GOVERNANCE & ACCOUNTABILITY

For the BC Workers' Compensation System

Prepared for:
The Royal Commission on Workers' Compensation in British Columbia

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May 1, 1998
# Table of Contents

1 EXECUTIVE SUMMARY 3

1.1 INTRODUCTION 3
1.2 PUBLIC SECTOR GOVERNANCE AND ACCOUNTABILITY 4
1.3 WORKERS’ COMPENSATION GOVERNANCE ACROSS CANADA 7
1.4 GOVERNANCE AND ACCOUNTABILITY IN THE BC SYSTEM 9

2 INTRODUCTION 15

2.1 PURPOSE 15
2.2 STRUCTURE OF THE REPORT 15
2.3 GENERAL APPROACH 16

3 PUBLIC SECTOR GOVERNANCE AND ACCOUNTABILITY 19

3.1 INTRODUCTION 19
3.2 OVERVIEW OF GOVERNANCE AND ACCOUNTABILITY 20
3.3 GOVERNANCE AND ACCOUNTABILITY IN THE PUBLIC SECTOR 25
3.4 WHAT CONSTITUTES EFFECTIVE GOVERNANCE AND ACCOUNTABILITY? 27
3.5 OVERVIEW OF SELECT PUBLIC SECTOR ORGANIZATIONS 43

4 GOVERNANCE OF WORKERS’ COMPENSATION ACROSS CANADA 49

4.1 INTRODUCTION 49
4.2 APPROACH AND METHODOLOGY 50
4.3 OBSERVATIONS AND FINDINGS 51
4.4 SUMMARY MATRIX 59

5 GOVERNANCE AND ACCOUNTABILITY IN THE BC SYSTEM 63

5.1 INTRODUCTION 63
5.2 OBJECTIVE 64
5.3 THE HISTORY OF WORKERS’ COMPENSATION GOVERNANCE IN BC 65
5.4 ANALYSIS OF SUBMISSIONS THAT REFERENCE GOVERNANCE 71
5.5 WORKERS’ COMPENSATION GOVERNANCE ISSUES IN BC 77
5.6  FUNDAMENTAL GOVERNANCE STRUCTURE  84
5.7  TIER THREE GOVERNANCE ELEMENTS  90
1 Executive Summary

1.1 Introduction

Governance is a key issue for the Royal Commission and for the sustainable operation of the workers' compensation system. The breakdown of the governance system in place from 1991 to 1995 was the primary motivation for the Royal Commission to be established.

This report is intended to provide the Royal Commission with background and analysis that can be used as a basis for deliberations about recommendations related to governance issues. The report does not itself make recommendations. However, by involving the Commissioners in the development of the report, it is hoped that work has been made relevant and useful to the Royal Commission.

The report considers governance and accountability within the context of three levels or tiers of decisions that the Royal Commission will have to make. The first tier are prerequisites to determining governance issues and include deciding upon the Royal Commission’s recommendations about the basic purpose and mandate of the workers' compensation system and the structure of that system. The second tier involves the fundamental governance model for the system, including the structure of the governing body and the assignment of roles and responsibilities among those involved in system governance. The third tier is comprised of the more detailed, specific elements of the governance and accountability framework that need to be considered.

The report attempts to provide background and input to the Commissioners on governance and accountability by first reviewing the literature about effective governance in the public sector. The issues identified in that work are then applied to a comparative review of governance of workers' compensation systems across Canada. The report concludes with an analysis of governance issues for the British Columbia workers' compensation system.
1.2  **Public Sector Governance and Accountability**

The following is a summary of a review and synthesis of recent work on public sector governance and accountability.

**What is Governance?**

Governance is comprised of the *structure* and *processes* used to direct or “govern” the affairs of an organization. It refers to the mechanisms in place for setting the direction and overseeing the management of an organization so that the organization effectively fulfils its mandate.

All organizations have some form of governance framework, comprised of governance structure and governance processes. The governance structure includes the governing body of the organization and its relationship to other parts of the organization. Governance processes are the mechanisms used by the governing body and others involved in the governance of an organization to perform the function of setting the direction and overseeing the management of an organization.

**What is Accountability?**

Accountability is the obligation of one person, entity or group, to account to another person, entity or group for the responsibilities conferred upon them. Put another way, accountability is the responsibility of one person to another for the performance of a function entrusted to them. It goes beyond reporting to include mechanisms to hold those responsible for discharging their responsibilities\(^1\) and an explicit or implicit agreement about performance expectations.

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\(^1\) Such as the ability to appoint and rescind appointments
How Are Governance and Accountability Related?

In general terms, the governing body of an organization must be accountable to someone for the governance of that organization to provide an incentive to govern the organization effectively. In the case of private sector corporations, the board of directors is accountable to the members, often the shareholders, who have mechanisms for enforcing their interests. In the case of the public sector, there is generally a chain of accountability through the governing body that ultimately leads back to the Legislative Assembly’s accountability to the voting public.

This means that there must be an accountability regime as an integral part of any governance framework in which the governing body of an organization is accountable to someone for the performance of the governance function and for the performance of the organization.

Governance and Accountability in the Public Sector

The governance and accountability framework for widely held private sector corporations is relatively straightforward compared to public sector governance. Members or shareholders of the corporation elect the directors but do not have any direct role in the governance of the corporation. The governance framework includes both the board of directors and senior management, but the board of directors is the governing body and is ultimately accountable to the shareholders for the performance of the corporation.

