with set term limits for renewal. Such practices help to balance the Board's need for continuity and experience with the need to refresh the Board and bring on new skills and expertise to appropriately reflect the challenges faced by the organization (Auditor General of Manitoba, 2009).
- All governing bodies need continuity in their membership so that they can make the most of the pool of knowledge and understanding and the relationships formed both inside and outside the organization. It is also important that governing bodies are stimulated by fresh thinking and challenges, and that they avoid lapsing into familiar or repeated patterns of thinking and behaviour that may not best serve the organization's purpose (The Independent Commission on Good Governance in Public Service, 2004).
- The FAA requires that as far as possible no more than 50 percent of a Board's director positions should expire in any one year. Expiry dates need to be staggered evenly to ensure that continuity of expertise and corporate memory is not compromised (Auditor General of Canada, 2000).
- Appointments to Boards should be timely and evenly staggered to ensure continuity and stability of Boards in an effort to maintain corporate memory (Auditor General of Canada, 2005).
- The Board should have a succession plan for the orderly turnover of Directors (British Columbia Crown Agencies Secretariat, 2009).

Board vacancies should be filled on a timely basis

- It is important that appointments be made in a timely manner. Deficiencies or delays in appointments could have significant consequences for the governance of the organization (Auditor General of Canada, 2009).
- The quality and timeliness of the appointments process is important to ensure public sector organizations are governed by well-qualified individuals, and that delays in appointments do not impair the Board from carrying out its duties effectively (Auditor General of Manitoba, 2009).
- The Board should have a succession plan for the orderly turnover of Directors (British Columbia Crown Agencies Secretariat, 2009).

III. Board Functioning and Independence

Directors of Crown corporations should be independent

- In order to ensure directors' interests are aligned with shareholders, at least two thirds of every Board should be independent of management. "Independence" means a Director is independent of management, does not have a material relationship with the corporation and, except for Director fees and share ownership, does not financially benefit from his or her relationship with the corporation. A material relationship is any relationship that could interfere with a Director's ability to exercise independent judgment or inhibit his or her ability to make difficult decisions about management and the business (Canadian Coalition for Good Governance, 2013).
- Ensuring that a majority of Board members are independent from management supports the realization of an independent Board and thus contributes to sound governance (Treasury Board of Canada Secretariat, 2005).
- Adequate processes, functions, and structures must be put in place to ensure that individual directors and the Board as a whole maintain an independent perspective in the governance and oversight of the corporation (Treasury Board of Canada Secretariat, 2005).
- The general practice in British Columbia is that all appointees to public sector Boards are individuals who are independent of management and have no material interest in the organization (British Columbia Board Resourcing and Development Office, 2005).

The Board should not involve itself in the day-to-day management of the Crown corporation

- An effective Board holds management accountable for organizational performance, while maintaining a respectful and trusting relationship. The Board is also careful not to stray from their governance role and functions into micro-management or overly operational matters (Auditor General of Manitoba, 2009).
- The Board needs to develop a productive working relationship with senior management, where roles and authorities are clearly delineated. Job descriptions, which clearly outline the responsibilities and delegated authorities of senior management, should be in place. It is important that there is clarity in the allocation and sharing of power and authority between a Board and its CEO (Auditor General of Manitoba, 2009).

- The Board’s role in policy-making guidance of the strategic planning process, and performance monitoring, is separate from responsibility for the day-to-day management of the enterprise (BC Crown Agencies Secretariat, 2005).
- Board of Crown corporations should provide strategic direction to their corporation, along with a policy framework with which management may operate (Auditor General of New Brunswick, 1996).
- There needs to be a clearly defined division of responsibilities at the head of public sector entities to ensure a balance of power and authority (International Federation of Accountants, 2001).
- The governing Board should set out a clear statement of the respective roles and responsibilities of the non-executive and the executive and its approach to putting this into practice (The Independent Commission on Good Governance in Public Service, 2004).
- The Board publishes a Charter describing the Board’s roles and responsibilities and the governance process used to fulfill Board duties (British Columbia Board Resourcing and Development Office, 2005).

