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Policy des politiques
Forum publiques

Governor-in-Council Appointments: *Best Practices and Recommendations for Reform*

February 2004

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ISBN:

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Acknowledgements

The authors gratefully acknowledge the assistance received from Bill Neville, Senior Advisor to the President, Public Policy Forum, in developing this publication. We greatly appreciated his advice and guidance throughout the life of this project.

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Executive Summary

Much of the federal government's work is delegated to agencies, boards and commissions (ABCs). There are currently an estimated 170 federal ABCs responsible for a wide range of activities including, for example, managing trade and tariff issues, setting prices and quotas for a host of agricultural products and issuing radio and television licenses. The directors and chief executive officers of these organizations are appointed by the Governor-in-Council (GIC) on the advice of the government through a process known as the GIC appointment process.

Because of the responsibility vested in these senior positions, the government must consider a number of factors in making these appointments. The individuals should share the political philosophy of the government of the day and should represent various regions and interests of Canadian society. Quite an elaborate process has grown up around GIC appointments. However, few Canadians, actually understand how the GIC appointment process works. This has led to the perception that appointments are based on political considerations rather than on the qualifications of the candidate.

The granting of patronage positions is as old as democracy itself, as are attempts to codify, rework and reform the system. In recent history, beginning with the administration of Brian Mulroney, various governments have put a great deal of effort into reforming the GIC appointment process, but as recently as 2000, the Auditor General of Canada recommended additional reform measures to identify skill sets and match them to appointments.

In a period of government transition, public attention turns to political appointments and transition time often sees the initiation of new reform measures. The new government of Prime Minister Paul Martin has recognized the link between the GIC appointment process and public trust and confidence in the institutions to which these appointments are made. The government's action plan for democratic reform includes a process for parliamentary oversight of some appointments.¹

Meanwhile, Canadian institutions in the public, private and voluntary sectors are reforming their board appointment processes to address public, shareholder and member

¹ Canada, Privy Council of Canada, *Ethics, Responsibility Accountability: An Action Plan for Democratic Reform*. (Ottawa: February, 2004)

concerns. The lessons learned from these initiatives provide useful examples of reform measures in action.

As a contribution to building better government, this study traces the development of the GIC appointment process, documents the current process and proposes reforms. Our methodology included open source research, interviews with key practitioners and experts, and the development of case studies from the public, private and voluntary sectors.

Although the current system ensures that the public can hold the prime minister accountable for the appointments made, the process of developing a short list and selecting the best candidate is critical. The potential for reform in this area is significant. Input provided by participants in this research study indicates measures can be taken to choose a candidate who meets the needs of the board, the needs of the government and the expectations of the public for a fair and equitable system.

Based on the research undertaken for this study, we recommend the following changes to the current appointment process to make the system more accountable, inclusive and evidence-based:

- 1. Establish a central clearinghouse that will serve as an independent coordinator of appointments.**

To reduce concerns about politicization of the appointment process and to increase transparency and accountability, the government should establish an independent advisory committee that will act as a central clearinghouse for appointment recommendations to the prime minister and the responsible ministers.

- 2. Engage the current board of directors to identify skills and competencies.**

Current boards should be tasked to produce profiles that specify the skills and competencies required to fulfill their mandates. These board profiles should include the skills and competencies of the current board, those required to complement the existing board and those needed in the future.

- 3. Promote diversity in GIC appointments.**

Every reasonable step should be taken to ensure that appointments reflect the broadest possible spectrum of Canadian society. Diversity can be viewed as increasing a board's accountability to the public it serves.

- 4. Provide training and continuing education for GIC appointees.**

Newly appointed directors must receive adequate orientation and ongoing training in order to fulfill the responsibilities of their appointments.

5. Assess individual and board performance.

To improve governance practices, regular assessments of a board's effectiveness and the contribution of individual directors are essential. The work of the board, its committees and the individual directors should be assessed on a regular basis upon predetermined evaluation criteria.

6. Provide parliamentary oversight.

The GIC appointment process should include a role for Parliament in the review of candidates **before** final confirmation by the government.

7. Vest agencies, boards and commissions with the responsibility to report on progress.

Agencies, boards and commissions should be vested with the responsibility to report on appointment process reform as a component of their annual reports. Host departments, government central agencies and Parliament would then be better positioned to provide oversight, to evaluate progress and, through comparison, to identify and promote best practices.

Introduction

The Prime Minister's Office is responsible for making appointments to leadership positions in a large number of public sector organizations — senior public servants, including the diplomatic service; senators; heads of Crown corporations; chief justices of the Supreme Court and senior provincial courts; and boards of numerous agencies, boards and commissions (ABCs). These patronage appointments are called Governor-in-Council (GIC) appointments because they are made by the Governor General on advice from the Privy Council Office (PCO) and are handled through a process which recognizes the prime minister's prerogative to make final decisions on all appointments.² The GIC appointment process is a central, and some would argue, necessary feature of the Canadian political system, but it is one of the least understood government activities.

In September 1998, the Public Policy Forum reviewed the appointment of boards of directors of Crown corporations as part of its study *Protecting the Shareholder*.³ The study recommended that competency and relevant experience must be the over-riding criteria for appointments to corporate boards of directors and that governments must pay more attention to the need for continuity in making appointments to Crown boards.

In recent years, many organizations in the private and not-for-profit sector have had to develop more publicly accountable systems for appointments to their boards of directors and to senior management positions to address shareholder, donor and member concerns. And, in response to public concerns over mismanagement in public institutions, the new prime minister pledged to tighten government accountability so that Canadians will have confidence that their government is acting in an open, honest and transparent manner in his campaign for leadership of the Liberal Party of Canada.⁴ Upon taking office, the prime minister introduced an action plan to address a host of democratic reform issues, including GIC appointments.⁵

² Canada. Privy Council of Canada, *Decision-Making Processes and Central Agencies in Canada: Federal, Provincial and Territorial Practices*. (Ottawa: 1998).

³ Peter Larson and Bill Neville, *Protecting the Shareholder: A Review of the Governance Structure of Canadian Crown Corporations*. (Ottawa: Public Policy Forum, September 1998).

⁴ Paul Martin, *Making History: the Politics of Achievement*. (November, 2003).

⁵ Canada. Privy Council of Canada, *Ethics, Responsibility Accountability: An Action Plan for Democratic Reform*. (Ottawa: February, 2004).

During a time of government transition—as a result of an election or change of leadership in the ruling party—much public attention focuses on the GIC appointment process. The Public Policy Forum believes that the time is opportune to revisit the current practices of GIC appointments to agencies, boards, commissions and to Crown corporations— a GIC population composed of approximately 500 full-time and 1,900 part-time appointments to ABCs. A comparative case study approach, using cases from the public, private and voluntary sectors, has been adopted to identify best practices and to make recommendations for reform.

Although the GIC appointment process is subject to unique considerations, private and voluntary sector boards also strive to ensure the right people are in place to govern the organization in a way that will maximize the trust of shareholders, members and funders. Appointment processes that are transparent, inclusive and accountable are a first step in building public trust therefore, lessons can be learned from the recruitment and appointment of senior leaders to organizations in all sectors of society.

Why the GIC Process is Important to Public Confidence

Trust and confidence in the leadership of organizations is a central to the legitimacy of organizations in all sectors. Given the significant role that governments play in the day-to-day life of citizens, it is imperative that Canadians trust the people who make a wide range of decisions on their behalf. While the decision makers that most often come to mind are the elected officials within government, and specifically the prime minister and cabinet ministers, there are over 2,400 leadership positions within various agencies, boards and commissions that have an impact on the economic, social and cultural lives of Canadians. Consequently, a GIC appointment process that finds the right people plays a key role in public trust and confidence in government.

The 1998 Public Policy Forum review of appointments to Crown corporations found that in general, Canadian Crowns are properly directed and well managed, but the study also indicated that there are flaws in the current governance structure.⁶ Some of those interviewed for this study felt that appointments were based on political considerations rather than on the skills and competencies of the candidates. Such a system no longer meets public expectations. Canadians are looking for better management in government, for government to be more efficient, more accountable and more transparent.⁷ Although announcements of appointments often include reference to numerous criteria such as regional representation, gender balance and skills of candidates, the subjective and non-transparent nature of the current system undermines citizens' trust in government, the legitimacy of the appointees and the organizations that they lead. Partisan-patronage appointments to public offices weakens the legitimacy of the public sector.⁸

⁶ Peter Larson and Bill Neville, *Protecting the Shareholder: A Review of the Governance Structure of Canadian Crown Corporations*. (Ottawa: Public Policy Forum, September 1998).

⁷ Ibid.

⁸ Peter Aucoin and Elizabeth Goodyear-Grant, "Designing a Merit-Based Process for Appointing Boards of ABCs: Lessons from the Nova Scotia Reform Experience," *Canadian Public Administration*, vol. 45, no. 3 (Fall 2002), pp. 301-327.

The new government of prime minister Paul Martin has recognized the link between the GIC appointment process and democratic renewal. Mr. Martin claims that democratic reform is a top priority for his government and he supports reforms to the process for government appointments⁹ as part of his democratic deficit reduction initiative. To ensure a functional and transparent system that encourages good candidates for the public benefit, the Martin government plans to seek advice from the appropriate standing committee on how best to proceed on prior review of appointments to certain key positions, including heads of Crown corporations and agencies.¹⁰

The prime minister's democratic deficit reduction initiatives are echoed in activities within the private and voluntary sectors who must ensure that their organizations are managed by competent and engaged directors. In the private sector, the need for good governance at the highest level of an organization has become increasingly obvious in recent years with corporate scandals finding their way to the front pages of national and international newspapers and with shareholders taking a more active interest in a corporation's ethical and social behaviour in addition to its market performance.

The Governor-in-Council Appointment Process

The Current GIC Appointment System

The GIC appointment process recognizes the prime minister's prerogative to coordinate or determine all appointments.¹¹ The PCO plays a supporting role to both the Prime Minister's Office (PMO) and to the clerk of the Privy Council in the process.

PCO supports the prime minister by providing substantive policy and management advice on certain senior appointments.¹² Through the clerk of the Privy Council, the Management Priorities and Senior Personnel Secretariat in the PCO provides operational advice to the prime minister.¹³ PCO ensures that statutory and procedural requirements are met while advising on issues of feasibility, remuneration and conditions of appointment. The director of appointments in the PMO is responsible for providing political advice to the prime minister on appointments.

⁹ Paul Martin unveiled his six-point plan for reforming the House of Commons in a speech at Osgoode Hall, Toronto. (May 2003).

¹⁰ Canada. Office of the Prime Minister, *Democratic Reform*. (Ottawa: December 2003).
http://pm.gc.ca/eng/dem_reform.asp

¹¹ Canada. Privy Council Office, *Decision-Making Processes and Central Agencies in Canada: Federal, Provincial and Territorial Practices*. (Ottawa: 1998).

¹² Canada. Privy Council Office, *The Responsibilities of the Privy Council Office*. (Ottawa: 2000).

¹³ Canada. Privy Council Office, *A Guide Book for Heads of Agencies: Operations, Structures and Responsibilities in the Federal Government*. (Ottawa: August 1999).

Normally, GIC appointments are made on the recommendation of a cabinet minister, in accordance with the provisions of the relevant statutory authority—most organizations have their own enabling statute.¹⁴ Consultation on judicial appointments takes place with senior members of the judiciary and the Canadian Bar Association, and with the appropriate provincial or territorial attorneys general or ministers of Justice. The vast majority of appointments, however, to agencies, boards, commissions and Crown corporations operating at both local and national levels, have no such formal consultation system.

The agency head, or the chair of the board of directors in Crown corporations, will consult and provide advice to the responsible minister on the needs of the organization and skill sets desired in new members.¹⁵ The responsible minister will work with the Office of the Director of Appointments in the PMO to develop recommendations for GIC appointments.

In terms of the role of the regional ministers in the appointment process, the Public Policy Forum is aware that regional ministers play a role in articulating regional concerns and reviewing appointments to ensure regional representation. However, there is a lack of documentation available on the specific roles and procedures involved.

Vacancies for full-time positions may be advertised in the *Canada Gazette* and/or in a national newspaper or other publications. For some appointments, executive search firms may be used and this practice is followed most often for chief executive officers of Crown corporations. Recommendations for appointments originate from several sources, including the political, commercial and academic communities, senior public servants, and interest groups.

The selection process for full-time appointments involves the following human resource management practices:¹⁶

- Position description and selection criteria are made available to candidates.
- Candidates that most closely meet the education and experience requirements are interviewed.
- The selection process may be conducted by representatives of PMO, the relevant minister's office, PCO, and the chair of the board of directors or head of the agency.
- In the case of chief executive officers of a Crown corporation, there may be a search committee established by the board of directors.