The governance and accountability system for government organizations is more diverse and complex. Usually the mandates to public sector organizations include several conflicting objectives but are rarely clearly articulated. The governing body can take the form of a commission, board of directors, agency or individual, such as a Minister. Management plays a role in governance, though there is less likelihood than in the private sector of management being part of the governing body. However, in the public sector there is greater likelihood that whomever the governing body reports to will pay some active role in governance, such as enactment of legislation, imposition of controls, or simply by setting public policy goals.
Governance and Accountability Issues

Recent studies and reports on the issue of what constitutes effective governance and accountability come to the following conclusions:

*Need for Clear Mandates, Roles and Responsibilities* - a clear articulation and understanding of the organization’s mandate and the roles and responsibilities of all those who form part of the governance structure of an organization is absolutely essential for the effective overall governance of an organization.

*Core Functions - Governing Body as “Steward” of the Corporation* - governing bodies or boards are responsible for the management, or the supervision of the management, of the affairs of an organization. As “stewards” of the organization, the governing body sets direction, monitors and evaluates the organization’s performance and reports out on that performance. The governing body or board has a fiduciary responsibility and a high duty of care in overseeing the operations of the organization as a whole. There must be a clear division of responsibility and lines of accountability between management and the governing body to ensure that the governing body operates independently of management.

*Governance is Enhanced by Qualified Directors* - an effective governing body or board has the appropriate mix and balance of members with good judgement, sound business acumen, financial skills and experience in the organization’s business area. Orientation and training for new recruits is critical in terms of maintaining board continuity and effectiveness.

*Importance of the Selection and Appointment Process* - the governing body of an organization should develop a “board profile” enumerating the necessary mix of skills and experience to be used as the basis for recruiting and selecting new members.

*Need to “Close the Loop” by Monitoring and Reporting Out on Performance* - the importance of evaluating the performance of the organization, senior management and the governing body itself, is an integral part of the overall governance framework. Accountability for performance with a focus on results is being established throughout public sector agencies. A key component of this
system is the need to communicate with government, interested parties and the public.

1.3 **Workers' Compensation Governance Across Canada**

The following are the highlights of the comparative review of the governance structure and processes in the workers’ compensation systems in the twelve Canadian jurisdictions:

**Basic Model** — There are two types of governance models in place in Canadian workers’ compensation systems: the board of commissioners structure in place in Saskatchewan with full time commissioners also providing executive management and the board of directors corporate governance model in place in all the other Canadian jurisdictions where policy-making and direction-setting are separated from the management function.

**Duties, Authority and Powers** — In the legislation some jurisdictions simply assigns the responsibility for administering the legislation to the board of directors. The legislation in other jurisdictions puts more emphasis on responsibility by specifically requiring that the board of directors is responsible for the stewardship of the organization.

**Duty of Care** — In only two jurisdictions (Ontario and New Brunswick) is there a legislative provision regarding the required standard and duty of care of board members. In British Columbia the Panel has addressed the issue.

**Representation** — There are four models — equal representation, Saskatchewan, Québec, Nova Scotia, Prince Edward Island, and the Yukon; predominant equal representation - New Brunswick, Newfoundland, and British Columbia; non-predominant representation - Alberta, Manitoba and Northwest Territories; and fiduciary (no representation) – Ontario.

**Selection Process** — In all jurisdictions the governing body is appointed by elected officials, either the Lieutenant Governor in Council or the equivalent.

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2 of workers and employers.
or a Minister, sometimes with a requirement to consult before making appointments.

**Conflict of Interest** — Nine jurisdictions have specifically addressed conflict of interest of board members.

**Evaluation of Governing Body** — New Brunswick, British Columbia and Newfoundland specifically addresses the issue of evaluating the performance of the board of directors.

**Policy Development** — All jurisdictions have some form of standard, formal policy identification and development process. The complexity of the process, and the degree of required consultation with interested parties and others, varies across jurisdictions.

**Accountability to Government** — A few jurisdictions have a legislated reporting relationship between government and the board. Manitoba, Ontario, New Brunswick, Northwest Territories and the Yukon require reporting to government that is more detailed than a simple public annual report.

**Accountability to Interested Parties** — There were few specific accountability mechanisms from the governing body to the interested parties identified, beyond ongoing consultation as issues arise or changes are proposed. Newfoundland holds an annual general meeting as an accountability mechanism.

**Performance Evaluation** — Most jurisdictions indicated that they had a formal strategic planning process to develop goals and objectives and establish priorities and seven have a corresponding performance evaluation process.

**Review Requirement** — Four jurisdictions require by statute a periodic, independent review of the workers’ compensation system in the Province.
1.4 Governance and Accountability in the BC System

Objective

The following objective is proposed for the governance and accountability framework of the workers' compensation system:

To provide structures and processes that create an environment within which

- the workers' compensation system can be provided with leadership and the direction of the organization can be clearly and transparently set,
- “public policy”\(^3\) can be established and changed in a timely way, consistent with the mandate of the system and the public interest,
- the performance of the system can be continuously improved, and
- the interested parties have an appropriate role that is clearly defined and the tools to fulfil that role, consistent with the mandate of the system and the public interest.

Submissions

The submissions made to the Royal Commission confirm that the traditional stakeholders\(^4\) believe governance to be a key issue for the Royal Commission. The submissions also reveal a split between the traditional stakeholder groups, the workers and employers.

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\(^3\) The definition of “public policy” and the distinction between public policy and administrative policy are discussed below.

\(^4\) Throughout this report, the term “traditional stakeholders” is used to refer to the workers and employers, who have traditionally been seen to be the primary groups with a direct interest in the workers' compensation system. When references could include other groups with a legitimate interest in the workers' compensation system, term “interested parties” is used.
The most significant issue for both is the issue of representation on the governing body. Workers support continuance of the “predominant, equal representation” model under which workers and employers have an equal number of representatives which together comprise most of the governing body members. Otherwise, workers believe, there will effectively be control of the board by those with interests similar or identical to the employers.