There should be separation between the role of Chairperson and Chief Executive Officer

- One way to ensure that a Board can function independently from management is to require that different individuals perform the duties of Chair of the Board of Directors and CEO of the corporation. Most Crown corporations currently have statues or practices that respect this distinction (Treasury Board of Canada Secretariat, 2005).
- The roles of Chair and Chief Executive should be separate and provide a check and balance for each other’s authority. The Chair and the Chief Executive should negotiate their respective roles early in the relationship (within a framework in which the Chair leads the governing body and the Chief Executive leads and manages the organization) and should explain these clearly to the governing body and the organization as a whole (The Independent Commission on Good Governance in Public Service, 2004).
- The CEO of the organization is an ex-officio member of the Board and does not have voting privileges. Current governance literature suggests that the CEO not be a voting member of the Board (Auditor General of Manitoba, 2009).
- The Chair is accountable to shareholders and the CEO is accountable to the Board. Combining the two positions creates inherent conflicts of interest and obscures accountability. Accordingly, the two positions should be separated (Canadian Coalition for Good Governance, 2013).
- The positions of Chair and CEO are separate in the organization, and the CEO is not a voting member of the board (British Columbia Crown Agencies Secretariat, 2009).

There should be limits around the appointment of public servants to Crown corporation Boards

- Public servants and elected officials, while bringing knowledge of government priorities and processes, may inhibit effective functioning of the Board, and at times, may be in a conflict of interest position (Canadian Institute of Chartered Accountants, 2007).
- Public servants might not be—or be perceived to not be—in the same position as an independent director to perform a challenge function

vis-à-vis the Minister in areas such as policy direction and approval of corporate plans. In addition, other members of the Board may perceive that directors who are also public servants speak more authoritatively as representatives of the government (Treasury Board of Canada Secretariat, 2005).

- Care must be taken when appointing public servants to a Board so as to ensure such circumstances are clarified and managed to avoid potential difficulties. Any Board with such members should have a specific documented discussion of the implications of this situation (Auditor General of Manitoba, 2009).

The Chair is responsible for facilitating the Board's debate and decision-making process

- The Board has a position description that sets out the roles and responsibilities of the Chair. The Chair should be a person who can set the Board's agenda; run meetings effectively; control discussion appropriately; manage dissent; work towards consensus; communicate persuasively with colleagues, management, the public and government; and establish a culture of active and constructive Board engagement (British Columbia Crown Agencies Secretariat, 2009).
- The meeting agenda belongs to the Board, not management, and the lead responsibility for setting the agenda is usually a function of the Chairperson. The Chair should work in conjunction with management in setting the agenda. All Board members should also be provided an opportunity to suggest or add agenda items to the meeting. A Board should not rely on management to set the agenda, nor be passive in guiding what issues are to be dealt with at the Board level (Auditor General of Manitoba, 2009).

Board decision-making and deliberation should be designed to embrace the challenge function required of independent Boards

- Board members should have a commitment to good governance. Members should commit both individually and as a group to the goals of the organization and the processes set in place for the Board to achieve them (Auditor General of Manitoba, 2009).
- Directors are expected to attend every Board and applicable committee meeting. The record of individual director attendance at Board meetings every year should be published (Canadian Coalition for Good Governance, 2013).
- The Board should hold a sufficient number of meetings to fulfill their role and responsibilities. The Board should keep adequate meeting minutes and supporting documentation (British Columbia Crown Agencies Secretariat, 2009).
- Notwithstanding the general recognition of the value of disclosure, sensitive information related to human resources, corporate strategies, confidential commercial information, and other operations discussed in the purview of Board meeting could cause damage if inappropriately released to the public. To ensure that the Board may deliberate freely, and exercise the challenge function expected of directors, Board proceedings should remain confidential (Treasury Board of Canada Secretariat, 2005).

- The Board should clarify that all its members have collective responsibility for its decisions and have equal status in discussions. The Chair and other directors should challenge individual directors if they do not respect constructive input by others or if they do not support collective responsibility for fulfilling the organization's purpose and for working towards intended outcomes (The Independent Commission on Good Governance in Public Service, 2004).