¹⁴ Canada. Privy Council Office, *Practices for Appointing Senior Officers to Government Organizations in Other Countries: Government response to recommendation number ten of the Fifteenth Report of the Standing Committee on Public Accounts*. (Ottawa: March 2003).

¹⁵ Canada. Privy Council Office, *Practices for Appointing Senior Officers to Government Organizations in Other Countries: Government response to recommendation number ten of the Fifteenth Report of the Standing Committee on Public Accounts*. (Ottawa: March 2003).

¹⁶ Ibid.

- Names of candidates are referred to the responsible minister who will recommend one of the candidates for appointment.
- Once an appointment is made, the appropriate standing committee in the House of Commons can call the appointee to appear to review the person's qualifications. However, the Standing Committee may not veto appointments.

When making recommendations to the prime minister concerning suitable candidates, a number of factors must be taken into consideration. The enabling legislation of the organization often identifies specific skills that a candidate must possess. Sometimes the legislation will also outline the procedure that must be followed to make recommendations to the minister. Sometimes a requirement for geographical representation will be found in the legislative framework, but more often than not, it is simply a political reality that needs to be taken into consideration. The ability to speak both French and English can be a requirement of some positions.

The government has also established the Conflict of Interest and Post-Employment Code that outlines the steps to avoid real or apparent conflicts between the private interests and public responsibilities of public office holders. The Office of the Ethics Counsellor is responsible for administering the program and all full-time appointees are contacted by the Office of the Ethics Counsellor to ensure compliance with the Code. The provisions of the Code do not apply to part-time appointees, but the spirit and principles of the Code do.¹⁷

Parliament has the authority to review GIC appointments.¹⁸ The Standing Orders of the House of Commons provide the Standing Committees of the House of Commons, which have members from all political parties in the House, with the authority to review all non-judicial appointments made by the Government of Canada.

Shortly after an appointment is made, a copy of the appointing order is tabled in the House of Commons for consideration by one of the Standing Committees of the House. The members of the Standing Committee can then choose whether they will request a meeting with the appointee. The Committee may ask questions about the appointees relevant qualifications but the Committee has no authority to veto the appointment. In practice, review by Standing Committees of the House rarely takes place.

The GIC appointment process blends law, politics and tradition in varying quantities. The sole discretion to recommend appointments to the GIC generally rests with the prime minister, and until that changes, the process will continue to evolve on the political stage. However, the changes begun by the Kim Campbell government and continued by the Liberals have resulted in a more transparent process with a wider consultation base. The Chrétien government initiated the practice of issuing press releases regarding

¹⁷ Canada. Privy Council Office, *A Guide Book for Heads of Agencies: Operations, Structures and Responsibilities in the Federal Government*. (Ottawa: August 1999).

¹⁸ Ibid.

appointments, usually within 72 hours of an appointment, to increase the transparency of the GIC appointment process.¹⁹

Recent Reform Initiatives

During the administration of Prime Minister Brian Mulroney, and since, various reforms have been initiated to make appointments to boards of agencies, boards and commissions more transparent and objective in response to criticism that the practice is secretive and prone to abuse.

In 1985, the McGrath committee report set out four principles that guided its recommendations on the role of Parliament with respect to government appointments:

- The primary purpose of a nomination procedure is to seek the best possible people.
- It is important that the public see appointments as more than simply political patronage.
- There are good reasons for excluding certain appointments from any political scrutiny.
- Some appointments warrant different degrees of scrutiny.

These principles are still as relevant today as they were in 1985. The committee focused on the following types of appointments: deputy ministers, heads of Crown corporations, heads of regulatory agencies, House of Commons officers, and agents of Parliament such as the auditor general or the privacy commissioner. The recommendations brought forth by the committee were consistent for all appointments: that appointments be tabled in the House of Commons, providing committees the authority to review the appointments.

In 1994, Gérard Veilleux²⁰ reviewed the appointment process to boards of directors of Crown corporations. He observed that political affiliations have played a large role in the appointment process. Veilleux did not attempt to argue that political affiliations should have no role in the selection process, but he did argue that appointments should be more objective and transparent, and recommended the use of “job profiles” outlining key attributes of potential candidates.²¹ He also recommended that board members receive better training and urged Treasury Board to undertake a general review of board performances and of the means to enhance their accountability. In response to Veilleux’s report, in July 1996 Treasury Board and the Department of Finance released new guidelines for corporate governance for Crown corporations and other public enterprises.

¹⁹ Penny Collette, “So You Want an Order-in-Council Appointment?” *Administrative Agency Practice*, vol.1, no. 5 (November 1995), pp. 103-107.

²⁰ A federal public servant on loan to the Canadian Centre for Management Development.

²¹ Peter Larson and Bill Neville, *Protecting the Shareholder: A Review of the Governance Structure of Canadian Crown Corporations*. (Ottawa: Public Policy Forum, September 1998).

The 1998 *Protecting the Shareholder* report by the Public Policy Forum recommended several changes to the current appointment process. These included:²²

- Competence and relevant experience must be the over-riding criteria for appointments to Crown corporation boards.
- Governments need to ensure that Crown corporation boards have reasonable continuity in membership.
- Appointees to Crown boards need to know the government's expectations of them, when they are first appointed and at regular intervals after that.
- Boards of directors should have increased involvement in the hiring, evaluation, and compensation of the CEO.
- The role of the chair of a Crown corporation as the principal liaison person with the government shareholder, should be clarified and respected by all parities.

With the release of the "Red Book"²³ by the Liberal party in the early 1990s, a promise to examine the size and relevance of boards and commissions was made. In addition, the Liberals undertook to review the appointment process to ensure competence and equity played a key role in the selection of candidates.

As a result of these campaign promises, a review of agencies, boards and commissions was conducted under the umbrella of public service renewal initiatives. The goals of the review were to assess the relevance of these organizations against current and future needs, to abolish any outdated organizations, and to operate the remaining organizations as efficiently as possible. The review process led to the elimination of 665 appointed positions and a greater commitment to the appointment of women, visible minorities, Aboriginal peoples and people with disabilities.

The Chrétien government has also continued the practice initiated by the Campbell government of advertising vacancies for most full-time, fixed-term Governor-in-Council appointments in the Canada Gazette. The use of this advertising tool promotes greater transparency, encourages the public to submit applications, and has resulted in a larger pool from which to select a candidate. In addition, a senior staff member in the PMO works closely with cabinet ministers, the public service, and heads of agencies, boards and commissions to solicit candidate recommendations and to identify the needs of the organizations whose leadership positions are filled through the Governor-in-Council appointment process.

The December 2000 Report of the Auditor General of Canada on the governance of Crown corporations provided observations and recommendations on the appointment

²² Ibid.

²³ The Liberal Party of Canada, *Creating Opportunities*. (Ottawa: 1993).

process for boards of directors, board chairs, and chief executive officers. The report indicated that overall the management of Crown corporations has improved since the *Financial Administration Act* was amended in 1984, but further improvements are still needed in some important areas like strategic and corporate planning and the measurement and reporting of corporate performance.

Some of the main observations and recommendations include the following points²⁴:

- Boards of directors of Crown corporations reflect Canada's diversity but lack other key skills and capabilities.
- Corporations need to better define their requirements for skills and capabilities and communicate them to the government and the government needs to act on those requirements. Each Crown corporation should develop a board skills profile.
- The government, along with Crown corporations, should ensure that newly appointed directors are provided with adequate orientation and training.
- The government should decide on Crown corporation director appointments in a timely manner, improve the staggering of term expiry dates and increase the length of service of qualified directors.
- Each boards of directors needs to be more engaged in the selection of its chair as well in the corporation's chief executive officer (CEO). Without meaningful board involvement in the selection of the CEO, his or her accountability to the board is weakened and corporate governance as a whole suffers.
- The board of directors, in consultation with the minister, the Prime Minister's Office and the Privy Council Office, should lead the process of selecting the corporation's CEO for approval by the Governor in Council.

The Office of the Auditor General (OAG) has spoken to weaknesses in internal governance arrangements in federal government organizations, specifically the Office of the Privacy Commissioner of Canada. In September 2003, the OAG made public the audit report²⁵ on the activities of the Privacy Commissioner of Canada. The report revealed a major breakdown of governance structures and internal control processes. The report contained a number of recommendations to ensure that central agencies apply governance mechanisms to prevent abuse and wrongdoing. One key recommendation to the PCO involved ensuring that Governor-in-Council appointees are appropriately briefed on the government's control framework, its legislative and policy framework, and on the standards of conduct expected of them.²⁶

²⁴ Canada. Auditor General of Canada, Report, chapter 18, *Governance of Crown Corporations*. (Ottawa: December 2000).

²⁵ Canada. Auditor General of Canada, *Report on the Office of the Privacy Commissioner of Canada*. (Ottawa: September 2003).

²⁶ Ibid.

The response provided by PCO to this recommendation is also included in the Auditor General's report. Since autumn 2002, PCO has been arranging customized orientation sessions for new heads of agencies and Crown corporations. As well, heads of federal agencies must, as a condition of employment, comply with the provisions of the *Conflict of Interest and Post-Employment Code for Public Office Holders*. These codes are designed to guide the conduct of federal public office holders and to maintain and enhance public confidence. Following an appointment, the head of an agency must make a confidential disclosure to the Ethics Counsellor of detailed personal information regarding assets, liabilities, and outside activities.

Our Findings: Best Practices

Based on our open source research, interviews with experts and practitioners and on our preparation of case studies on organizations in the public, private and voluntary sectors, the following best practices have been identified with respect to board appointment processes, board assessment and quality control issues. For more information on the individual case studies see Appendix A.

Promoting Diversity and Representativeness

The boards of directors of public agencies, boards and commissions should represent the Canadian population in age, colour, culture, gender and geography. According to the December 2000 report by the Auditor General of Canada, the government has improved the gender balance and geographic representation on boards of directors, but there is no standard process to promote greater diversity in appointments.

Diversity in the backgrounds, skills and experience of board members can enhance the effectiveness of a board by bringing a wider range of perspectives and knowledge. Studies have determined that there is a direct correlation between board diversity and corporate profits.²⁷ Diversity of background and experience can add value to boardroom deliberations.²⁸ Boards that are composed of people from a variety of backgrounds, skills and interests are less likely to enter into complacent relationships with management and are more apt to exercise probity and independence in analyzing information and in making decisions.

Public sector boards need to ensure that the appointment process facilitates the consideration of qualified people from diverse backgrounds (gender, culture, region) in the recruitment and selection of potential board members. Through our research, we identified organizations in the voluntary sector that have been proactive in developing

²⁷ David Brown, Debra Brown and Vanessa Anastasopoulos, *Women on Boards: Not Just the Right Thing But the 'Bright' Thing*. (Ottawa: The Conference Board of Canada, May 2002).

²⁸ Joint Committee on Corporate Governance, *Beyond Compliance: Building a Governance Culture*. (Toronto: Toronto Stock Exchange, Canadian Venture Exchange & Chartered Accountants of Canada, 2001).

recruitment processes to create boards that are reflective of the diversity of the Canadian population in terms of race, age, language and other traits.

The YWCA ensures that its board is representative in terms of geography, youth and diversity. The nominating committee monitors nominations to ensure representation from all three regions of the country (east, central and west), and 25% of the board is made up of young women under 30. In addition, the board actively seeks representation of visible and cultural minorities and women from a variety of walks of life in keeping with the YWCA's mission and values and according to advice from its membership.

Independent Nomination Processes

Independent search and nomination processes are used in both the voluntary and public sectors to handle the various aspects of the appointment process.

In all of the voluntary organizations participating in the case studies, an independent committee is tasked with managing the nomination and selection process. The National Council of the Canadian Cancer Society collects the nominations put forward by members in each division and then selects from the pool of candidates. Confirmation of the decision is communicated back to members. In contrast, both the YWCA and Oxfam Canada require a director to be elected by a membership vote. In the case of the YWCA, a nominating committee solicits calls for nominations and conducts interviews with potential candidates from both inside and outside the organization. The committee then recommends a slate of candidates to members at the annual general meeting and a vote is taken to accept or reject the recommendation. The Oxfam Canada process is led by an elections committee that invites nominations from its members based on a specific set of candidate qualifications. Members vote individually for each candidate through a secret mail-in ballot process.

The initial appointment process for the Immigration and Refugee Board (IRB) is also tasked to an independent committee. A ministerial advisory committee manages the initial screening, a written test, reference checks and an interview. A private human resources firm is hired by the secretariat to conduct the reference checks, mark the written tests and facilitate the interview. Once the initial screening is complete, the committee presents an inventory of qualified candidates for consideration to the minister of Citizenship and Immigration Canada. Although the minister has the authority to appoint outside the inventory, to date he or she has always chosen from the list provided by the ministerial advisory committee.