Employers do not favour traditional stakeholder representatives having a predominant position on the governing body and would like to see either a board with no representation (“fiduciary model”) or with representation accounting for less than a predominant majority of members. They also believe there should be requirements that the board include members with certain skills and abilities or include members from certain professions.

A group representing injured workers has argued for separate representation of injured workers and the B.C. Federation of Labour has endorsed that position.

Workers and employers are also split on a number of other more detailed governance issues, including whether:

- the Chief Appeal Commissioner should be an ex officio non-voting member (workers – yes, employers – no),

- there should be full-time members of the governing body (workers – yes, employers – no, except possibly the chair),

- the Appeals Commission should be able to overturn policies set by the governing body on the grounds that they are unlawful, and

- the governing body should be large or small (workers – 15, employers -9).

The groups agree that terms of appointment for governors should be at least three years, there should be a purpose statement in the legislation to guide governors, governors should owe a duty of care to the organization and the interested parties need to be able to have more influence on the policy development process.
Issues

Three underlying issues have been identified.

The first is the almost unique public policy setting authority and responsibility placed upon the governors. This makes the job of the governors complex and time-consuming compared to the jobs of the governing bodies of most other public sector organizations. It also means that effective accountability is critical to a sustainable governance function.

The second is the appeal system. This has been perhaps the most contentious governance issue throughout the history of workers’ compensation in British Columbia. While the Royal Commission is addressing the adjudication and appeal system as a separate issue, there are governance implications that need to be taken into account.

The third issue is interested party involvement. The needs are to identify the appropriate interested parties and to give them an appropriate level of input into the governance and operation of the workers’ compensation system. That requires striking a delicate balance between giving interested parties effective means to put forward their interests without giving interested parties in general or any one group the ability to paralyse decision-making or force the workers’ compensation system to put specific interests ahead of the public interest.

Fundamental Governance Structure

Five options have been suggested as representing some of the myriad potential models that could be used. It is noted that, with the strong support and commitment of traditional stakeholders and the government and with a comprehensive set of supporting governance and accountability elements, almost any reasonable fundamental governance structure could be made to work. However, given the positions of the traditional stakeholders, it may be difficult to have the strong consensus required. In the absence of that consensus, the question may be, which fundamental governance structure is most likely to be sustainable in the absence of initial universal traditional stakeholder support.
• **Predominant Representation** – this option is the pre-Panel of Administrators status quo. This approach was the consensus result of a multi-stakeholder process and could likely be workable with the required level of commitment and with appropriate ancillary governance elements in place. However, if the commitment is not there, it has been shown to be susceptible to deadlock.

• **Segregated Board of Governors** – under this model there would effectively be two boards with interlocking membership, one responsible for public policy and strategic direction, and the other responsible for the stewardship of the organization. The former would have only non-representative members while the latter would have either predominant or minority traditional stakeholder representation. The intention would be to separate the public policy and stewardship functions of the governors. This would be an attempt to give interested parties direct influence on the governance of the system and effective input into public policy without the interested parties being public policy decision-makers.

• **Tri-partite Board of Governors** – under this model, there would be traditional stakeholder representation on the board of governors but the predominance of the worker and employer representatives would be reduced. The intention would be to provide continued worker and employer representation while reducing the likelihood that the result would be deadlock.

• **Reduced Board Public Policy Role** – under this model, regardless of the representation of interested parties on the board of governors, the governors’ responsibility for public policy would be shifted back to the provincial government. In that way, the complexity of the governors’ job would be reduced and the accountability for public policy decisions would be increased by putting the decision-making authority with those who are directly accountable to the voting public.

• **Non-representative Board of Governors** – under this so-called “fiduciary model” the governors would not be chosen to represent any interested party.
Tier Three Governance Elements

The following governance elements are proposed for consideration by the Royal Commission:

**Board Size** – need to balance the potential efficiency of a relatively small board with the need to have sufficient resources to discharge all of the board’s functions.

**Duty of Care** – if there are representative governors, need to determine if the governors’ first responsibility should be to the organization and public interest or to their constituency.

**Independence from Management** – not currently an issue in British Columbia but it has been in the past. The literature suggests it is important that the Chair and President/CEO positions be separate. Given the fragility and complexity of workers’ compensation governance, the issue may warrant comment by the Commission in spite of the fact that it is currently not a significant topic of debate.

**Director Qualifications** – the board could be required to develop a profile of required skills, abilities and experience to guide selection and appointment of governors.

**Selection and Appointment** – consideration should be given to giving the board a role in the selection of governors.

**Board Turnover** – continuity is important, especially given the complexity of the workers’ compensation system and the governance functions. Board turnover could be reduced by having appointments with terms of a reasonable length and by limiting the proportion of board members that would be able to be changed in a given year, except for cause. In order to ensure effective accountability, consideration should be given to whether termination for cause should include termination because of performance concerns with the board or with the organization.
Board Training and Orientation – consideration should be given to making board orientation, ongoing board training and board self-evaluation statutory requirements.

Transparent Governance Practices – consideration should be given to statutorily requiring that the practices of the governors be documented and publicly available.

Full-Time / Part-Time & Policy Development – concerns about the ability of interested parties to have effective input into policy development could be partially addressed through a full-time chair (and possibly other full-time members) responsible for supervision of policy development and relations with interested parties, assuming the governors retain public policy responsibility.