The Board should conduct periodic self-evaluations of its performance

- Boards of Directors should establish regular assessments of their effectiveness and the contribution of individual directors as a self-development tool. The assessment of the Board as a whole should be communicated to the appropriate Minister (Treasury Board of Canada Secretariat, 2005).
- A Board shall periodically monitor and evaluate its own performance in fulfilling its governance functions and achieving its governance objectives (Auditor General of Manitoba, 2009).
- The Governance and Ethics Committee should produce an annual report on its activities, including a summary of its assessment of the performance of the Board of Directors (Government of Quebec, 2018).
- Boards should annually assess performance against its Terms of Reference (British Columbia Crown Agencies Secretariat, 2009).
- An appraisal and performance review of individual directors demonstrates that their role and contribution is important and valued, and provides an opportunity for them to take stock of their own development needs. The governing body can improve its collective performance by taking the time to step back and consider its own effectiveness (The Independent Commission on Good Governance in Public Service, 2004).

IV. Board Committee Structures and Responsibilities

The Board should establish committees with specific roles and responsibilities

- The particular committees established by a Board can vary depending on the context of the organization and the specific requirements of the Board. The key consideration in creating or eliminating a committee is to assess how it contributes to the Board fulfilling its governance functions and responsibilities. Current governance literature commonly identifies four committees which may assist the Board in fulfilling their governance function: Audit Committee; Corporate Governance Committee; Nomination Committee; and Executive Compensation Committee (Auditor General of Manitoba, 2009).
- A Crown corporation Board is accountable, through the Chair, to the Minister for establishing such committees as are required for effective management, governance and accountability, such as audit or governance committees, to advise the Board on agency affairs (Auditor General of Ontario, 2016).
- Boards typically use committees to undertake detailed reviews and to provide in-depth supervision in key areas of Board responsibility. Task forces or other temporary working groups may also be established to address time-limited projects (British Columbia Board Resourcing and Development Office, 2005).

- The Board of Directors should establish the following committees: a governance committee; an audit committee; and a human resources committee. The committees are to be composed solely of Board members who are independent directors. The Board of Directors may establish other committees to examine specific issues or facilitate the proper operation of the enterprise (Government of Quebec, 2018).

Board committees should have written terms of reference

- Committees should operate under a written Charter, or Terms of Reference, that clearly articulates the role, composition and specific responsibilities that the committee will perform as well as any authorities that will be delegated to the committee. A comprehensive and well-articulated Charter is a key contributor to developing effective relationships for the committee as it ensures that all parties are clear on the role the committee will play in the Board's governance process, as well as the expectations and assurance that can be placed on the committee. The Charter should be reviewed on a periodic basis to ensure that it accurately reflects the current context and functioning of the committee (Auditor General of Manitoba, 2009).
- Board committee charters promote effective accountability. Accountability requires clarity about who is accountable for what and to whom. Charters should delineate the boundaries of responsibilities and in so doing sharpen accountabilities. In support of an effective accountability regime, it is important that each committee have a written charter clearly stating its responsibilities and authorities (Treasury Board of Canada Secretariat, 2005).
- For committees or working groups to function effectively, their mandates should be spelled out in written terms of reference that define their purpose, composition and working procedures (British Columbia Board Resourcing and Development Office, 2005).

Committee members should have relevant skills, qualifications, and competencies

- Committee members are usually selected by the Board based on the interest and expertise of the members. New committee members should be provided with training specific to the role of the Committee (Auditor General of Manitoba, 2009).
- Audit committees should be composed of at least three members. Each member should be an independent director, who should not be an officer or an employee of the corporation. Although a variety of skills and experience is beneficial to an effective and balanced audit committee, all members should be financially literate and at least one member should have accounting or related financial management expertise (Auditor General of Canada, 2005).
- The audit committee must include members with accounting or financial expertise. At least one committee member must be a member of the professional order of accountants governed by the Professional Code (Government of Quebec, 2018).
- Audit committee members should be independent and financially literate. At least one member of the committee should have a financial designation or relevant financial management expertise (British Columbia Board Resourcing and Development Office, 2005).