Some provincial governments in Canada have also adopted the use of various forms of independent search or advisory committees for appointments to public boards. The Government of British Columbia set up a Board Resourcing and Development Office (BRDO) that is the central clearinghouse for all appointments to the province's public boards. The Government of Alberta also provides agencies, boards and commissions with a recommended approach to staffing, but it is not a mandatory procedure. The

relevant minister's office or the chair of the organization can choose to use the services of the Alberta Personnel Administration Office or can choose to run the recruitment independently with a departmental review panel or with the support of another department or an external search firm. The Government of Nova Scotia has also established a system of mandatory departmental screening panels to identify qualified candidates for appointments. These panels recommend qualified candidates to the appropriate ministers.

Similar systems have already been instituted in other countries. In the United Kingdom, the government has created the position of Commissioner for Public Appointments in an effort to ensure public appointments are more transparent and consistent across departments. While the Commissioner is not responsible for making the actual appointment, his or her role is to regulate, monitor, report and advise on ministerial appointments. The United States uses the Senate confirmation process to build transparency into the selection of candidates. A number of other countries have broadened the methods used to identify candidates by advertising to the public through government Web sites, daily newspapers, industry publications, and by consulting with stakeholders who will be affected by the selection of a candidate.

Identifying the right skills

In order to appoint candidates on the basis of competency, the selection process for board appointments must seek out people with the skills that are essential to the effective functioning of the board.²⁹

In his report, Veilleux (1994)³⁰ recommended the use of board profiles in Crown corporations. This recommendation has also been endorsed by the Privy Council Office, the Treasury Board, the Auditor General and several provincial governments.³¹ Yet the Auditor General's report in December 2000 found that many boards of directors have not developed such profiles. Of those that have developed profiles, fewer than half found them effective because they have no assurance that the government takes their suggestions seriously or that the government uses their profiles at all. The report also observed that where the government acted on the board profiles and stated requirements, the resulting appointments better met board needs.

The Board of the Atomic Energy of Canada Ltd. (AECL) used the Auditor General's report as the impetus to recommend to the government a new method to appoint a replacement for the chief executive officer. The board undertook a profiling exercise to identify the skills and expertise required to effectively lead the organization. The exercise focused on what skills were currently represented among board members versus the skills

²⁹ Canada. Auditor General of Canada, Report, chapter 18, *Governance of Crown Corporations*. (Ottawa: December 2000).

³⁰ Gérard Veilleux, *Unfinished Business: A Report on the Appointment Process to Boards of Directors of Crown Corporations*. (Ottawa: Canadian Centre for Management Development, March 1994).

³¹ Canada. Auditor General of Canada, Report, chapter 18, *Governance of Crown Corporations*. (Ottawa: December 2000).

needed in the short and medium term. A resulting profile was developed after consultation with the board, the minister, PCO and management, and was forwarded to the minister. It was accepted as a template for future appointments.

The election process used by the YWCA also includes the use of a skills profile. When soliciting calls for nominations to the board, the YWCA Nominating Committee provides members with a list of competencies that are required by the board. These competencies include skills and abilities as well as knowledge and awareness of the YWCA organization, its governance and decision-making structures.

EnCana often supplements the advice of its Nominating and Corporate Governance Committee with the assistance of a professional search firm to ensure that qualified candidates have not been overlooked. As with all publicly traded companies, shareholders have the opportunity to endorse the board selection at the annual general meeting.

The Role of Current ABC Boards in the GIC Process

Many of the individuals whom we interviewed, who currently serve on boards of directors, recommended that the board have greater input into the selection process. They argued that directors are in the best position to assess the needs of the board and that it is in their best interests to ensure their colleagues around the boardroom table are of the highest quality.

We found that in the federal system, some boards take a leadership role in the appointment process and have a great deal of input in developing a short list of candidates from which the minister and prime minister choose. In other cases, the board is just one of many resources used by the government to feed into the appointment process. The worst case scenario is when the advice of the board is not solicited or when the board's advice is forwarded to the government and then ignored completely.

Current chairs and boards of directors of agencies, boards and commissions have an important role to play in identifying needed skills and assessing competencies. However, full responsibility for identifying potential candidates should not rest entirely with the current board. The government must retain responsibility and accountability for ensuring diversity and representativeness. Self-perpetuating boards—those that recruit from within their ranks and from within their peer groups—have difficulty achieving the level of diversity expected of a public board as illustrated by a number of high profile scandals in the private sector.

Orientation and Training

The Public Policy Forum's study *Protecting the Shareholder*, as well as past reports of the Auditor General, observed that new directors are not adequately briefed on their duties, although there have been some improvements in this area. Crown corporations generally provide orientation sessions for new directors, and some urge their directors to

attend external training sessions.³² However, there is a need for a more formalized training and orientation process for new appointees as well as for continued training throughout the duration of an individual's appointment to a board.

The Alberta Municipal Government Board has a formal training process, as part of its mandate, that begins upon appointment and continues throughout the member's term. The process includes a comprehensive orientation program that runs for the first five months of an appointment and ongoing professional development seminars and learning events. Similarly, the Immigration and Refugee Board (IRB) has implemented a comprehensive training program managed by three full-time professional development staff that includes orientation and six-month individual learning plans.

Performance Assessment

A well-functioning board holds itself accountable for the quality of the organization's governance. Through periodic performance assessment a board can identify ways to strengthen its operations and address areas that need attention.

The BMO Financial Group is one example of a board that diligently assesses its performance and incorporates changes into its operations as a result of feedback from directors. The performance of the board as a whole and each individual director is assessed on an annual basis. The peer review process requires directors to assess each other against identified competencies. Each director receives his or her own report card and the lead director receives the composite data on how the directors fared generally on each question. In addition to the peer review process, the directors undertake a governance survey to assess the operations of the board and the performance of the lead director.

While public sector boards are beginning to adopt these practices, there is less consistency across organizations and many boards are just beginning to incorporate performance assessment processes on a regular basis. The Canada Pension Plan (CPP) Investment Board has a two-phase performance assessment framework: first, the board as a whole participates in a self-assessment; and, second, each individual director undertakes a peer evaluation. The board self-assessment is led by the governance committee and consists of a questionnaire that investigates various aspects of board performance. The peer evaluation provides an opportunity for each director to individually assess the performance of the other directors, including whether or not they should be reappointed. The responses to this question are sent to the nominating committee members for use in their deliberations regarding reappointments.

The combination of an individual self-assessment and a peer-assessment offers a balanced evaluation approach. Individual assessments are a good way to make

³² Canada. Auditor General of Canada, Report, chapter 18, *Governance of Crown Corporations*. (Ottawa: December 2000).

performance expectations clear and to improve directors performance.³³ Self-assessment will provide a director with the opportunity to reflect on personal performance, but needs to be balanced with peer evaluation as well.

Evaluations are highly valuable as a mechanism to promote accountability within the board. A well-managed appraisal process can increase a board's effectiveness and accountability.

Section 1: The Public Sector Best Practices

A. Provincial Government Appointment Processes

Alberta

In October 1997, the Government of Alberta issued a policy directive recommending a process for the recruitment of senior and executive level positions to significant agencies, boards and commissions within the province. The directive makes a commitment to establish an objective review and certification process to ensure that qualified candidates are appointed to these organizations.

While the directive provides agencies, boards and commissions with a recommended approach to staffing, the procedure is not mandatory. The relevant minister's office or the chair of the organization can choose to follow the directive and use the services of the Alberta Personnel Administration Office. Alternatively, it can choose to run the recruitment and appointment process independently or with the support of another department or an external search firm.

The recruitment process begins with the minister establishing a review panel which may include members of the public, technical experts, and key stakeholders. Ministers can choose to establish one panel for several appointments or can choose to have one panel serve for a period of time. Staff from the Public Service Commissioner's office, Executive Search, Department of Human Resource Offices, or a private consulting firm may provide assistance to the review panel.

The selection criteria are established by the minister to reflect a proper mix of skills and experience required for the agency, board or commission. The current chair may also be involved in this process, if appropriate.

Recruiting methods may include referrals, direct sourcing, or paid advertising in career sections or appropriate trade publications. Ministers can also use the services of *The*

³³ Jay A. Conger and Edward Laslor III, "Individual Director Evaluations: The Next Step in Boardroom Effectiveness." *Ivey Business Journal* (September/October 2003), pp. 1-5.

Bulletin, a weekly government newspaper, and *The Bulletin Online*. To broaden public awareness of appointments, the Alberta government expanded the mandate of *The Bulletin*, which has a distribution of 32,000 copies throughout government offices, Canada Employment Centres and post-secondary institutions.

The review panel assesses all candidates against the established criteria. Once the assessment is complete, suitable candidates will be recommended for further consideration. The review panel is responsible for short-listing qualified candidates for the minister and/or executive council.³⁴

The Alberta Labour Relations Board and the Municipal Government Board are both examples of organizations that have followed the approach outlined by the government's directive. Both are quasi-judicial boards that have had successful experiences staffing board positions in recent years. At the general level, the process has broadened the pool of candidates eligible for receiving an appointment and has allowed each organization to choose from a large number of qualified individuals.

1. Alberta Labour Relations Board

Alberta Labour Relations Board at a Glance

The Alberta Labour Relations Board is established by the Legislature of Alberta under the provisions of the *Labour Relations Code*. As an independent, quasi-judicial body, the board provides expertise in the field of labour relations and administers the *Labour Relations Code*, the *Public Service Employee Relations Act* and the *Policy Officers Collective Bargaining Act*. The board holds 500-600 hearings each year and makes judgments about the rights and liabilities of parties who appear before it, including employees, unions and individuals.

The *Labour Relations Code* encourages parties to settle their disputes through honest and open communication. The board offers informal settlement options to the parties, but it also has inquiry and hearing powers to make binding rulings whenever necessary.

The board consists of a chair, two full-time vice-chairs, three part-time vice-chairs, and approximately 34 part-time members. The members are representative of both labour and management, and are appointed by the Lieutenant-Governor in Council for specified terms.

The Lieutenant GIC Appointment Process

The legislation provides for the appointment of board members to fixed terms, but does not dictate the qualifications of members. Appointments to the board are made by the Lieutenant-Governor in Council, usually on the advice of the Minister of Human

³⁴ Alberta. Personnel Administration Office, *Recruitment to Agencies, Boards, and Commissions*. (Edmonton: October 1997).

Resources and Employment. By tradition, the board's members are drawn equally from organized labour and management.

The recruitment process begins with an open competition run through the Executive Search group in the Alberta Personnel Administration Office. The office posts advertisements in local and province-wide communications forums to solicit applicants for board positions. The advertisements provide potential candidates with information about the Labour Relations Board, the expectations of the candidates in terms of time management, as well as a specific profile of the types of skills and experiences required of a board member. At a general level, the board looks for individuals with active participation in the labour relations community, knowledge of the applicable legislation and labour relations practices, an ability to analyze evidence, exercise judgment, solve problems, and work toward meeting a consensus.

Potential candidates are screened and rated against the criteria mentioned above. The initial screening and ranking process is completed by the chair of the board, the executive director, and the head of recruiting in the Executive Search branch. Only those candidates receiving top marks will proceed to the next step in the solicitation process.

Once the list of candidates is compiled through the open solicitation process, the board relies heavily on the use of a multi-stakeholder panel to lead the remainder of the recruitment process. Panel members are provided with candidate screening summaries, résumés, a copy of the advertisement, the position profile and an interview guide. The panel then interviews each candidate and recommends individuals to the minister based on the operational needs of the board and sector representation.

Performance Assessment

The board undertakes a comprehensive evaluation of members upon consideration for reappointment. Each member's performance, abilities, motivation and commitment are evaluated along each of the following criteria:

- performance as a board member, including objectivity, professional conduct, ethical conduct and knowledge of legislation and issues;
- active participation as a representative of the labour community;
- participation on committees;
- participation at meetings and hearings;
- professional upgrading; and,
- desire of the member to continue as a member of the board.

Members are assessed through a combination of objective and subjective evaluations of performance, participation, availability and development. The chair of the board, who may solicit feedback from the vice-chairs, completes the evaluation. Specific input may also be obtained from key Labour Relations Board staff members and the labour relations community at large. Based on the results of the evaluation, the chair will make a

recommendation to the Minister of Human Resources and Employment with respect to the individual's reappointment.