Accountability – there are three elements: accountable to whom; accountable for what; and, how the accounting is provided. It is suggested that accountability should be to the public through those elected by the public and held directly accountable. The accountability should be for performance, that implies a public agreement between the governors and elected officials about what the performance indicators and goals should be. However, the interested parties should arguably have some input into the priority and goal setting exercise. The accounting would then be reporting against the agreed goals. The governors would be held accountable through the ability of the elected officials to appoint and rescind appointments.
2 Introduction

2.1 Purpose

The purpose of this report is to provide the Royal Commission on Workers' Compensation in British Columbia with the information necessary to make recommendations about governance and accountability issues in its final report.

Governance issues and government’s decision to replace the board of directors in 1995 underlie the decision to constitute a Royal Commission on Workers' Compensation in BC. As it must, the mandate of the Royal Commission extends well beyond governance. Nevertheless, many believe that an effective governance system and an appropriate accountability framework are essential to the sustainable achievement of any reasonable set of objectives for the workers' compensation system.

The report does not itself make recommendations about the governance and accountability framework. Rather, the report is intended to be a “policy analysis” of the governance and accountability issues. It is meant to help the commissioners reach decisions about how they believe governance and accountability should be dealt with and to provide background information and analysis that can be used to support the recommendations that are eventually developed. It is hoped that the fact the Commissioners have been involved and consulted during the development of this report will make the final result useful and relevant to the Commission.

While the report covers most governance and accountability issues, it does not address a major part of the governance and accountability framework of public organizations — information flows to and from the governing body. A detailed analysis of that issue is being conducted as a separate but linked project.

2.2 Structure of the Report

The remainder of this chapter of the report suggests an approach to examining the issues and describes an overall framework to put governance and accountability in the context of the Commission’s mandate.
Chapter 3 is a review and synthesis of recent published work on public sector governance and accountability. This chapter attempts to explore what “governance” and “accountability” mean, how these concepts are related and the elements of each.

Chapter 4 is a comparative review of governance and accountability in Canadian workers’ compensation systems. It builds upon the high level comparison of governance in the general comparative review previously prepared by the authors. The comparative review included in this report uses the elements of governance and accountability identified in Chapter 3 as the basis of comparison across the Canadian jurisdictions.

Chapter 5 is an analysis of governance and accountability issues in the context of the British Columbia workers’ compensation system.

2.3 General Approach

Prior to discussing the substance of governance and accountability, this section will attempt to put governance and accountability within the overall context of the Commission’s work.

Section 1 of the terms of reference of the Royal Commission states that the Commission is

“To examine the statutory framework, mandate, structure, organization, governance and administration of the British Columbia workers’ compensation system in order to meet the needs of the people of British Columbia for a high quality public system that is equitable, effective and efficient in the context of changing workplaces and consistent with the underlying principles of workers’ compensation in British Columbia, namely

• accident prevention,

Governance & Accountability
for the BC Workers’ Compensation System

- no fault compensation,
- collective employer liability,
- industry funding,
- universal coverage, and
- administrative adjudication.

It is clear that governance is a key element of the Royal Commission’s terms of reference. It is also true that all of the elements of the terms of reference, including those outlined above, are interrelated. For example, as will be seen in Chapter 3, a clear, well-understood mandate is an important prerequisite to an effective governance arrangement. Also, structure and organization are closely interrelated to governance because each separate organization within a system and the system itself must be governed. Administration and governance are clearly interrelated as well, since it is the governance arrangement that should set the direction and evaluate the performance of the administration.

Based on this, it is suggested that there are three tiers of issues that the Commission needs to grapple with related to governance and accountability:

**Tier One  Prerequisites to Dealing with Governance**

These are issues that may affect the nature of the recommendations the Commission makes about governance. In particular, these issues include the overall purpose or mandate for the workers’ compensation system and the essential elements of the organizational structure of the system.

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6 Terms of Reference, Royal Commission on Workers’ Compensation in British Columbia.
Tier Two  Fundamental Governance Model

These are the issues that lie at the core of the governance arrangement for the workers’ compensation system. The issues include the type of governing body and the definition, at the highest level, of the roles and responsibilities of the main players in the system, such as Cabinet, the Minister responsible, the workers’ compensation governing body, the management and the interested parties.

Tier Three  Additional Elements of Governance and Accountability

These are the various remaining elements of the system of governance and accountability for the organization. While arguably just as important for effective governance as the fundamental governance elements, most of these elements can be implemented regardless of what the fundamental elements of the system are.

This report deals only with Tier Two and Tier Three issues. Because this work is being done prior to the Commissioners beginning specific deliberations about what they are going to recommend, the report is written without any assumptions, explicit or implicit about what the Tier One recommendations may be. However, it is expected that the Commissioners will have at least a general idea of the mandate and structure of the system they envision before addressing the governance structure which will direct and superintend that system.
3 Public Sector Governance and Accountability

3.1 Introduction

Purpose

The purpose of this chapter is to provide a synthesis of recent published work on governance and accountability in the public sector. The chapter deals only with the general issue of governance and accountability rather than the more specific issue of governance and accountability in the workers’ compensation context, which is the subject of Chapter 5.

Specifically, the chapter:

• defines governance and accountability;
• discusses the relationship between governance and accountability;
• discusses the principles of effective governance and the components of an effective corporate governance and accountability framework for public corporations, including but not limited to the structure and processes underlying effective boards of directors;
• reviews and describes the current governance and accountability structure of select public sector agencies and corporations.

Scope of Paper and Approach

The chapter is designed to serve as a high-level background paper on the issue of governance and accountability for the Commissioners and senior staff of the Royal Commission on Workers’ Compensation in British Columbia. It is intended to provide the Commissioners with a general discussion of current thinking about governance, accountability, and their inter-relationship, as well as the principles and components of an effective governance and accountability framework for public sector corporations.
This chapter does not contain any original work on the issue of what constitutes effective governance and accountability in the public sector. Rather, it synthesizes several recent private and public sector studies and reports on effective governance and accountability frameworks based on a comprehensive literature review.