Boards should constitute an Audit Committee that fulfills the oversight roles and responsibilities required for effective financial accountability

- The audit committee should ensure financial oversight by critically reviewing the interim and annual financial statements, the auditor's report, and the management discussion. It should ensure that the presentation of financial statements is fair, appropriate, and clear, and that it meets generally accepted accounting principles. It should actively solicit the external auditor's judgements about the acceptability and the quality of the corporation's accounting principles as applied in its financial reporting. This discussion should include such issues as the clarity of financial disclosure and the aggressiveness or conservatism of the corporation's accounting principles and estimates (Auditor General of Canada, 2005).
- The audit committee is an indispensable element of the modern Board of Directors. On behalf of the Board, the audit committee plays a key oversight function in the areas of internal and external audit and the probity of financial statements, internal controls, and risk assessment, management and mitigation (Treasury Board of Canada Secretariat, 2005).
- The functions of the audit committee include (1) approving the annual internal audit plan; (2) making sure that a plan for the optimal utilization of the enterprise's resources is put in place, and following up on that process; (3) seeing that internal control mechanisms are put in place and making sure that they are appropriate and effective; (4) making sure that a risk management process is put in place; (5) reviewing any activity likely to be detrimental to the enterprise's financial health that is brought to its attention by the internal auditor or an officer; (6) examining the financial statements with the Auditor General and the external auditor appointed by the Government; and (7) recommending approval of the financial statements by the Board of Directors. The audit committee must notify the Board of Directors in writing on discovering operations or management practices that are unsound or do not comply with the law or the regulations or with the policies of the enterprise or its wholly-owned subsidiaries (Government of Quebec, 2018).
- The Audit Committee's job is to help the Board fulfill its financial accountability and oversight responsibilities. The committee does this by reviewing financial and performance information, monitoring the systems of internal controls that management and the Board have established, and overseeing the internal and external audit process (British Columbia Board Resourcing and Development Office, 2005).
- The activities generally charged to the Audit Committee include: ensuring the integrity of financial statements and reporting, ensuring the integrity of internal controls and standards of codes of conduct and ethics, assessing the performance of the internal audit function, assessing the performance of the external auditor, reviewing and making recommendations on financial planning, and assessing the enterprise risk management program (Treasury Board of Canada Secretariat, 2014).

The Board should ensure that an overall risk management process is in place

- All Crown corporations must report risk identification, assessment and mitigation strategies (Ontario Management Board of Cabinet, 2010).
- All Crown corporations need to establish and implement sound systems for risk oversight and management and internal control, and these systems should be integrated into the business planning process. Systems should be designed to identify, assess, monitor and manage risk throughout the agency (Australia Public Service Commission, 2007).
- The function of the Board and the audit committee, specifically, is establishing the policies for management of the risks associated with the conduct of the operations of the enterprise (Government of Quebec, 2018).
- A Board's contribution to the key area of risk management and ensuring adequate internal control mechanisms exist is an important aspect of their accountability and oversight of the organization (Auditor General of Manitoba, 2009).
- The Crown corporation should have an organization-wide risk and opportunity identification, assessment and management plan in place, which includes mitigation strategies and risk transfer (British Columbia Board Resourcing and Development Office, 2005).
- Clearly assign Board responsibility for risk oversight as set out in Board and committee mandates. Ensure breadth of capability on the Board to understand and oversee all critical risks and, if appropriate, utilize independent advisors to advise the Board with respect to critical risks. Ensure directors are engaged in discussions of risk and bring constructive criticism (Canadian Coalition for Good Governance, 2013).

The Board should conduct periodic evaluations of the performance of each of its committees

- The Board should annually assess the performance of each of its Committees against their respective Terms of Reference (British Columbia Crown Agencies Secretariat, 2009).
- Several levels of Board evaluation should occur, including evaluating the operation and performance of Board Committees (Auditor General of Manitoba, 2009).
- Review committee charters every year and amend or confirm the mandate and procedures based on information received from the Board and committee evaluation processes (Canadian Coalition for Good Governance, 2013).