2. Alberta Municipal Government Board

Alberta Municipal Government Board at a Glance

The Municipal Government Board (MGB) was created in May 1994 from an amalgamation of the Alberta Assessment Appeal Board, the Planning Board and the Local Authorities Board. It operates under the authority of the *Municipal Government Act*. The board is an independent quasi-judicial tribunal providing timely appeal adjudication in the areas of assessment matters, planning, inter-municipal disputes, annexation recommendations and subdivision appeals. It hears 8,000 to 10,000 cases per year. Ninety-five percent of the case load is assessment appeals with 85 percent of these appeals originating in Edmonton and Calgary.

The Lieutenant GIC Appointment Process

Since its creation in 1994, recruitment has been undertaken three times with the appointment of new members in 1997, 1999 and 2001. Appointments to the MGB follow the premier's required process for board appointments. This includes public advertisements, screening for professional and board qualifications by the Public Service Commission and interviews by a panel of stakeholders and the board. This process is driven by the terms of office of the members. Since the inception of the board all appointments have been done according to this policy with no appointments being made individually.

When applications are received during non-recruitment periods, it is the practice of the MGB to acknowledge receipt and advise of the board's appointment process. Résumés are held on file until the next recruitment program, when a letter is sent to the individual advising that recruitment is being initiated and inviting a formal application.

The Executive Search Branch of the Personnel Administration Office (PAO) conducts the search for members of the Municipal Government Board in accordance with the premier's guidelines for appointment to boards. Advertisements run in *The Edmonton Journal* and *The Calgary Herald* for two consecutive Saturdays. They also appear in the *Alberta Government Bulletin* and on the government's Web site job search until the competition closes.

The screening process is based on the skill criteria required by the board, graded on the qualifications and experience of the applicant. The Executive Search Branch of the PAO undertakes the initial screening. A second review is conducted by PAO and the board. The initial interviews are conducted with a committee composed of the board, stakeholder representatives and the PAO. These interviews are based on general suitability, knowledge, skills and experience. The second, in-depth, interviews are conducted by PAO and the board. These interviews involve:

- review of an assessment case and the oral delivery of a decision and reasons;
- responses to specific case situations prior, hearing, during and after a hearing; and
- writing a decision based on a fictitious act, plus a case, to determine the candidate's analytical ability and writing skills.

When the interviews are completed, a list of finalists is recommended to the minister. The final decision for appointments rests with the minister and cabinet.

The board is made up of individuals from a variety of backgrounds and disciplines. When the Municipal Government Board was created in 1994, a policy decision was made to ensure that the membership of the Board was inter-disciplinary and limited to part-time members.

The criteria for board appointment include a background in one or more of the following: experience with quasi-judicial tribunals and administrative law, property assessment, property appraisal, real estate valuation, planning, past municipal administration, past experience as an elected municipal official, or other related experience. Besides being a resident of Alberta, members must have sufficient free time to meet board commitments, have good communication skills (verbal and written), and not have a conflict of interest before the board.

In order to meet the requirement of the premier's guidelines for "selection criteria reflecting a proper mix of skills and experience required for the board," and to ensure that the board maintains its inter-disciplinary background, candidates are screened into the following categories: legal, quasi-judicial experience, property valuation, industry and municipal. Candidates compete with colleagues of a similar background in each category. Some candidates have experience and skills in more than one category.

The current geographic distribution of members is compatible with the caseload of 85% of assessment appeals originating in the Edmonton and Calgary areas.

Performance Assessment

The mandate of the MGB requires training for its new members so they can provide timely, independent, quasi-judicial appeal adjudication. These group training sessions provide information on the legislation and regulations in the areas of assessment matters, planning, subdivision appeals, inter-municipal disputes and annexation recommendations. They also teach skills in the hearing process such as appropriate questions, introduction of evidence, and writing board orders in order to ensure fairness, equity and natural justice. To provide members with the training necessary for proper performance as a tribunal, a complete training program is conducted throughout the term period with experts brought in as required (e.g. linear assessments in the oil and gas industry). New members participate on panels at a hearing only after they have fully completed the training program, usually a period of five months. Additional training is conducted throughout the year with all members.

One key element of this quasi-judicial tribunal is the performance of its members. In 1998, the MGB introduced performance management to its members. Goals and objectives, together with criteria for performance standards were established, with individual evaluations conducted on an annual basis. An important aspect of performance management is identification of strengths and areas for development.

It is because of the requirements for training and the evaluation of the performance of members that appointments of new members occur on a prescribed schedule.

British Columbia

In 2001, British Columbia premier Gordon Campbell came into power promising a more business-friendly approach to government. He set up a new Board Resourcing and Development Office (BRDO), which has become a central clearinghouse for all appointments to the province's 400 public boards. The mandate of the BRDO is to:³⁵

- establish guidelines for all provincial appointments to agencies;
- ensure that all provincial appointments are made on the basis of merit following an open, transparent and consistent appointment process; and
- ensure that appointees receive appropriate orientation and ongoing professional development with respect to board governance issues.

The BRDO has established a set of formal guidelines for appointments to public boards. The BRDO works with agencies and ministries to develop skills and experience profiles for vacancies, seeks out and screens potential candidates, recommends qualified candidates to the responsible minister and generally oversees and monitors all appointments to agencies.³⁶ Potential candidates can still be proposed by politicians, but the BRDO will assess each nominee and use its own executive search consultant to find other suitable candidates. The responsible minister will formally appoint a candidate to fill a vacancy, or recommend an appointment in the case of appointments by the Lieutenant-Governor in Council.

To provide transparency and accountability to the public, the BRDO publishes the names, terms and biographies of all appointees to all government boards on its Web site. The next step for the BRDO will be to require all government boards to publish their director selection criteria.

The major steps involved in filling a vacancy include the following:³⁷

³⁵ British Columbia. Board Resourcing and Development Office Web site:

http://www.gov.bc.ca/bvprd/bc/channel.do?action=ministry&channelID=-8627&navId=NAV_ID_-8627

³⁶ British Columbia. Board Resourcing and Development, Office of the Premier, *Public Agencies Appointment Guidelines*. (Vancouver: November 2001).

³⁷ British Columbia. Board Resourcing and Development, Office of the Premier, *Public Agencies Appointment Guidelines*. (Vancouver: November 2001); and British Columbia. Board Resourcing and Development, Office of the Premier, *Crown Corporations Board of Directors Appointment Guidelines*. (Vancouver: August 2001).

- Identify a vacancy

The agency and ministry establish internal systems that alert them to future appointments at least four months in advance and six months for significant appointments.

For Crown corporations it is incumbent on the board of directors to identify upcoming vacancies, four months for a member vacancy and six for a chair vacancy.

- Vacancy skills profile

The chair, together with ministry officials, will prepare a skills profile for the vacant position. The profile should be consistent with the Board Selection Criteria Profile but tailored to the particular vacancy.

- Request for appointment

The agency/ministry prepares a request for appointment that includes the needs assessment, selection criteria profile, vacancy skills profile, and any other relevant information.

The Crown corporation prepares and submits to the BRDO a request for appointment that includes an appointment summary, governance and board composition information, a needs assessment, board selection criteria profile, vacancy skills profile, other considerations (e.g., federal/provincial or local/regional considerations), recommended search processes and potential candidates.

- Review by responsible minister and deputy minister

The request for appointment package is reviewed and approved by the responsible minister and the deputy minister.

- Submission to BRDO

The Request for Appointment is submitted to the BRDO.

- Identify candidates

There are a variety of formal and informal ways suitable candidates can be identified (direct solicitation through advertising, executive search consultants,

nominating agencies, etc.). The BRDO will consider names of potential candidates from all sources.

- Short list

The BRDO, in consultation with the agency, the chair of the Crown corporation and the responsible minister, will assess the candidates against the vacancy skills profile and create a short list.

- Due diligence

The BRDO conducts a due diligence process for each candidate that includes a review of the candidate's probity, identification of potential conflicts of interest and a declaration by the candidate accepting the responsibilities set out in the agency's Board Terms of Reference Profile.

- Consultation and review

Linkages between the agency, Crown corporation, the ministry, the responsible minister and the BRDO are maintained throughout the appointment process.

- Final selection

After the due diligence process, the BRDO will present the names of the recommended candidates to the responsible minister for selection and/or recommendation. Recommendations will proceed to cabinet for final review and approval.

- Process to formalize appointment

The responsible minister will direct ministry staff to process the appointment. The BRDO will monitor the progress.

- Communication

The BRDO and the ministry will notify the appointee that the appointment has been made, and the appointment will be made public on the BRDO Web site.

Nova Scotia

In September 1999, the Nova Scotia Premier John Hamm introduced changes to improve and add accountability to the selection process for appointees to agencies, boards and commissions.³⁸ The government established a system of mandatory departmental

³⁸ Nova Scotia. Premier's Office, *Appointment Process Improved*. (Halifax: September 10, 1999).

screening panels whose mandate is to identify qualified candidates for appointments to agencies, boards and commissions from among those that have applied.³⁹

The new structure involves a new screening process for applicants and a new process for sharing information about applicants. The procedure for identifying interested applicants by means of public advertisements and the guidelines for those who do apply did not change. All vacant positions are advertised in newspapers throughout Nova Scotia twice a year, in the spring and in the fall. This process is coordinated by both the Legislative Committees Office and the Executive Council Office. Applications are received in the Executive Council Office where they are logged in a database and kept as active applications for three years.

The applications are then forwarded to the responsible department. When a vacancy arises in the department, the applications are screened by the individual departmental screening panels, which are made up of laypersons and departmental staff. Ministers, with the assistance of departmental staff, select the members of these panels based on experience in the area of concern to the department, expertise, regional representation, gender, race and other affirmative action considerations.⁴⁰

The panel will evaluate applicants based on criteria such as experience, technical expertise, public advocacy, community involvement and when applicable, gender, cultural, linguistic or ethnic backgrounds.⁴¹ These panels screen for qualifications only and do not rank the candidates relative to one another. The panel will recommend qualified candidates to the appropriate minister, who will then select the nominee for submission to cabinet. After the recommendation has been approved by cabinet it is sent to the Human Resource Committee for final approval.

In June 2000, the government improved the appointment process for the Utility and Review Board (URB), the most important of the province's regulatory-adjudicative agencies.⁴² The process entails an advisory committee that is composed of the chair of the URB, two lay representatives appointed by the minister from among the four lay representatives of the Judicial Appointments Advisory Committee and a human resource professional appointed by the deputy minister of the Public Service Commission. A member of an administrative tribunal from another province is added in the case of full-time appointments, as is a representative of the appropriate association if there is a need for an appointee holding a specified professional designation.

³⁹ Peter Aucoin and Elizabeth Goodyear-Grant, "Designing a Merit-Based Process for Appointing Boards of ABCs: Lessons from the Nova Scotia Reform Experience," *Canadian Public Administration*, vol. 45, no. 3 (Fall 2002), pp. 301-327.

⁴⁰ Peter Aucoin and Elizabeth Goodyear-Grant, "Designing a Merit-Based Process for Appointing Boards of ABCs: Lessons from the Nova Scotia Reform Experience," *Canadian Public Administration*, vol. 45, no. 3 (Fall 2002), pp. 301-327.

⁴¹ Nova Scotia. Premier's Office, *Appointment Process Improved*. (Halifax: September 10, 1999).

⁴² Peter Aucoin and Elizabeth Goodyear-Grant, "Designing a Merit-Based Process for Appointing Boards of ABCs: Lessons from the Nova Scotia Reform Experience," *Canadian Public Administration*, vol. 45, no. 3 (Fall 2002), pp. 301-327.

The committee weeds out unqualified candidates and prepares a shortlist of three to six candidates. The committee, however, does not rank the candidates on the shortlist and the government's decisions on appointments are final; there is no requirement for confirmation of appointments by the human resource committee.⁴³ The URB model is significant because the advisory committee is not entirely at the discretion of the minister, and the discretion that is exercised by ministers is within the constraints of the short list established by the advisory committee. Appointments are still made by the ministers, but they must choose from the shortlist.

In January 2002, after signing a settlement in connection with a complaint of discrimination filed with the Human Rights Commission, the government committed itself to further reforms based on the following principles:⁴⁴

- The fundamental goal is to select the best candidate.
- Qualifications for a position must be stated clearly in advance and the positions must be properly advertised.
- A non-partisan advisory committee must determine which applicants are qualified and recommended, and from this list the government will determine the best candidate.
- Sufficient information on the nominees must be provided if the government's recommendation must go to the human resource committee.
- The entire process must be transparent to the public and the government must ensure that it is accountable to the public for its record of appointments.
- For adjudicative boards with quasi-judicial functions, an advisory committee must be composed of a human resource professional, two lay persons and two public servants.