Private sector studies and references to governance in a private sector context have been included because there are significant overlaps in issues with public sector governance. Accountability in the public sector context, on the other hand, tends to be somewhat distinct from accountability in the private sector, but there may still be lessons to be learned by comparing and contrasting public and private sector approaches.

3.2 Overview of Governance and Accountability

What is Governance?

Governance is the structure and processes used to direct or “govern” the affairs of an organization. It refers to the mechanisms in place for setting the direction and overseeing the management of an organization so that the organization effectively fulfils its mandate. All organizations have some form of governance framework, comprised of governance structure and governance processes.

7 The 1994 report of the Toronto Stock Exchange Committee on Corporate Governance in Canada (commonly known as the Dey Committee) defined “corporate governance” as the process and structure used to direct and manage the business and affairs of the corporation with the objective of enhancing shareholder value, which includes ensuring the financial viability of the business. The process and structure define the division of power and establish mechanisms for achieving accountability among shareholders, the board of directors and management. The direction and management of the business should take into account the impact on other stakeholders such as employees, customers, suppliers and communities.

In their report, The Workers’ Compensation Board of British Columbia - Board Governance Review: Report and Recommendations, Patrick O’Callaghan, and Judi Korbin define governance as “the process and structure used to direct and manage the affairs of an organization ... The structure is created by the legal and administrative framework within which an organization functions. This includes the organization’s governing statutes, the articles and by-laws, resolutions of the Board and other policies and procedures
Governance Structures

The governance structure includes the governing body of the organization and its relationship to other parts of the organization. There may be parts of an organization beyond the governing body that have a significant influence on how the governance functions are performed such as management and entities which control the governing body.

For private sector corporations of all kinds, corporate law establishes the board of directors as the governing body of the organization and places the responsibility on the board of directors to manage and supervise the management of the affairs of the corporation. Note that the members of the corporation do not have any direct role in its governance. The directors are the “stewards” of the organization and have a high duty of care to ensure that they exercise their powers and perform their duties in the best interests of the corporation. In addition, there is the management of the corporation, which often interlocks with the board of directors. Management’s job is to undertake the day-to-day operations of the corporation under the supervision of the board of directors and management also has a duty to act in the best interests of the corporation. Thus, for private sector corporations, the governance framework includes both the board of directors and senior management, but the board of directors is the governing body.

For public sector organizations, governance structures are somewhat more diverse, but usually retain several of the main features of the governance which are adopted by the organization, and community standards. The governance process refers to the system for decision making used by the parties who are charged with directing and managing an organization and making the decision-makers accountable.  

8 There are several types of private sector corporations, including companies, societies, co-operative associations, credit unions and others. Within the companies category, there is a distinction between “public” and “private” companies which generally refers to the amount of disclosure required of the company about its affairs, primarily for securities regulatory purposes.

9 In the case of companies, the members are the shareholders. For some other types of corporations, there are no shareholders, per se, but there is some group with the ability to elect directors who are usually known as the “members”.

Perrin, Thorau & Associates Ltd. May 1, 1998
structures of private corporations. There is a governing body, which can take the form of a commission, board of directors, agency or individual, such as a Minister. The legal duty of care imposed on the governing body of a public sector organization usually depends on the legislation, if any, that creates the organization. Management of the organization usually also has a role to play in the governance of a public sector organization, but there is less likelihood of management being part of the governing body than in the private sector. Also, in the public sector, there is a greater likelihood that whomever the governing body reports to will play an active role in governance, such as through the enactment of legislation or regulations affecting governance of an organization or simply by setting public policy goals.

**Governance Processes**

Governance processes are the mechanisms used by the governing body and others involved in the governance of an organization to perform the function of setting the direction and overseeing the management of an organization. These processes include such things as:

- setting strategic direction,
- setting high level and operational policy,
- requiring that all of the functions, systems, controls and mechanisms for ongoing operations be put in place and maintained,
- monitoring performance of the organization and requiring corrective action where necessary, and
- fulfilling the duty of accountability to whoever holds the organization accountable.

In different organizations, different parts of the governance structure may perform different elements of the governance processes and the processes themselves may be approached in very different ways. The point is that governance is more than the makeup of the board of directors but extends to other parts of an organization and to the ways in which the organization is governed overall.
What is Accountability?

Accountability is the obligation of one person, entity or group, to account to another person, entity or group for the responsibilities conferred upon them. Put another way, accountability is the responsibility of one person to another for the performance of a function entrusted to them.

Often accountability is viewed as simply a requirement to “account” by reporting out, particularly on financial matters. However, as will be seen below, it goes beyond reporting to include the concepts of agreed goals against which performance is reported and consequences or mechanism by which those responsible can be “held accountable.”

The nature and extent of the accountability regime for a given organization will vary with depending upon the circumstances.


“Accountability is a contract between two parties. In the case of government, the contract is between the public and their government: the public gives government the responsibility to govern and manage public resources, and the government is accountable to the public through the Legislative Assembly for its performance...

In the public sector ... each manager, in both ministries and Crown corporations, is accountable to a superior for managing the responsibilities and resources provided. At its highest level, it means that government is accountable to the Legislative Assembly for its performance in managing the responsibilities and resources entrusted to it. In turn, a responsibility of the Legislative Assembly, acting on behalf of the citizens it represents, is to assess that performance.”
How Are Governance and Accountability Related?

In general terms, the governing body of an organization must be accountable to someone for the governance of that organization to provide an incentive to govern the organization effectively. In the case of private sector corporations, the board of directors is accountable to the members, often the shareholders, who have mechanisms for enforcing their interests. In the case of the public sector, there is generally a chain of accountability, as described above, which ultimately leads back to the Legislative Assembly’s accountability to the voting public.