V. Board Relationship with Corporation's Executive

The Board should be involved in the selection and appointment of the Chief Executive Officer

- The 'Board Form' of governance generally assumes that the CEO is hired by and reports directly to the Board, who also possess the ability to terminate the CEO, if required. In the public sector, the Board's ability to hire and fire the CEO is not always as clear-cut, as the CEOs of public sector organizations are sometimes appointed by government through Order-in-Council. If the government hires the CEO rather than the Board, the CEO's accountability relationship to the Board can become more complex and diffused. In such instances, it can be perceived that the CEO is more responsive to government and less responsive to the Board's input and influence (Auditor General of Manitoba, 2009).
- The Board is responsible for hiring and dismissing the Crown's CEO, unless otherwise specified in the agency's enabling legislation (British Columbia Crown Agencies Secretariat, 2009).
- The selection process for the CEO will be determined by the Board of Directors. Each Board will establish a nominating committee to identify candidates for the position of CEO appointed by Governor in Council (Treasury Board of Canada Secretariat, 2005).
- A selection process that does not involve the Board weakens the accountability relationship between the Board and the CEO. If CEOs are not appointed or selected by the Board, they may believe they are accountable to the organization or individual that selected or appointed them (Auditor General of Canada, 2005).
- The "Board Search" model, where the Board is central in hiring the CEO, is seen as effective as it supports good governance and an accountability relationship between the Board and the CEO (Auditor General of Canada, 2000).

The Board should develop clear performance expectations for the Chief Executive Officer

- Boards are expected to assume an active role in overseeing management and holding management accountable. A Board's role is to effectively monitor the performance and results achieved by management in implementing their strategic direction. Monitoring the performance of the CEO is a significant responsibility of any Board, and the Board is expected to ensure an appropriate evaluation of management's performance is conducted regularly (Auditor General of Manitoba, 2009).
- The Board annually establishes performance expectations for the CEO and assesses performance against expectations and the position description (British Columbia Board Resourcing and Development Office, 2005).
- A Crown corporation is accountable, through the Chair, to the Minister for setting performance objectives for the CEO (Ontario Management Board of Cabinet, 2010).

The Board should develop with senior management the corporation's vision, strategy and values

- Directors are responsible for oversight of the corporation's strategy and ultimately approving the overall vision, objectives and long-term strategy of the corporation. Management, on the other hand, is responsible for developing and implementing an appropriate detailed

strategy that is designed to realize the corporation's vision and achieve its objectives while managing the associated risks (Canadian Coalition for Good Governance, 2013).

- Given the Board's role of holding ultimate authority and in order to fulfil their stewardship and leadership responsibilities as the governing body, the Board must be actively involved in setting the organization's strategic direction. Effective governance requires the Board to be an active participant in the strategic planning process of the organization. The development of a strategic plan is a joint activity and the Board should be actively involved throughout the strategic planning process in debating future direction and organizational risks, in reviewing and discussing draft strategic plans created by management in order to ensure goals are consensually held, and in approving the final strategic planning document, to which management is then held accountable for the plan's fulfillment (Auditor General of Manitoba, 2009).
- Boards of Crown corporations should provide strategic direction to their corporation, along with a policy framework within which management may operate (Auditor General of New Brunswick, 1996).
- Boards should assume responsibility for stewardship of the corporation, including responsibility for adopting a corporate strategy (Auditor General of British Columbia, 1996).
- The Board of Directors determines the enterprise's strategic directions, sees to their implementation and enquires into any issue it considers important (Government of Quebec, 2018).
- The governing body should set out clearly, in a public document, its approach to performing each of the functions of governance. This should include a process, agreed with the executive to account for achieving agreed objectives and implementing strategy. The governors should explain how and why their approach to each function is appropriate for the size and complexity of the organization (The Independent Commission on Good Governance in Public Service, 2004).