B. Federal Government Appointment Processes

The federal government is responsible for appointing a variety of individuals to leadership positions within agencies, boards and commissions operating across Canada. As demonstrated by the case studies that follow, the process used to make Governor-in-Council appointments varies considerably across organizations. In some cases, the minister's office and the Prime Minister's Office maintain control over the selection and appointment process with very little input from the existing board of directors. In other cases, the board plays a key role in developing a list of candidates that meets the needs of the organization. In these instances, the minister makes an appointment from the list of candidates provided by the board. A third model is the use of an independent committee that develops a short list of candidates for presentation to the minister.

⁴³ Ibid.

⁴⁴ Peter Aucoin and Elizabeth Goodyear-Grant, "Designing a Merit-Based Process for Appointing Boards of ABCs: Lessons from the Nova Scotia Reform Experience," *Canadian Public Administration*, vol. 45, no. 3 (Fall 2002), pp. 301-327. Ibid.

Each appointment process has its inherent strengths and weaknesses. At the core of each model is the recognition that the minister and prime minister are ultimately accountable to the public for the appointment. However, these two individuals are far removed from the actual workings of the boards of directors under their purview. As such, it is often the current board that is in the best position to identify and recommend candidates that meet the needs of a particular organization. It is this reality that underscores the delicate balance that those responsible for Governor-in-Council appointments must appreciate.

The federal organizations participating in this case study represent both traditional boards of directors as well as quasi-judicial boards. Atomic Energy of Canada Limited has evolved in recent years from an appointment process controlled by the responsible minister, the Prime Minister's Office and the Privy Council Office to one that seeks the input and involvement of the board. The Canada Pension Plan Investment Board is a newly formed organization whose legislation specifically provides for an advisory committee to participate in the appointment process. The Immigration and Refugee Board is a large, quasi-judicial body that employs a formal recruitment and evaluation process to appoint qualified Canadians to its board.

1. Atomic Energy of Canada Ltd.

AECL at a Glance

Canadian involvement in the nuclear industry dates back to 1942 when a joint British-Canadian laboratory was set up in Montréal, Québec, under the administration of the National Research Council of Canada, to develop a design for a nuclear reactor. Atomic Energy of Canada Limited (AECL) was established in 1952 as a Crown corporation and as of March 2003 it employed 3,600 staff in Canada and overseas. AECL is now a global nuclear technology and engineering company that designs and develops the CANDU® nuclear power reactor, as well as other advanced energy products and services. AECL supports its customers over the entire plant life cycle from R&D, nuclear services, design and engineering, to construction management, specialist technology, waste management and decommissioning.

The mandate of AECL is to create customer and shareholder value through:

- managing the Canadian nuclear platform responsibly and cost effectively;
- leveraging the technology base to deliver nuclear products and services to market; and
- paying dividends from profitable growth.

AECL's vision is:

- to be the top worldwide nuclear products and services company;
- to protect the health and safety of the public, our employees and the environment; and
- to minimize nuclear legacy obligations for future generations.

The GIC Appointment Process

Leading up to 2000, all appointments for president and chief executive officer were made strictly by the Minister of Natural Resources, the Prime Minister's Office and the Privy Council Office. A report⁴⁵ by the Office of the Auditor General in December 2000 on the governance of Crown corporations provided the government with a number of recommendations to improve the GIC appointment process. The board of AECL used the Auditor General's report as the impetus to recommend to the government a new method to appoint a replacement for the soon-to-retire chief executive officer. The board recommended that a search committee of the board be established to interview potential candidates and make a recommendation to the government, ranking the top candidates in order of preference and suitability. There was some reluctance on the board to engage in this process as the government had not taken the board's recommendations into consideration in the past. However, to the surprise and appreciation of all directors, the government was open to recommendations and listened to the input provided by the board. In the end, three candidates were recommended to the government and the individual identified as the board's first choice was appointed to the position of chief executive officer.

The auditor general's report also encouraged the board to undertake a profiling exercise to identify the skills and expertise it requires on the board to effectively lead the organization. The exercise focused on the skills currently represented among board members versus the skills needed in the short and medium term. A resulting profile was developed after consultation with the board, the minister, PCO and management, and forwarded to the minister. It was accepted as a template for future appointments. Based on the profile, the core attributes, competencies and experience required by directors include the following:

- Be comfortable working within the international marketplace and contributing to the organization's activities in that arena.
- Be able to work with management on decisions and strategies involved with guiding research and development activities and introducing new technology into the marketplace.
- Be capable of providing wise and thoughtful advice based on sound business experience and judgment.
- Be comfortable questioning management at the strategic level on an informed basis so as to help shape the approach to complex issues.
- Demonstrate high ethical standards and integrity.

The profile also identifies the following specific skills, knowledge and experience which would be of assistance to the corporation:

⁴⁵ Canada. Auditor General of Canada, Report, chapter 18, *Governance of Crown Corporations*. (Ottawa: December 2000).

- international experience;
- industry knowledge (power/regulation, knowledge of key players and participants);
- financial acuity;
- deal structuring background;
- understanding technology;
- shareholder/public policy familiarity;
- project management; and
- identifying and assessing risk.

A balance of both geographic and gender equity among board members is also recommended.

In general, the board profile has been an effective tool in the selection process for new directors. The minister has been very cooperative in asking for recommendations from the board, and the board has been active in looking to fill the gaps identified through the profiling exercise. To date, personnel search firm has not been used to fill board positions. Rather, directors use their extensive networks to recommend individuals to the board. The advantage of this process is that potential candidates are personally known by at least one director and reference checks are a secondary exercise.

Performance Assessment

On a confidential basis, the board annually surveys its members as to the efficiency and functioning of the board and its committees. Over the past three years, the board has used a questionnaire to evaluate the overall operation and functioning of the board. The responses are unattributed and data are submitted to the Human Resources and Governance Committee for analysis and presentation to the board. Board processes and senior management interaction with the board are amended as necessary to respond to the comments made by the board through the questionnaire.

2. Canada Pension Plan Investment Board

CPP Investment Board at a Glance

The Canada Pension Plan (CPP) Investment Board is a professional investment management organization based in Toronto. Its purpose is to invest funds received from the Canada Pension Plan in a way that maximizes returns.

The CPP Investment Board was incorporated as a federal Crown corporation by an Act of Parliament in December 1997 and its first investment was made in March 1999. The mandate of the Investment Board is set out in its legislation, the *CPP Investment Board Act*:

- to invest in the best interests of CPP contributors and beneficiaries; and

- to maximize long-term investment returns without undue risk of loss, taking into account the factors that may affect the funding of the Canada Pension Plan and its ability to meet its financial obligations.

The Investment Board operates independently of the Canada Pension Plan and at arm's length from the federal and provincial governments, which were jointly responsible for the creation of the Plan.

The GIC Appointment Process

The GIC appointment process for the CPP Investment Board results in the selection of 12 directors to the board (including the chair). Each director is appointed for a term of three years and is eligible to be reappointed twice for a maximum of three terms (nine years of service), but the chairperson can serve a fourth term as a director. The founding directors were appointed in October 1998 and at that time the first chairperson was selected in consultation with the provinces and with the members of the board of directors.

Directors are appointed by the federal finance minister in consultation with the participating provinces, and with the assistance of a nominating committee. The federal government appoints the chair of the nominating committee, and each participating provincial government appoints one representative. The role of the nominating committee is to recommend candidates for appointment and reappointment to the federal finance minister who, in turn, makes the appointments in consultation with the provincial finance ministers.

The use of a nominating committee is designed to ensure that individuals with expertise in investment, business and finance are appointed to the board. The nominating committee structure is mandated through the *CPP Investment Act* and so is a mandatory process for each appointment or reappointment to the board. Factors for consideration in the appointment process include the desirability of having directors who are representative of the various regions of Canada and having a sufficient number of directors with proven financial ability or relevant work experience.

In addition to the mandatory process described above, the chair of the nominating committee consults both the chair of the board and the chair of the governance committee to solicit feedback regarding new appointments and reappointments. The inclusion of the chair of the governance committee in addition to the chair of the board is designed to ensure that input from the board is garnered from a variety of sources.

Consultation with the chair of the board and the chair of the governance committee provides an opportunity to identify the expertise and experience that it requires of new directors in the coming years. While the nominating committee is governed by a standard set of competencies developed through federal-provincial consultation, the board also provides the committee with a written submission describing the specific competencies it requires to address gaps in the current board or to complement current board

competencies over and above the standard competencies that are used for each appointment.

Although the minister maintains final authority over board appointments, in practice, board appointments have been drawn from the list presented by the nominating committee.

The success of the current GIC appointment process is predicated to a certain extent on the judgment of the chair of the nominating committee. The current chair recognizes the need for independent directors and is open to suggestions from the board regarding priority backgrounds. However, consultation with the board is not mandated through the enabling legislation and the ability of the board to contribute to the appointment and reappointment of directors could be lost upon the selection of a different nominating committee chair.

Performance Assessment

The performance assessment framework for the board of directors follows a two-phase approach: (1) the board as a whole participates in a self-assessment; and (2) each individual director undertakes a peer evaluation.

The board self-assessment is led by the governance committee and consists of a questionnaire that investigates various aspects of board performance. The results of the questionnaire are sent to an industrial psychologist who collates the information and provides the board with a summary and analysis. The board uses this feedback to modify and improve its practices.

The peer evaluation provides an opportunity for each director to individually assess the performance of all other directors. In a manner similar to that of the board self-assessment, each director responds to a questionnaire that evaluates the performance of his or her peers. The information is collated and summarized by the industrial psychologist and is provided only to the person being evaluated. The anonymity and confidentiality of this process allows for personal development among directors. Upon receipt of individual feedback, directors can approach the psychologist or the chair if they require more in-depth information or require assistance in developing an improvement strategy.

The final question of the peer evaluation asks whether or not the director should be reappointed. The responses to this question are sent to the nominating committee for use in its deliberations regarding reappointment. This provides the nominating committee with important input into the performance of directors while also maintaining the confidentiality of the boardroom. Although no director has been denied reappointment as yet, the process is in place to ensure power is more evenly distributed among the chair and the directors.

3. Immigration and Refugee Board

IRB at a Glance

The Immigration and Refugee Board (IRB) is Canada's largest independent administrative tribunal. It is responsible for making well-reasoned decisions on immigration and refugee matters, efficiently, fairly and in accordance with the law. The IRB decides, among its responsibilities, who among the thousands of claimants who come to Canada annually need refugee protection.

Citizenship and Immigration Canada (CIC) has the overall responsibility for immigration and refugee matters. CIC determines claims for refugee protection made abroad at Canadian embassies and consulates. It is responsible for selecting immigrants, issuing visitors' visas, granting citizenship and removing people from Canada. It is also CIC that determines if a refugee protection claim should be referred to the IRB for a determination. The IRB reports to Parliament through the Minister of Citizenship and Immigration, but the IRB remains independent from CIC and the minister.

The IRB's enabling legislation is the *Immigration and Refugee Protection Act*, which was enacted on November 1, 2001 and implemented on June 28, 2002. The IRB's mandate is found in Part 4 of the new legislation. As an independent tribunal, the IRB's mandate is to:

- Determine claims for refugee protection made in Canada;
- Conduct admissibility hearings and detention reviews; and
- Hear appeals of sponsorship refusals, removal orders, permanent residents who have not fulfilled their residency obligations, and appeals by the Minister of Citizenship and Immigration from decisions made in admissibility hearings.

The GIC Appointment Process

The Governor in Council appoints members to the board, currently numbering 225. Appointments are made in accordance with the procedures of the Ministerial Advisory Committee established in March 1995. A process has been put in place by the committee to ensure qualified candidates from all walks of life are selected to serve on the IRB. The screening process includes the following steps:

- initial screening;
- written test;
- reference check; and
- interview.

The Committee uses a competency-based approach to assess candidates. Candidates must demonstrate that they possess the following competencies:

- analytical reasoning and thinking skills;
- decision-making and judgment;

- action management;
- communication skills;
- interpersonal relations; and
- professional ethics.

The Ministerial Advisory Committee Secretariat manages the screening process. A private human resources firm is hired by the Secretariat to conduct the reference checks, mark the written tests and facilitate the interviews.

The initial screening process ensures each candidate has a degree from a recognized university or equivalent professional qualification and a minimum of five years of professional experience. Candidates who pass the initial screening are invited to participate in a written test administered by the Committee Secretariat. The testing process evaluates a candidate's communication skills, analytical reasoning and thinking skills, decision-making and judgment, and action management. All candidates must pass the written test in order to continue in the screening process.

Candidates are then asked to provide two character references. These two references must be fairly recent – within two years of application date – in order to provide up-to-date information on the candidate. In a telephone interview, each reference is asked to report on past achievement and performance.