This means that there must be an accountability regime as an integral part of any governance framework in which the governing body of an organization is accountable to someone for the performance of the governance function and, implicitly, for the performance of the organization.

Conceptually, there are four basic elements to such an accountability regime:

- What the organization is accountable for (mandate);
- Who specifically is accountable and to whom;
- What information is provided to determine if performance is acceptable; and,
- Mechanisms to enforce the interests of those holding the organization accountable.

At the most basic level, governance relates to how responsibilities are carried out, whereas accountability relates to how the organization is held to account for the performance of those responsibilities. The concepts are clearly intertwined and interdependent, both directed to the effective accomplishment of a mandate. As highlighted in the 1996 Report of the Auditor General and Deputy Minister’s Council, “accountability must serve to influence governance; accountability is not an end in itself.”
3.3  Governance and Accountability in the Public Sector

Types of Public Sector Organizations

Government delivers policies, programs and services through a number of institutional forms. Some of those forms are:

Direct Government — ministries, departments or line agencies responsible for delivering broad programs and services to the public. Headed by a Deputy Minister or equivalent who is directly accountable to a Minister for the performance of the ministry or department;

Agencies and Commissions — bodies, usually established by legislation, outside of direct government to deliver specialized programs or services. Normally headed by a single individual, or group of commissioners, accountable to government through a responsible Minister. In some cases these are so closely interrelated to Ministries as to be effectively part of direct government and in others are purposefully kept quite separate from the apparatus of direct government.

Crown or Public Corporations — corporations established by governments to act as agents of government in the achievement of a particular public policy goal. Governed by a board of directors, a crown or public corporation is generally expected to operate with a relatively high degree of independence from the rest of government.\(^{10}\)

The federal government has also recently begun to experiment with alternative service delivery structures such as local authorities which are not for profit

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\(^{10}\) As listed in the 1996/97 Report of the Auditor General on crown corporation governance, the delivery of a program or service through a crown corporation model is generally considered appropriate for programs that: focus mainly on a business or commercial interest; generate revenue, varying in amounts up to self-sufficiency; involve large numbers of transactions with members of the public; require greater flexibility than is available under the ministry model; or require decision making that is more removed from government than ministries.
corporations established under federal legislation to deliver specific regulated services for the federal government\textsuperscript{11}.

\textit{Public Sector Governance Frameworks}

The overall governance and accountability framework for government organizations differs depending upon the nature of the organization.

Where government delivers a program or service directly through a ministry or within a department of government, the governance framework is relatively straightforward. Ministries and agencies are generally subject to detailed, standardized administrative rules and procedures including financial controls, and decision making is highly centralized. Cabinet establishes this administrative framework pursuant to legislation. A government ministry is generally headed by a single individual (Deputy Minister) who is responsible for the operation and effective performance of the ministry within the established administrative framework. The Deputy Minister reports to and is directly accountable to a Minister, who in turn is accountable to the government represented by Cabinet and, ultimately, to the Legislative Assembly and the voting public.

Generally crown corporations have more autonomy and fewer standardized controls imposed from outside than ministries, but the British Columbia government does retain some significant powers to impose controls and affect crown corporation governance. The governing body for a crown corporation is its board of directors. The board of directors of a public corporation, similar to a private sector corporation, is responsible for supervising the management of the affairs of the corporation. It in turn is accountable through the Minister responsible for the corporation to government, represented by Cabinet, and ultimately the Legislative Assembly and voting public. The governance of crown corporations, through a board of directors structure, adds an additional layer of complexity to the governance framework as compared to direct government.

\textsuperscript{11} Local authorities are already in place to govern larger airports and legislative amendments are currently being considered to provide for local authorities to govern the operations of Canadian ports.
Although the institutional structure may vary, all government organizations have one thing in common: they are all instruments of public policy and therefore ultimately accountable to the citizens of British Columbia for meeting those public policy objectives. As noted in the 1995 Report of the Auditor General of Canada “as control is decentralised, the requirement for greater accountability increases.” 12 Where the government establishes public agencies and corporations outside of direct government for the delivery of its public policy objectives it is important that an appropriate governance framework including an effective accountability regime is established.

3.4 What Constitutes Effective Governance and Accountability?

Over the past few years there has been a serious “re-thinking of the field of governance” in both the private sector and the public sector.

In the private sector this reflects a growing sense of the importance of effective corporate governance for the strong economic performance of companies. That is, both government largely through securities regulators and industry have recognized that there are public policy benefits to be gained from a general improvement in the effectiveness of private sector corporate governance.

Several recent studies have focused on the way “corporate governance” can be enhanced and offer insights into the way that boards of directors of corporations can improve the manner in which they discharge their governance responsibilities. Some prominent reports on the issue of effective private sector corporate governance include:

- The Financial Aspects of Corporate Governance in the United Kingdom; commonly referred to as the Cadbury Report (U.K., 1992);
- The Committee of Sponsoring Organizations of the Treadway Commission (U.S., 1994);

12 Chapter 10, “Crown Corporations: Fulfilling Responsibilities for Governance”.

Perrin, Thorau & Associates Ltd. May 1, 1998
Where Were the Directors? Guidelines for Improved Corporate Governance in Canada, Report of the Toronto Stock Exchange Committee on Corporate Governance in Canada (Canada, 1994);

Corporate Governance, Report of the Standing Committee on Banking, Trade and Commerce, commonly referred to as the Kirby Commission (Canada, 1996); and

Guidance for Directors - Governance Processes for Control, guidelines prepared by the Canadian Institute of Chartered Accountants (Canada, 1995).