The Board should hold in camera sessions without the presence of the CEO and senior management on a regular basis

- It is commonly accepted practice for members of a Board to meet regularly without the CEO or other management representatives in attendance. This type of meeting is customarily held at the end of a regular Board meeting and allows Board members to explore freely any issues they wish to raise privately. At the end of such meetings, the Chair should give the CEO feedback on the contents and results of the discussion (British Columbia Board Resourcing and Development Office, 2005).
- Board meeting agendas should include time reserved for in-camera sessions as part of each meeting. An in-camera session is usually one in which the Board meets without the presence of management, thereby allowing the Board to discuss any items, issues, or concerns they may not wish to raise in front of management. Holding in-camera sessions as a regular routine component of the Board's agenda, even if only briefly, assists in ensuring such sessions are a normal part of Board functioning, and lessens any management concerns that may arise if such sessions are only held if specifically requested by a Board member (Auditor General of Manitoba, 2009).
- All Board meetings should include in-camera sessions with independent directors only (Canadian Coalition for Good Governance, 2013).

VI. Monitoring and Reporting

The Board should ensure that it receives sufficient performance information on a timely basis

- Board members should receive high quality information on a timely basis for decision-making. Information and management proposals should be provided to the Board in a manner that facilitates their understanding of the overall impact of any decision. Information provided to Boards should be pertinent to governance issues, and useful and relevant to the decisions that must be made and choices that need to be considered. Governance information should facilitate adequate monitoring of organizational performance by the Board, and allow the Board to ensure that its policies and directives have been implemented. Hence, it is important that the Board assesses their information needs on a regular basis (Auditor General of Manitoba, 2009).
- Board members should receive timely, clear, accurate, reliable, concise and complete information in order to do their job. Though management assumes responsibility for providing Boards with the majority of the information they require, Boards must be satisfied that it is complete, reliable and tailored to their needs. If Boards are dissatisfied with the information they receive, they must develop a strategy to address the shortfalls (Auditor General of British Columbia, 2009).
- Boards of Crown corporations should establish appropriate arrangements to ensure that they have access to all relevant information, advice and resources as are necessary to enable them to carry out their role effectively. Management has an obligation to provide the governing body with appropriate and timely information, but information volunteered by management is unlikely to be enough in all circumstances and members may need to make further enquiries where necessary (International Federation of Accountants, 2001).
- The Board of Crown corporations should monitor the performance of Crown corporations 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 (Auditor General of New Brunswick, 1996).
- The Board should ensure that information is directly relevant to the decisions it has to take; is timely; is objective; and gives clear explanations of technical issues and their implications. The governing body should also ensure that professional advice on legal and financial matters is available and used appropriately in its own decision making and elsewhere throughout the organization when decisions that have significant legal or financial implications are taken (The Independent Commission on Good Governance in Public Service, 2004).
- Secretariat staff and those submitting matters to Boards and committees for consideration have an obligation to make all reasonable efforts to provide sufficient information on which to base a decision (Australia National Audit Office, 2003).

The Board should ensure that it receives appropriate financial and accounting information

- The Board should receive regular financial information that is presented in a clear, understandable manner, and that is produced on a timely basis for decision-making (Auditor General of Manitoba, 2009).
- The Board should ensure that it receives sufficient, appropriate information to allow it to fully assess organizational performance and compliance, and to support Board-level decision making (British Columbia Crown Agencies Secretariat, 2009).
- The audit committee should seek input from the internal audit group and the external auditor (Auditor General of Canada, 2000).
- The role of the Auditor General as an external auditor or joint auditor (with a reputable accounting firm) should be extended to all Crown corporations (Treasury Board of Canada Secretariat, 2005).

The Board should publicly report on Crown corporation performance each year

- Annual reports are an important vehicle for accountability, and a key method for communicating organizational performance with stakeholders. Leading practices in annual reporting are moving beyond presenting mere financial data, to telling a performance story that communicates public benefits and the value that an organization adds through the results it achieves. It does this by focusing on organizational goals expressed as measurable targets, and reporting achievements against those goals. In order to fulfil their accountability reporting, Boards should ensure that appropriate performance measures are established and monitored in order to measure the organization's progress in achieving performance targets in both financial and public policy areas. (Auditor General of Manitoba, 2009).
- Reporting on activities and performance is an important element of a governance system involving the delegation of authority. The annual report with its core elements, the Management's Discussion and Analysis section and the audited financial statements, is the primary mechanism through which corporations' report to Parliament and to Canadians (Treasury Board of Canada Secretariat, 2005).
- Crown agency Boards are accountable for information contained in Annual Service Plan Reports and the basis on which the information has been prepared, and Chairs must sign an accountability statement affirming this responsibility. Although the Annual Service Plan Report compares actual performance to planned performance documented in the Service Plan, it is a stand-alone document, and should include sufficient detail to be read and understood in isolation of the Service Plan (British Columbia Crown Agencies Secretariat, 2009).
- Each year, the governing body should publish the organization's purpose, strategy, plans and financial statements as well as information about the organization's outcomes, achievements and the satisfaction of service users (The Independent Commission on Good Governance in Public Service, 2004).
- Performance reporting is an important aspect of the accountability cycle in a public sector organization. Accountability information should be provided on a regular basis to all stakeholders in an understandable and unbiased fashion, and should provide an evaluation of organizational performance (Auditor General of Manitoba, 2009).