Once a candidate passes through the initial screening, written test and reference check, a member of the committee interviews the candidate with a focus on the competencies listed above. After the interview is complete, the screening results of several candidates are compiled and provided to each member of the committee. At this point, the committee meets to review the results and to allow each member an opportunity to provide recommendations. The committee then deliberates, votes on proposed candidates, and presents an inventory of qualified candidates for consideration by the minister of CIC. Although the minister has the authority to appoint from outside the inventory, to date selections have always been made from the list provided by the Ministerial Advisory Committee.

Approximately 20 appointments and 40 reappointments are made each year. Initial appointments last three years, with the potential to serve a second five-year term and a third term of two years. The IRB complement was temporarily increased by 20 members to assist with the backlog of cases in Toronto.

Members' Performance Appraisal

In 1990, the IRB became one of the first federal tribunals to formally appraise the performance of its decision-makers. Since then, the board has continued to strengthen its formal evaluation process. In January 1999, the chairperson of the IRB announced the establishment of a Performance Review Program that includes an enhanced formal performance appraisal process and a Performance Review Committee. Further enhancements to the program were introduced in June 2001. The Performance Appraisal

Program focuses on member development and provides a closer link between the annual appraisal and learning support.

Although reappointments to the board are the prerogative of the Governor in Council, the minister of Citizenship and Immigration Canada takes into consideration the performance of members over the period of their mandate.

The Performance Appraisal Program is designed to foster and maintain the highest standards of performance, provide a forum for the sharing of experiences and recognize the positive contributions of members. In addition, it provides an opportunity to review past performance, identify areas where professional development may be needed, and provide a basis for the member's continuing tenure with the board.

The following elements are considered in evaluating the performance of members:

- general knowledge;
- case preparation;
- conduct of hearings;
- decision-making and reasoning;
- professional development;
- compliance with the Members' Code of Conduct; and
- other aspects of performance.

This revised performance appraisal approach, and the resulting learning plans, will further advance a continuous learning environment at the board.

Members' Professional Development Program

The IRB has implemented a comprehensive training program managed by three full-time professional development staff. At the time of hiring, appointees participate in a three-week training program focusing on both substantive and procedural topics. In addition, they receive extensive training and reference materials.

The program for newly appointed members provides for a six-month individualized learning plan following the three-week classroom training session. Newly appointed members are assigned a professional development team (an experienced member acting as a mentor, a legal advisor and a professional development advisor) that provides information instruction and feedback on all aspects of their role as decision-makers. This on-the-job learning program has been designed with a flexible infrastructure to focus on the new member's individual learning needs.

C. International Appointment Processes⁴⁶

Australia

The prime minister and the cabinet control appointments to the following types of organizations: boards; commissions; statutory offices; agencies; non-statutory tribunals; advisory bodies; and commissions of inquiry. As of March 2003, there were 2,100 full-time and part-time appointees serving in significant bodies.

The process for clearing proposed appointments to significant public offices is the responsibility of the cabinet secretariat in the department of the prime minister and the cabinet. Appointments are referred to the prime minister, but at his discretion are usually referred to the cabinet for consideration. They are subsequently approved by the relevant minister, or as the legislation provides, the Governor-General.

The methods for the selection of a candidate are left to the discretion of the ministers. However, ministers are asked to consider the benefits of advertising or employing a professional agency to broaden the field of potential candidates. The Cabinet Handbook does not provide detailed guidelines on how candidates are to be selected or shortlisted, but it does draw attention to the need to avoid conflicts of interest and to encourage diversity of public appointments.

Appointments are based on the merit principle to ensure that vacancies are adequately published, that assessments are made against realistic standards, that there is no discrimination and that candidates are ranked on the basis of their assessed abilities. There is currently no independent body responsible for monitoring, regulating and approving appointments.

New Zealand

There are approximately 400 boards and agencies to which the government makes regular appointments, with between 2,500 and 3,000 members. The majority of appointments are made pursuant to some statutory authority. The responsibility for appointments rests with the individual minister, the Governor General acting on the advice of a minister, or the Governor General in council acting on advice of the executive council (the prime minister, 20 cabinet ministers and six ministers outside of cabinet).

Appointments with political or national significance go through the cabinet system. The Cabinet Appointments and Honours Committee, chaired by the prime minister and composed of senior ministers, considers proposed appointments. The decisions of the committee are then confirmed or amended by cabinet.

⁴⁶ Information was obtained from: Canada. Privy Council Office, *Practices for Appointing Senior Officers to Government Organizations in Other Countries: Government response to recommendation number ten of the Fifteenth Report of the Standing Committee on Public Accounts*. (Ottawa: March 2003).

As the responsibility for appointments rests with individual ministers and departments, there is no single prescribed appointments process. The appointing agency and the board concerned can tailor the process to meet their own needs. However, all processes must meet the relevant statutory requirements. The process can range from advertising, using search consultants and interviewing to simply having the minister seek nominations from his or her colleagues. Despite the range in the selection process, officials and ministers do receive a large amount of general guidance when conducting appointments.

There is no central appointments unit; oversight of appointment matters is provided by the Cabinet Appointments and Honours Committee. As well, the Cabinet Office, State Services Commission, and the Crown Company Monitoring and Advisory Unit provide an overview function.

The appointment process of senior officials in New Zealand provides a means of neutralizing the power of the prime minister.⁴⁷ The States Services Commissioner makes recommendations for appointment of senior officials not to the prime minister but to cabinet. As well, the process involves a full and open competition, for should the recommended appointee be rejected, the reasons as well as the name of the rejected individual have to be publicly stated. The States Service Commissioner is appointed by the prime minister, but can only be dismissed by the governor general following a resolution of the legislature.

United Kingdom

All public bodies in the United Kingdom are attached to a sponsoring government department, but they do not form part of the sponsoring department. As of March 2003, there were 834 public bodies sponsored by government and a total of approximately 22,000 public appointees serve on these bodies.

Appointments to nationalized industries, public corporations and non-departmental public bodies (NDP) are made by the responsible minister, in some cases after consultation with the prime minister. However, appointments for all chairs and non-executives of national health services bodies (NHS) are now made by the NHS Appointments Commission, and not the health ministers. The Commission consists of a chair, a chief executive and eight regional commissioners.

Vacancies to fill chair positions, positions that are paid, positions with a high profile or that have the responsibility for managing significant public funds must involve an appropriate form of advertising. The government department places advertisements for public appointments in various national, local and specialist presses. Some departments are also placing advertisements on their Web sites.

⁴⁷ Herman Bakvis. "Prime Minister and Cabinet in Canada: An Autocracy in Need of Reform?" *Journal of Canadian Studies*, vol. 32, no.4 (Winter 2001), pp 60-79).

In March 2003, the Public Appointments Unit (PAU) in the cabinet office launched a new public appointments opportunity Web site.⁴⁸ The Web site provides details of vacancies in England and for public bodies that operate throughout the United Kingdom. The Web site allows the public to obtain information on current and prospective public appointment vacancies across all departments.

To ensure that appointments are made on merit following a fair, open and transparent procedure, appointments are monitored by an independent Commissioner for Public Appointments. The Office of the Commissioner for Public Appointments (OCPA) was established in 1995, with the goal of making public appointments more transparent and consistent across departments. The commissioner is appointed by the Queen and is independent of both government and the civil service.

The role of the OCPA is to regulate, monitor, report and advise on ministerial appointments. The Commissioner for Public Appointments audits appointments to ensure compliance with the principles of the Code of Practice. These principles include ministerial responsibility, merit, independent scrutiny, equal opportunities, probity, openness and transparency, and proportionality. Departments are required to document stages of the appointment processes, and the information must be stored for a minimum of two years. The Commission, in addition to routine audits, may ask independent auditors to carry out ad hoc audits.

United States of America

The President of the United States of America is responsible for approximately 4,000 appointments; 700 of these positions require Senate confirmation, such as members of the cabinet and subcabinet, ambassadors and members of key regulatory advisory boards. The Assistant to the President for Presidential Personnel, with a staff of 25 people, assists the president with appointments.

Any American citizen wanting to apply for a non-career position in the executive office of the president or a federal department, agency or commission must submit an application online at the official White House Web site, because vacancies are not advertised in newspapers or specialty publications. Potential candidates may be identified from the database and/or through informal networking with policy people, senators, governors and governors' chiefs of staff.

There are no formal selection committees conducting interviews, but close attention is paid to why the individual wants to serve and if the person has the skills, expertise and the right temperament for the job. The top three candidates are invited to Washington for an interview. After the successful candidate has been identified, a recommendation from the Assistant to the President for Presidential Personnel and/or staff goes to the president for approval.

⁴⁸ The Web site is hosted by the Department for Work and Pensions:
<http://www.publicappointments.gov.uk>

As mentioned previously, Senate confirmation is required for some of the president's appointments. They include positions throughout the federal government (e.g. deputy secretaries, assistant secretaries), positions in cabinet and subcabinet (e.g. secretaries and under secretaries), in regulatory commissions and numerous advisory boards, as well as ambassadorships and judgeships.

Once the nominations have been endorsed by the president, the names of candidates are sent to the responsible Senate committee for nominations. The Senate committee reviews both the FBI background checks and the conflict of information disclosures conducted on the candidates. Additional information may also be requested from candidates. Subsequently, each nominee is called for a hearing at which time members of the Senate committee will have the opportunity to ask questions of the candidate. An approved nomination will then proceed to the Senate to be voted on. Once the majority of the Senate votes in favour of the appointment, the nomination is finalized. For appointments that are not passed by the Senate, the nomination goes back to the president through the Assistant to the President for presidential personnel and a decision is made either to put the name through the process again or to identify a new candidate.

Currently, there is no independent body in the United States that oversees the appointment process.

Section 2: The Private Sector Best Practices

A first glance, a comparison of the public sector Governor-in-Council appointment process and the private sector appointment of directors may seem unhelpful. However, upon closer inspection there are a number of similarities between the two models that promote an interesting dialogue on sharing lessons across sectors.

In the private sector, the shareholder holds the final vote as to who sits on the board of directors. However, in order for an individual to reach the point of being recommended to shareholders, he or she is generally closely examined by a committee of the board. As such, the analysis of potential candidates undertaken by private sector boards follows a similar approach to public sector appointments. The private sector boards that participated in this case study use board of director profiles to ensure the necessary knowledge, skills and experiences are represented by board members. The size of private sector boards has diminished in past years and as a result, organizations place a premium on ensuring the right people are placed in leadership positions.

Although private sector boards do not necessarily experience the same public scrutiny as their public sector counterparts, directors of private sector boards are only elected on a one-year renewable term and must answer to shareholders each year at their annual general meetings.

Compared to public sector organizations, private sector boards seem to excel in the area of performance assessment. Private sector boards have implemented performance assessment tools at both the board and individual levels for a number of years. These tools are generally administered in the form of a questionnaire completed on an anonymous basis. The BMO Financial Group is one example of a board that diligently assesses its performance and incorporates changes into its operations as a result of feedback from directors. While public sector boards are beginning to adopt these practices, there is less consistency across organizations and many boards are just beginning to incorporate performance assessment processes on a regular basis.

The Public Policy Forum chose BMO Financial Group and Encana Corporation as examples of private sector best practices in corporate governance. BMO Financial Group has been recognized as a leader in corporate governance. The Bank has been the recipient of numerous national and international awards for corporate governance, such as the 2001 National Award in Governance. In 2002 the Alberta Energy Company Ltd. and PanCanadian Energy Corporation merged to create one of the world's largest independent oil and gas companies. This created the opportunity to examine the new structure of the board and its corporate governance system.

1. BMO Financial Group

BMO Financial Group at a Glance

Founded in 1817 as the Bank of Montreal, today BMO Financial Group is a highly diversified financial services provider. It offers clients a broad range of personal, commercial, corporate and institutional financial services across Canada and in the United States through BMO Bank of Montreal, BMO Nesbitt Burns, Harris Nesbitt and its Chicago-based subsidiary, Harris Bank.

The Board Appointment Process

BMO Financial Group has a board composed of 14 directors who are not affiliated with the bank and one inside director with the title of chairman and chief executive officer. In recognition of the inherent conflict in having one individual serve as both CEO and chairman of the board, the bank has created the position of lead director. The lead director is responsible for many of the duties normally associated with the office of the chair.

This governance model has evolved over the past 30 years. In the past, the board has been as large as 54 directors in an effort to be regionally representative and to represent the various activities of the bank. However, over time it was recognized that a smaller board would encourage more meaningful discussion and participation by members.

