

Getting the Right Board: A Best Practice for Government Crown Corporations

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"Get the best board member you can."²

Claude Lamoureux,
ICD Fellow, 2002

Failings in Crown corporation governance have recently received considerable public attention. This article describes a highly effective nomination process for one federal government Crown corporation and suggests that it be considered a government best practice.

Crown corporations fulfill important roles in Canadian society. Part of the machinery of government, they provide services and fulfill mandates where the departmental form of organization is not appropriate. Two keys to their effectiveness are the selection of competent board members and the selection of the right chair. Because they are wholly-owned government entities, it is the responsibility of the government of the day to fill board positions and to select the chair. How these appointments are made varies widely within the federal government and it is appropriate to seek out best practices for this process.

In my view, these processes for the Public Sector Pension Investment Board (PSPIB) provide an example of best practices. The PSPIB is a federal Crown corporation established in 2000 to assist the government in financing public sector pensions for the public service, military and RCMP. It currently manages approximately \$35 billion of public money. For the fiscal year ended in March 2009, the PSPIB received \$4.4 billion from the federal government, representing contributions to the pension plans by both the employer and employees.

The Process for Appointments to the Board of Directors of the PSPIB

The nomination process is set out in the statute creating the Crown corporation (The Public Sector Pension Investment Board Act). It is designed to be open and transparent and to ensure the appointment of Directors of the highest calibre. The innovative feature is a statutory Nominating Committee chaired by a volunteer independent Chair with stakeholder representation. The government must select Board members from the list provided by the Nominating Committee. This feature was cited in a recent report by the Auditor General of Canada in a wide-ranging review of the appointment process for Crown corporations.³

The Nominating Committee is chaired by a recognized industry expert, and is composed of seven other members. These members are selected by the stakeholder advisory committees of the three pension plans for the public service, military and RCMP and by the main pensioners' association. The public service nominees usually include a senior public servant and a bargaining agent representative who are members

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² Lamoureux, Claude, *Effective Pension Governance: the Ontario Teachers' Story* (October 1, 2008). Rotman International Journal of Pension Management, Vol 1, No. 1, Fall 2008.

³ 2009 March Status Report of the Auditor General of Canada, Office of the Auditor General of Canada, Chapter 2, Section 2.36.

of the advisory committees. Recommendations for appointments to the Board are made by the Nominating Committee and are considered by the President of Treasury Board. These recommendations are backed by a thorough analysis of the needs of the Board and the skill sets and competencies of the proposed individuals. The list of names of qualified candidates contains more names than available vacancies in order to provide additional flexibility for the President. For reappointments, usually only one name is provided. The President makes a recommendation to the Governor-in-Council who makes the final decision. Appointments to the Board are Governor-in-Council appointments which means that they have been approved by Cabinet and the Governor General acting in a legal capacity.

The Board selection process is supported by a professional executive search firm and by the staff of the Treasury Board Secretariat. The staff of the Treasury Board Secretariat track upcoming vacancies and prepare the appropriate documentation at the various phases of the process. They also provide a link to the Privy Council Office which has the key responsibility in government for providing oversight and direction on the appointment process.

Potential Board vacancies are advertised on the website for federal appointments maintained by the Privy Council Office. The notice clearly identifies skill sets and competencies required, as well as other qualifications. Should Ministers have potential Board members to suggest, these names are provided to the executive search team and reviewed by the Nominating Committee along with other names that have been developed. Thus, the Minister can provide referrals, but cannot substitute his preferred candidates for those recommended by the Nominating Committee.

The Prime Minister's Office is also involved in ensuring that candidates can have the confidence of the government once the President of the Treasury Board has made a recommendation to the Governor-in-Council.

Why It Works

Five factors contribute to the success of this process:

First, in developing a list of potential nominees, the Nominating Committee interacts with the Chairs of the Board and of the Governance Committee to review the current needs for the Board and the performance of current members whose terms may be ending. As an organization grows and evolves, what is required from Board members also changes. A Board member with the skills appropriate for a start-up may be less necessary as the organization matures. The Board Chair also plays an important role in addressing issues of "cultural fit". Once the Nominating Committee has developed a short list of candidates, there are interviews by the search firm and by the Board chair. Thus, the interaction and involvement with the Board ensure that the Nominating Committee has the information it needs.