In the public sector, the recent focus on governance and accountability are related to two trends:

- increased emphasis on fiscal prudence leading to efforts to increase the efficiency and effectiveness of government service delivery; and
- a general demand from the public for more responsible government.

Several studies into public sector governance and accountability have built on the findings of the work done on private sector corporate governance. These studies have focused on ways to enhance “corporate governance” in public corporations and have provided further discussion and recommendations on governance and accountability directed specifically at public sector enterprises. Some notable reports on the issue of public sector governance and accountability include:

- the 1995, Canadian Comprehensive Auditing Foundation document outlining “Six Characteristics of Effective Governance”.
- the October 1994 report of conference proceedings of sponsored jointly by the Crown Corporations Directorate of Treasury Board (federal Department of Finance) and the Conference Board of Canada, “Corporate Governance, Improving the Effectiveness of Crown Corporations Boards”.
- the 1993 Crown Corporations Directorate of Treasury Board (federal) and the Centre for Management Development guide for directors titled, “Directors of Crown Corporations: An Introductory Guide to Their Roles and Responsibilities”.
• In 1996 report of the Advisory Group on crown corporations to the federal Department of Finance, “Corporate Governance in Crown Corporations and Other Public Enterprises: Guidelines”.


The findings of both private sector and public sector studies are generally consistent in terms of the broad principles of what constitutes effective governance and how the governance framework can be enhanced to increase the overall effectiveness of an organization.

**Principles of Effective Governance**

In 1995, the Canadian Comprehensive Auditing Foundation (CCAF) introduced a set of six characteristics of effective governing bodies. The study, which included input from directors and senior management of large corporations, academics, regulators and auditors, concluded that effective governing bodies:

1. “Are comprised of people with the necessary knowledge, ability and commitment to fulfil their responsibilities

2. Understand their purposes and whose interests they represent

3. Understand the objectives and strategies of the organizations they govern

4. Understand what constitutes reasonable information for good governance and obtain it

5. Once informed, are prepared to act to ensure that the organization’s objectives are met and that performance is satisfactory

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6. Fulfil their accountability obligations to those whose interests they represent by reporting of their organization’s effectiveness.”

The CCAF characteristics are intended to be inter-dependent and their impact on an organization’s performance depends on the “synergy that is associated with their collective application.” However, the CCAF cautions that though the principles are common sense and seem simple enough

“The challenge of having the six principles work ... and work together ... is not to be underestimated.

While it may seem simplistic to say that those who steer should collectively know where they want to go, in practice organizational complexity and individual perspectives may make this a challenge. However without that understanding the organization will drift and confidence with be eroded.

In addition, the organization must understand the strategies that are being taken to meet the objectives. Frequently, the only difference between the success of similar organizations is the manner in which their strategies are implemented.

The need to be informed about the performance of the organization is paramount. But what constitutes reasonable and necessary information? How can information be obtained in which the governing body members can have full confidence ... not an easy task. On the one hand, information that is easily obtained may be of doubtful relevance, and on the other hand, too much information may paralyze the decision making process.

The governing body itself must define the principles that will guide the information it receives and play a leadership role in ensuring that the information will be dealt with fairly and with wisdom.

However, having the right people, with the right information does not always add up to effective governance.
Public confidence is an important part of an organization’s working capital. Organizations and their governing bodies that shy away from telling their performance story can easily become suspect in the eyes of their stakeholders and the people they serve. Confidence is usually maintained if people understand why certain courses of action were taken - and the consequences - even if they disagree with the particular decision.”

Note that the question of information flows associated with governance is the subject of a separate but related project. While clearly a critical element of effective governance, information flows are not a main topic of discussion in this report.

The characteristics of effective governing bodies enumerated by the CCAF correspond closely to the results of other recent private and public sector examinations. Many of these studies built on these characteristics and outlined specific recommendations respecting governance structures and processes that are necessary to effective governance, discussed below.

**Components of an Effective Governance Structure**

**Clarifying Mandates, Roles and Responsibilities**

Several studies addressed the issue of the organization’s mandate and the roles and responsibilities of the different players in the governance system of an organization.

These reports concluded that clear articulation of the organization’s mandate is absolutely essential for the effective overall governance of an organization. In addition, there must be a clear, mutual understanding of the roles and responsibilities of all of those who form part of the governance structure of an organization, including but not limited to the governing body.

For example, the 1995 Report of the Auditor General of Canada, *Chapter 10, Crown Corporations Fulfilling Responsibilities for Governance*, emphasized that, not only must there be a clear understanding of the public corporation’s mission, goals and objectives in addition, the government, board of directors, and
management must have a common understanding of that mandate and of their respective roles, the authority to carry out those roles, and accountability for the use of that authority. The report further notes that this issue is more complicated in the public than the private sector because, though the board of directors in the public sector may have the same general responsibilities as a private sector board, in many cases it does not have the same degree of authority as a result of the general oversight and control role played by government. That is, in the public sector those holding a crown corporation accountable often also play a role in governance while in the private sector, shareholders have little or no direct governance role.

**Board Core Functions**

Several reports outlined specific guidelines respecting the core functions and responsibilities of the board of directors. They all recognized the central principle that the board of directors is responsible for the management or the supervision of the management of the affairs of the corporation. The 1994 report of the Toronto Stock Exchange Committee on Corporate Governance in Canada (commonly known as the Dey Committee) charged boards to explicitly assume the responsibility for the “stewardship” of the corporation. Various studies of private sector corporate governance concluded that as stewards of the corporation, the board of directors is responsible for:

- adopting a corporate strategy and providing the leadership to put the strategy into effect;
- supervising the management of the corporation, including appointing, training, and monitoring senior management;
- communicating and reporting to shareholders, stakeholders and the public on their stewardship of the corporation.