The bank uses its governance committee as the lead body in managing the recruitment of new directors to the board. This responsibility is outlined in the written mandate of the

committee. The committee is chaired by the lead director and is made up of four members in total, all of whom are outside directors who do not work for the bank. In managing the recruitment process, the committee follows a three-phase process:

- A detailed board profile is developed that identifies the competencies that are deemed necessary for the continued success of the organization. Directors of a bank require an intimate understanding of economics and finance in order to make a meaningful contribution to the business of the board.
- A list of the skill set of the current directors is developed and compared to the competencies that are deemed necessary. This allows the committee to identify the skills that require replacement due to retirements or would be helpful to the board in the future.
- An evergreen list of prospective directors is maintained that contains the names of 25 to 30 individuals who could potentially be recruited to sit on the board. This list of names is developed by canvassing the senior managers of the bank in both Canadian and international positions, as well as the current directors. The individuals who are suggested to the committee are reviewed for eligibility to ensure there is no conflict with a competing business or any board on which they sit. Once eligibility is established, a biography is prepared for each individual added to the evergreen list. The list is reviewed by the governance committee three times a year and is continually updated. In general, the bank looks to recruit CEOs who have both business literacy and financial expertise.

Based on the above process, the governance committee recommends to the board a slate of directors for each annual meeting. The board reviews and approves the suggestions of the committee and the list goes forward to shareholders at the annual meeting. Shareholders receive a biography of each candidate as well as his or her attendance record for the past year where a reappointment is sought.

It is estimated that directors living in the Toronto area must commit 20 to 25 days a year to properly attend to board business. Those individuals living outside of the Toronto area require up to an additional 10 days for travel. Not surprisingly perhaps, the significant amount of time expected of directors has a negative impact on the board's ability to recruit candidates. This is especially true of individuals residing in the United States. While the board would like a greater number of American representatives, the travel and time commitments are significant, the pay differential in Canada compared to banks in the United States is considerable, and the recognition an individual would get for sitting on the board of a Canadian bank is low.

Performance Assessment

The performance of the board as a whole and each individual director is assessed on an annual basis. The peer review process requires each director to anonymously complete a survey. The survey is based on the list of competencies required of directors and each

director is assessed against each competency and rated on a five-point scale. The surveys are submitted to an outside consultant who compiles and analyzes the data. Each director receives his or her own report card and the lead director and the board receive the composite data on how the directors fared on each question.

In addition to the peer review process, the directors undertake a governance survey to assess the operations of the board and the performance of the lead director. In a manner similar to that followed by the peer review process, directors anonymously respond to a survey that is then submitted to an outside consultant. The consultant collates and analyzes the data and provides the board with a report concerning its overall performance. This process has proven to be a wonderful tool for improving the operations of the board. For example, one year the results indicated that board members felt they were not getting enough exposure to the next generation of senior managers within the bank. At the time, the board interacted with the top six executives but not through to the top 20 executives in the bank. In order to remedy this shortfall, the board arranged for presentations to be made by different people to allow directors to interact with a broader cross-section of executives. In addition, dinners were organized to provide directors with an opportunity to get to know second-level managers.

2. EnCana Corporation

EnCana at a Glance

EnCana was formed in 2002 through the integration of two North American oil and gas explorers and producers, Alberta Energy Company Ltd. and PanCanadian Energy Corporation. EnCana is one of the world's leading independent oil and gas companies with an enterprise value of approximately C\$30 billion. EnCana is the largest producer and landholder in Western Canada and is a key player in Canada's emerging offshore east coast basins. Through its U.S. subsidiaries, EnCana is one of the largest gas explorers and producers in the Rocky Mountain states and has a strong position in the deepwater Gulf of Mexico. The company has two key high potential international growth platforms: through its international subsidiaries, EnCana is the largest private sector oil producer in Ecuador and is the operator of a large oil discovery in the U.K. central North Sea. The company also conducts high upside potential New Ventures exploration in other parts of the world.

The Board Appointment Process

The board of EnCana is composed of 16 directors, 15 of whom are unrelated to the organization. EnCana's president and CEO is the only board member who is also a member of the corporation's management. The nominating and corporate governance committee is responsible for identifying individuals qualified to become board members and recommending nominees for election. Each director is appointed for a one-year renewable term that is restricted only by the mandatory retirement guidelines.

The committee itself formulates criteria for candidates and establishes procedures for approaching prospective candidates. Within this process, current board members are canvassed for suggestions and recommendations. When necessary, a professional search firm is employed to develop a list of candidates. Consideration is given to the appropriate size of the board, the scope of business, and the governance activities necessary to effectively perform the boards functions.

It is within the mandate of the nominating and corporate governance committee to ensure the proposed candidates meet the needs of the board. In this respect, a set of guidelines for board members has been developed but no specific criteria have been identified with respect to gender or regional representation. The committee looks for expertise in the oil and gas industry and a broad understanding of the finance industry.

With the approval of the board, a slate of recommended directors is put forward at the annual meeting for election by the shareholders. Through the proxy information circulars, each shareholder receives information on the nominees, their principle occupations, and their board and committee experience. This information provides shareholders with a feel for the business background and expertise of each nominee.

Performance Assessment

The NCG committee on a periodic basis assesses the effectiveness of the board, the committees of the board and the contributions of individual members. As well, the committee is responsible for the orientation and education of new board members and continuing development of existing board members. The feedback provided by the performance assessment process is used by the non-executive chairman of the board and by committee chairs to improve the effectiveness of board operations.

Section 3: The Voluntary Sector Best Practices

The voluntary sector organizations participating in this case study have implemented a range of recruitment and appointment models with respect to their boards of directors. In all cases, an independent committee is tasked with managing the nomination and election process. Nominations are solicited either directly from members or from membership associations. However, the organizations differ in where final decision-making authority rests. For example, the nominating committee of the Canadian Cancer Society collects the nominations from each division and then makes its selection from the pool of candidates. Confirmation of the decision is communicated to members, but no voting opportunity is afforded to the membership at large. In contrast, both the YWCA and Oxfam Canada require a director to be elected by voting members. In the case of the YWCA, a nominating committee solicits calls for nominations and conducts interviews with potential candidates. The committee then recommends a slate of candidates to members at the annual meeting and a vote is taken to accept or reject the recommendation. Oxfam Canada follows a similar call and nomination process but then

allows members to vote individually for each candidate through a secret mail-in ballot process.

In a manner similar to public and private sector experiences, voluntary sector organizations also develop board profiles to ensure that proper representation is achieved in terms of skills and abilities. Voluntary sector boards are also similar to their public sector counterparts in proactively creating boards that reflects the diversity of the Canadian population in terms of race, age, language and other traits. Both public and voluntary sector experiences show that they are much farther ahead than private sector boards in recruiting individuals from a wide cross-section of the Canadian population.

1. Canadian Cancer Society

Canadian Cancer Society at a Glance

The Canadian Cancer Society focuses its activities in the area of cancer control to actively prevent, cure or manage cancer. It focuses its work on five areas:

- **Research:** The Canadian Cancer Society is the largest charitable funder of cancer research. The research dollars are allocated by the National Cancer Institute of Canada through a strict review process that ensures that the money contributed by the Canadian Cancer Society is directed only to excellent cancer research across Canada.
- **Advocacy:** The Canadian Cancer Society works to influence systemic change with regard to tobacco, prevention, coordination of cancer control, research and research issues and health reform. Working for change at the societal level will lead to fewer cases and deaths from cancer.
- **Prevention:** The Canadian Cancer Society makes every effort to provide Canadians with the information and help needed to make healthy lifestyle choices. It believes, however, that the burden of choice should not solely rest with the individual. Prevention is about systemic or societal choices, so the Society works to influence public policy.
- **Information:** The Canadian Cancer Society helps Canadians take control of their health with reliable information. Through the *Cancer Information Service*, www.cancer.ca, and a wide selection of publications, it offers up-to-date, accessible and credible information – information that empowers individuals to make good decisions.
- **Support:** The Canadian Cancer Society believes that no one need face this disease alone. As a result, it offers individual or group support programs for caregivers, family and friends.

The Board Appointment Process

The Canadian Cancer Society has 18 board members with terms ranging from one to three years. The board follows the John Carver policy governance model which focuses

on a values-based foundation for discipline, a framework for precision delegation, and a long-term focus on what the organization is as opposed to what it does.

The Cancer Society uses a National Council to lead the board appointment process. The National Council is made up of the presidents of each provincial division, the volunteer president of the national organization as well as the past president and president elect (if there is one). A call for nominations is distributed to each division in February of each year. Each division can put forward its own nominations for representatives, up to a total of three. Nominations are reviewed by the National Council in the spring and a final decision is made based on an analysis of the needs of the board. The framework of analysis used by the board looks at the skills it has versus the identified gaps. This exercise helps to prioritize the needs of the board for the following year. Once a board position is confirmed by the National Council, a notice is sent out to the membership. However, no voting opportunity is provided.

In theory, this system is effective. In reality, however, divisions often put forward only one nomination. As such, the board positions allocated to each division are not a result of an evaluation by the National Council but are rather a confirmation of an individual's nomination. Only those positions designated as member-at-large benefit from a more strategic evaluation of the needs of the board versus the skills and expertise of the candidates.

Commitment to the mission of the Canadian Cancer Society is the top priority for board positions. Following this, board members require an expertise/credibility related to cancer and cancer research, governance, financial management, marketing and fundraising. Reference checks are performed for each candidate that focus primarily on the individual's history as a board member in other organizations and his or her contribution to those boards.

Performance Assessment

The board has recently initiated an annual self-appraisal process that evaluates the performance of the board as a whole. This process is still underway and a move toward developing individual appraisals is being considered.

2. Oxfam Canada

Oxfam Canada at a Glance

Founded in 1963, Oxfam Canada is a non-profit international development organization that supports community programs in food security, health, nutrition and democratic development with an emphasis on working with women. It is a member-based organization. Members help to formulate its direction, participate in governing bodies and elect representatives to the board of directors. Oxfam Canada is one of the 12 Oxfam organizations around the world that form Oxfam International, which tackles the root causes of poverty, social injustice and inequality.

Oxfam Canada's mission is based on a commitment to the equitable distribution of wealth and power through fundamental social change. It works in relationships of solidarity and partnership to eradicate poverty, underdevelopment and powerlessness. Oxfam Canada is engaged in a development process that recognizes the imperative of social justice, a sustainable environment and the equality of all people.

The Board Appointment Process

Oxfam Canada's directors are considered trustees who act on behalf of all the organization's constituents, including service recipients, donors, volunteers and members. The board totals 12 individuals who are elected based on the following breakdown: five directors are elected to represent each of the five geographical Canadian regions; three directors are members at large; one director represents the youth members across Canada; one director is the staff representative; the executive director is an ex officio member; and the chair is elected by the board either from within its own ranks or from outside of the board. Directors serve a three-year term with a three-term limit.

Oxfam Canada endeavours to ensure the board is reflective of Canada's diversity and provides a balance of skills among its members. These include knowledge of international development, finance, law, contacts within the Canadian social movement/solidarity networks, and the ability to motivate and stimulate volunteer development.

The nomination process is led by an Elections Committee that is made up of two representatives from each region. The committee communicates with the membership to invite nominations and to identify the qualities sought by the organization. At the most basic level, a candidate must be a member of Oxfam Canada and must be nominated by two members in order to be eligible to become a director. In addition, the committee seeks candidates who meet some of the following criteria:

- knowledgeable about and committed to Oxfam Canada and its mission;
- experienced in policy development and in setting the strategic direction of an organization;
- experienced in or knowledgeable about governance of non-profit organizations and policy boards;
- a team player with good collaborative skills, able to build consensus out of diversity;
- prepared to support, with staff guidance, fundraising for Oxfam Canada;
- available for two weekend in-person board meetings per year and to participate regularly in reviewing and providing advice on policy matters concerning Oxfam Canada.

Once the nominations have been compiled by the committee, a package is sent to all members with short biographies of all candidates and their reasons for wanting to sit as directors of the board. Also included is a ballot to allow each member to vote for

candidates. The ballots are returned via mail and counted to determine the results of the election.

Performance Assessment

The performance of the board of directors as a whole was assessed for the first time one year ago. A questionnaire was used and the results were compiled and discussed by the board. The performance assessment is a new tool for Oxfam Canada and it is seen as a valuable method for obtaining feedback on the performance of the board and to ensure it is maximizing its value to the organization. It is anticipated that the performance assessment will continue on an annual basis.

3. YWCA

YWCA at a Glance

The YWCA of Canada is a national organization supported by member associations working in over 200 communities across Canada. It was established by its members to serve as the national coordinating body for the YWCA movement in Canada. A key role is to provide support services to its members to help them achieve optimum quality, effectiveness and efficiency in their activities.