- The annual report with its core elements, the Management's Discussion and Analysis section, and the audited financial statements, is the primary mechanism through which Crown corporations report to Parliament and Canadians. Information such as governance structure, codes of conduct, and compliance with policies on ethics and values should appear prominently in annual reports (Treasury Board of Canada Secretariat, 2005).
- Governing bodies of public sector entities should include in their annual reports a statement on whether or not they have adopted standards or codes of governance. This statement should identify the standards or codes adopted, as well as confirm compliance therewith, or if not, in what respect there has not been compliance (International Federation of Accountants, 2001).

The Board should communicate regularly with government

- Establishing clear and consistent lines of communication is critical for developing strong relationships between Crown corporations and their respective ministries. In order to strengthen accountability and build trust, there should be regular interaction between Crown corporation CEOs and Deputy Ministers and, less frequently, between Crown corporation Chairs and Ministers (Public Policy Forum, 2016).
- An effective public sector Board not only keeps government informed of the organization's performance results and operational challenges on a regular basis, but also of any significant issues relating to the organization which may arise from time to time (Auditor General of Manitoba, 2009).
- Boards of Crown corporations should ensure that sufficient, relevant information is reported to the Minister responsible. This will allow the government and Legislative Assembly to determine the degree to which the corporation has achieved its mission (Auditor General of New Brunswick, 1996).
- The Chair is accountable to the responsible Minister for ensuring timely communications with the Minister regarding any issue that affects the Minister's responsibilities for the agency (Ontario Management Board of Cabinet, 2010).
- Government should provide the Board with clear communication and consultation regarding its public policy expectations and intended outcomes. The Minister and relevant Department officials must ensure a productive, open relationship exists with their Boards in order that it may achieve its mandate and achieve the government's policy objectives (Auditor General of Manitoba, 2009).
- The Board should ensure that reasonable demands from stakeholders for information are met, and that the information provided is relevant, understandable, and reliable (International Federation of Accountants, 2009).
- The Ministers Responsible should ensure that Commercial and Service Delivery Crown Corporations report quarterly and annually. The Act also requires Ministers Responsible to make public an annual service plan report for Commercial and Service Delivery Crown Corporations that compares actual results against the performance objectives and targets set out in their service plans (British Columbia Crown Agencies Secretariat, 2009).

- Parliament is to receive on an annual basis summaries of corporate plans, annual reports, and a consolidated report on Crown corporations presented by the President of the Treasury Board. Parliament may ask Ministers questions about the activities of Crown corporations and Parliamentary committees have the authority to invite Chairs and CEOs to appear before them to explain the activities of their organizations (Treasury Board of Canada Secretariat, 2005).
- There should be communication and trust among politicians, public servants, and Boards so that they can effectively carry out their respective roles in governing the organization and the appointment process (Watson, 2004).

ABOUT THE IVEY ENERGY POLICY MANAGEMENT CENTRE

The Ivey Energy Policy and Management Centre provides an informed and independent perspective on Canadian energy sector development and policy. The Centre contributes to energy policy by conducting and disseminating evidence-based research and analysis on major issues affecting the electricity, gas, oil and pipeline sectors; it convenes energy sector stakeholders to openly discuss and exchange ideas in a trusted forum; and the Centre strengthens societal literacy on the Canadian and global energy industry through educational courses, programs, and materials.



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