A second factor is that the Chair of the Nominating Committee is a highly respected member of the pension industry. The most recent Chair⁴ was Claude Lamoureux (former head of the Ontario Teachers' Pension Plan). This voluntary unpaid position, filled by a member of the pension industry, is critical in providing to the Nominating Committee a much needed perspective on the business of pension investment management, advice on Board composition and a network of potential Board members.

A third element is the inclusion of stakeholder representation on the Nominating Committee. The process of selecting Board members cannot be scientific as one never knows exactly how a new Board member will perform or how the chemistry will work. For this reason, a selection process based on the multiple perspectives of stakeholder representatives ensures that elements of personal bias are eliminated in the process of coming to a short list of potential candidates. There is another benefit: the Committee develops an understanding of the required competencies and skills sets from its discussion with the Chair of the Board and the Governance Committee. The Chair feeds back important information regarding the health of the Board. From this information, stakeholders understand better the issues and challenges facing the Board, thereby increasing confidence in the legitimacy of the appointment process.

⁴ The position is currently vacant.

A fourth factor is that the Board selection process is supported by both a professional executive search firm and the staff of Treasury Board Secretariat. Professional search firms are experienced in developing lists of potential candidates and can be an important source of information on their strengths and weaknesses. The support of staff of the Treasury Board Secretariat ensures that government appointment protocols are respected. Involving Treasury Board staff addresses a key weakness in many earlier processes, namely a lack of communication among the various parties involved – Ministers’ staff, Privy Council Office, the Prime Minister’s Office, the Board, incumbents whose terms are ending and potential candidates. Clear communications on roles, responsibilities and expectations are essential.

A fifth success factor is mutual respect for the roles and responsibilities of each participant. Each group has a particular expertise and role to play whose contribution is essential to create a high-performing Board.

While the process has worked effectively since 2000, it is not without some drawbacks. The inclusion of an independent Nominating Committee adds time to the appointment process. This has several implications. First, when vacancies arise, it can take time to fill them, which can reduce the effectiveness of the Board. In addition, the lengthy period between first contact with a nominee and the Board appointment can result in losing certain excellent candidates who may select other boards in lieu of waiting.

The Process for Appointing the Chair

The process for appointment of the Chair is similarly set out in the PSPIB Act. Again, it is a Governor-in-Council appointment. The recommendation is made by the President of Treasury Board, after consultations with the Minister of National Defence, the Minister of Public Safety and Emergency Preparedness and the Board of Directors. The Chair is remunerated in accordance with the Corporation’s by-laws which include a provision that the Corporation is to have regard to the remuneration received by persons having similar responsibilities engaged in similar activities. The Chair may be removed for cause by the government.

Why It Works

The Chair is appointed from among existing Board members. This means that the new Chair will be familiar with the current approach of the Board and the current issues facing the Corporation. Because the Governance Committee of the Board sponsors peer reviews of the performance of all Board members including the performance of the current Chair in that role, there is a formal and annual process of evaluation. When the Board is consulted on a potential Chair, it is in a good position to provide the President of Treasury Board with sound advice on what skills are needed by the new Chair and which Board members can best meet those requirements.

Assessment and Conclusion

It is always difficult to assess board performance and more particularly the contribution of an appointment process to the performance of the board, but some sense of the performance can be derived from examining the relative success of the corporation itself, compared with its peers. In the case of The Public Sector Pension Investment Board, its performance has been in the first quartile amongst large Canadian pension plans, although it did lag in the last fiscal year. The four year average performance is at the median.

A statutory nominating committee with an independent chair and stakeholder representation effectively respects the political accountability objectives required by parliamentary democracy while ensuring that the evolving competencies and other requirements of the board are also addressed. This best practice deserves to be better known and employed.

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