The national board of directors is a mission-driven policy governance board that has the responsibility to provide strong leadership and good governance for the YWCA of Canada. The board on behalf of member associations and women and girls in Canada governs with a strategic feminist perspective, as expressed in the mission. To achieve this end, the board undertakes the following tasks:

- directs and leads the YWCA of Canada;
- makes strategic decisions focused on vision and outcomes;
- monitors the performance of the CEO in fulfilling the strategic plan, board policies, and annual expectations; and
- ensures the effective operation of the board, its officers, and committees.

The Board Appointment Process

The YWCA has a 15-person board of directors who sit for a four-year term with the possibility for re-election if the individual holds an executive position. The nomination of directors to the board is managed by a nominating committee that is currently composed of six members. The co-chairs of the committee are members of the board of directors and the remaining five individuals are elected from the membership at large. The current practice is to have co-chairs of the nominating committee in order to ensure that at least one member has experience—this builds in an opportunity for succession planning. Members of the committee serve a four-year term renewable for one additional term. The president and the executive director of the YWCA are also *ex officio* members of the nominating committee and act as a bridge between the committee and the organization.

Nominations to the board may be made by member associations or by members of the national board of directors. In addition to sourcing done by member associations and the national board, the nominating committee actively recruits from within the YWCA movement. Each nominee must receive at least two written nominations in order to be eligible to submit a nomination to stand for election. Standing for election implies the support of the membership. In fact, interviews are conducted by the committee and not everyone who submits a valid nomination is actually presented on a slate for election. A nomination is valid when a candidate is nominated by two member associations, or one member association and one member of the board of directors.

When issuing the call for nominations, the committee distributes packages to both nominators and nominees. The nominator's package contains information on rules governing nominations, a list of current board members and their terms, information on choosing good candidates, a nomination form and questions for the nominator. The nominee's package includes a list of the responsibilities of the national board, a list of the expectations of board members, a nominee information form and a nominee agreement form.

The YWCA is particularly cognizant of ensuring its board is representative in terms of geography, youth and diversity. The committee monitors nominations to achieve representation from all three regions of the country: East (Newfoundland, Nova Scotia, New Brunswick, Québec), Central (Ontario), West (Manitoba, Saskatchewan, Alberta, B.C., NWT). With respect to youth representation, the board is mindful of the World Council recommendation with respect to young women (under 30 at time of nomination/appointment) composing 25% of the board of directors. In addition, the board actively seeks representation of the diversity of women in Canada in keeping with the YWCA's mission and values and according to advice from the membership.

When soliciting calls for nominations, the committee provides members with a list of competencies that are required of the board. These competencies include skills and abilities as well as knowledge and awareness of the YWCA organization, its governance and decision-making structures. The characteristics are categorized below:

- Abilities
 - leadership capacity: policy development, analytical, financial, and decision-making skills
 - strong leadership and communication skills
 - ability to respect, accept, and reflect differing views and life experiences with regard to race, age, religion, sexual orientation, etc.
 - ability to work in partnership with volunteers and staff
 - ability to work with and from a women's perspective
 - ability to respond to organizational change
 - ability to work as a team member
 - ability to participate in lively, open discussions
 - ability to work from a national perspective

- Awareness
 - awareness and understanding of issues facing the YWCA of Canada
 - awareness of organizational culture and its impact on decision-making
- Representation
 - broad representation reflecting the diversity of women in Canada
 - from youth
 - from all parts of Canada
 - from both YWCAs and YMCA-YWCAs or the broader community
 - from small, medium, and large member associations

Once nominations are submitted to the committee, candidates participate in a one-hour interview and personal reference checks are undertaken. Based on the information provided through the interview process and the reference checks, as well as the documentation submitted by candidates and their nominators, and the current needs of the board/membership, the committee makes recommendations to the membership. The membership votes on the slate of candidates at the annual meeting and from there the directors are elected to the board.

There is a provision within the YWCA bylaws to have directors nominated mid-year if vacancies occur on the board. In this case the individual(s) are nominated using the same process, but the board of directors makes the final decision based on the recommendation of the nomination committee. These individuals then sit on the board for the duration of the term applicable to the vacancy and then can stand for re-election at the end of that term.

Performance Assessment

The board conducts an annual review of its performance as well as the performance of each director and the president. The activity is led by a small committee of the board that designs and distributes a questionnaire. Each director fills out the questionnaire and the results are compiled by the committee and presented to the board for assessment.

Recommendations for Reform

The current system ensures that the public can hold the prime minister accountable for the appointments that are made. This system is imposed in statute and has been the tradition in our country since its inception. However, the process feeding into the development of a short list from which the government can choose the best candidate is a critical step in making sure the appointment meets the needs of all involved parties. The potential for reform in this area is significant. The input provided by participants in this study indicates that a great deal can be done to ensure the candidate chosen meets the needs of the board, the needs of the government and the expectations of the public for a fair and equitable system.

Based on the research undertaken for this study, we recommend the following changes to the current appointment process to make the system more accountable, inclusive and evidence-based:

- 1. Establish a central clearinghouse that will serve as an independent coordinator of appointments.**

Agencies, boards and commissions are responsible for making strategic decisions and carrying out important business on behalf of the government. Appointees to their boards should be ideologically aligned with the political philosophy of the government. There is a sense, however, that political considerations in the federal government appointment process outweigh skills and competencies. With the trend toward board activism and engagement, the qualifications of an individual and the specific needs of the board should be the most important factors in any appointment.

To reduce concerns about politicization of the appointment process and to increase transparency and accountability, the government should establish an independent advisory committee that will act as a central clearinghouse for appointment recommendations to the prime minister and the responsible ministers. Other international jurisdictions and Canadian provinces have already instituted centralized appointment systems.

- 2. Engage the current board of directors in identifying skills and competencies.**

In making appointments to fill board vacancies, it is important for the government to understand the skills and capabilities the board needs. The current board is probably in the best position to advise the government on the skills and competencies required of board members, the complementary skills needed and the skills gaps to be filled with new appointments.

Current boards should be tasked to produce profiles that specify the skills and competencies required to fulfill their mandates. These board profiles should

include the skills and competencies of the current board, those required to complement the existing board and those needed in the future.

3. Promote diversity in GIC appointments.

Every reasonable step should be taken to ensure that appointments reflect the broadest possible spectrum of Canadian society. Diversity can be viewed as increasing a board's accountability to the public it serves.

As with any equity process, the institutionalization of a diversity-focused appointment process will require a fundamental reform of traditional recruitment and evaluation processes. It is important to educate those making appointment decisions on the need and value of diversity in the management of public institutions. Planning, dedicating the resources required and evaluating progress are important elements of a fair and equitable appointments program.

4. Provide training and continuing education for GIC appointees.

Newly appointed directors must be provided with adequate orientation and training in order to fulfill the responsibilities of their appointments.

Numerous studies note that the orientation that appointees receive is a critical step in ensuring good governance and in helping the individual adapt to the organizational culture and understand the norms of expected behaviour.⁴⁹ The continuing education of directors is also of importance. Better-educated directors make better directors, and in turn makes a better board.⁵⁰ However, the Public Policy Forum's own research has found that orientation and ongoing training of board members is inconsistent or non-existent in many of the boards studied.⁵¹

Effective orientation and training should be tailored to the specific needs of the board and the assessment of these needs can be determined by undertaking a corporate governance review. The Public Policy Forum's *Ten Steps to a Governance Checkup for Boards of Crown Corporations and Government Agencies* provides a helpful guide together with examples of assessment tools that can be adapted to the specific organization.⁵²

5. Assess individual and board performance.

To improve governance practices, regular assessment of a board's effectiveness and the contribution of individual directors is essential. The work of the board, its

⁴⁹ Canada. Auditor General of Canada, *Report on the Office of the Privacy Commissioner of Canada*. (Ottawa: September 2003).

⁵⁰ Richard Leblanc, "What Really Makes a Board Effective." *The Globe and Mail* (October 9, 2003), p. C3.

⁵¹ Peter Larson and Bill Neville, *Protecting the Shareholder: A Review of the Governance Structure of Canadian Crown Corporations*. (Ottawa: Public Policy Forum, September 1998).

⁵² Robert Plamondon, William Neville and David Zussman, *Ten Steps to a Governance Checkup for Boards of Crown Corporations and Government Agencies*. (Ottawa: Public Policy Forum, 2002).

committees and the individual directors should be assessed on a regular basis upon predetermined evaluation criteria.

Along with the evaluation of a board's overall performance, there is a need for individual appraisal. The combination of an individual self-assessment and a peer-assessment offers a balanced evaluation approach. Self-assessment provides a director with the opportunity to reflect on his or her performance. However, self-assessments need to be balanced by assessments from others, particularly peers. Properly conducted and followed up with action, evaluations can have an impact upon a board's effectiveness.

Evaluations provide a mechanism for the board and chair to hold each other accountable. A well-managed appraisal can increase a board's effectiveness and accountability. However, to be effective there must be clearly defined processes and commitment from individual directors, the chair and the government.

6. Provide parliamentary oversight.

The GIC appointment process should include a role for Parliament in the review of candidates **before** final confirmation by the government.

Parliament currently has the authority to review GIC appointments but seldom exercises this authority. Throughout the most recent Parliament there was much debate and discussion about the need to provide parliamentarians with more influence over government decision-making. The time is opportune to provide Parliament with a more active role in GIC appointment processes.

The action-plan of parliamentary reform proposed by prime minister Paul Martin⁵³ would enhance the role of individual MPs. Mr. Martin has indicated an interest in allowing the appropriate standing committee to review candidates before final confirmation. This would contribute to the creation of a process that ensures broad and open consideration of candidates. Nonetheless, the ultimate decision over appointments would remain with the government.

To determine which senior appointments merit public review, the prime minister advocates turning to a parliamentary committee to propose an improved yet functional approach that could be put in place in a transparent manner. The prime minister argues for a process where committees review government appointments before they are made in order to improve transparency and accountability and build public confidence in government.

⁵³ Canada. Privy Council of Canada, *Ethics, Responsibility Accountability: An Action Plan for Democratic Reform*. (Ottawa: February, 2004).

7. Vest agencies, boards and commissions with the responsibility to report on progress.

In many previous GIC reform initiatives, the onus to accept, initiate and remain solely accountable rested with the government. We believe that this top-down approach has been ineffective as implementation, including monitoring and evaluation, can be swamped by other priorities that governments face on an ongoing basis. We propose that the agencies, boards and commissions be vested with the responsibility to report on appointment process reform as a component of their annual reports. In such a scenario, the host departments, government central agencies and Parliament would be better positioned to provide oversight, to evaluate progress and, through comparison, to identify and promote best practices.

Conclusion

The purpose of this study was to enhance understanding of the current federal political appointment process and to promote debate and action on further reform initiatives.

Throughout the years, various initiatives have introduced reforms the process around GIC appointments. If the public is to have trust and confidence in the institutions to which these appointments are made, additional reforms are needed. Canadian institutions in the public, private and voluntary sectors are reforming their board appointment processes to address public, shareholder and member concerns. The lessons learned from these initiatives provide useful examples of reform measures in action.

The process feeding into the development of a short list of candidates is a critical step in the appointment process and the input provided by participants in this study indicates that the potential for reform in this area is significant. Analysis of the best practices identified through the comparative case studies of public, private and voluntary sectors indicates that measures should be taken to choose a candidate who meets the needs of the board, the needs of the government and the expectations of the public for a fair and equitable system.

Based on the research undertaken for this study, the Public Policy Forum has proposed numerous reforms to the current appointment process with the goal of making the system more accountable, inclusive and evidence based. The new prime minister has pledged to tighten government accountability and support reforms to the process surrounding government appointments, and this study should help to guide future reform initiatives.

Appendix A: Acknowledgements

In the course of the research for this study, the Public Policy Forum spent many hours interviewing experts and practitioners. In addition, many others have provided comments on various drafts prepared. The Public Policy Forum would like to thank the following people for their generous contribution of time and thought.

David Ablett

Director, Policy Development and Planning
TSX Group Inc.

Mark Asbell

Chair of the Board of directors
Alberta Labour Relations Board

Darlene Bessey

President
YWCA Canada

Penny Collette

Executive-in-Residence, Senior Fellow
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Harvard University

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Dr. Arthur Kroeger

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Hon. Marjory LeBreton

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Gerald Thomas

Executive Director
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Government of Alberta

Michael Murphy

Senior Vice-President, Policy
Canadian Chamber of Commerce

Bill Neville

Senior Advisor to the President
Public Policy Forum

Julie White

Chief Executive Officer
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