These roles and responsibilities are very similar to the roles and responsibilities of directors of crown corporations. According to the Crown Corporations Governance Forum of the Conference Board of Canada, the responsibilities of the board of directors fall into four broad areas:

- establishing the corporation’s strategic direction;
• safeguarding the corporation’s resources;

• monitoring corporate performance;

• reporting to the Crown.

These key responsibilities are also consistent with the responsibilities for boards of crown corporations outlined in the 1996 federal Guidelines on Corporate Governance in Crown Corporations and Other Public Enterprises, which are to:

• approve the strategic direction and the corporate plan for the corporation;

• ensure that the principal risks of the corporation’s business have been identified and that appropriate systems to manage these risks have been implemented;

• approve management’s succession plan including appointing, training and monitoring senior management; and

• ensure that the corporation’s information systems and management practices meet its needs and give the board confidence in the integrity of the information produced.

Duty of Care

Several studies have highlighted the duty of care and basic fiduciary responsibility of the board of directors. Statutory and common law generally impose upon directors a fiduciary obligation to act in good faith and the best interests of the corporation as a whole and a duty to exercise the care, diligence and skill of a reasonably prudent person. This includes effectively mitigating conflicts of interest, and maintaining strict confidentiality of matters involving the corporation.

As noted in the 1996/97 Report of the Auditor General of British Columbia on governance of crown corporations:
“It is the board that makes decisions, not individual directors. When directors are not clear as to whose interests they represent, the potential for an ineffective board increases.”

The Auditor General’s report makes specific reference to the Workers’ Compensation Board of BC in this regard and the governance problems it encountered as a result of its board of directors serving the interests of constituents to the detriment of the organization as a whole. A key finding of a 1995 review of the WCB (O’Callaghan/ Korbin review) was that the primary responsibility of a board is to the organization and the stakeholders:

“A board is not a parliament where elected members represent the best interest of their constituency. Governors have only one constituency and that is the organization and all of its shareholders.”

**Independence from Management**

Another key issue addressed in many of the reports on public sector governance was the importance of the board’s relationship to and independence from management. The conclusion of these studies is that central to sound governance is the ability of the board of directors to work with management but at the same time function with an independent perspective. In order to reinforce the board’s responsibility for the supervision of the management of the corporation, and management’s responsibility for the day to day operations of the corporation, it is critical that the board have in place the necessary and appropriate structures and systems to ensure that the board can function independently of management.

The fact that the Chief Executive Officer is appointed by government in most British Columbia crown corporations may serve to complicate this relationship. To achieve an effective working relationship and to ensure that the board operates in an impartial and fair manner and retains the confidence of

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government, the board of directors must clarify its role and responsibilities and establish a clear line of accountability from the CEO to the board.\textsuperscript{15}

\textit{Director Qualifications}

A common conclusion of many of the governance studies was the importance of the qualifications and composition of the board members:

\begin{quote}
“Governance is enhanced when the board can demonstrate that they have the mix of skills and experience necessary to carry out their responsibilities effectively.”\textsuperscript{16}
\end{quote}

It was generally concluded that to be effective the board of directors must have the appropriate mix and balance of members with good judgement, sound business acumen, financial skills and experience in the corporation’s business area. It was also felt that diversity in terms of regional and minority representation as well as gender balance were important aspects of a well balanced board of a public corporation or a private corporation that is widely owned and which operates on a national basis.

As part of the crown corporations governance study, the Auditor General of British Columbia surveyed directors of public corporations as to the attributes that they believed a board member should possess. More than half of directors surveyed ranked the following as very important attributes for board members:

\begin{itemize}
\item a general business knowledge;
\item professional expertise such as legal or financial skills;
\item prior experience on a corporation board, preferably in the private sector.
\end{itemize}

\textsuperscript{15} See for example, the 1996 report of the Advisory Group on crown corporations to the federal Department of Finance, “Corporate Governance in Crown Corporations and Other Public Enterprises: Guidelines”.

Though there is a definite tendency in private corporations to avoid “constituency” directors, the issue of representation of users and stakeholders on the board of directors of public sector corporations remains a point of debate. On the one hand, it is felt that representation of interest groups on public corporations provides for their input into the operations of the corporation and helps to lead to balanced decisions that avoid confrontation. On the other side, concerns have been expressed that representative directors may not always have the necessary skills and experience to properly exercise their duties. There is also concern directors representing special interests may allow those interests to outweigh their duty to the corporation as a whole.¹⁷ Opponents of representative directors argue that the interests of the public and stakeholders can be best represented by a well-balanced board of directors acting in the best interest of the corporation.

**Board Size**

Several studies addressed the issue of the optimum size of the board of directors. The general conclusion is that there is no optimum board size. The key consideration is whether the board is of the appropriate size to facilitate effective decision making. If a board is too big, decision making can be cumbersome and it may be difficult if not impossible to get a consensus decision. On the other hand, if the board is too small, there may not be the necessary mix of expertise and too few resources for the board to discharge its required duties and responsibilities.

On balance there is a general sense that many boards are larger than necessary. Several studies of governance, including the Dey Report, recommended that boards of directors specifically consider the size of the board necessary to facilitate effective decision making. In 1995, the federal government passed the *Government Organization Act* that included a provision reducing the size of board membership in many federal agencies, corporations and commissions.

Selection and Appointment of Directors

Several studies stressed the importance of the nomination process in the appointment of board members. A key recommendation was for development of a board profile enumerating the appropriate mix of qualified board members to be used as a basis for the recruitment and selection of new board members when vacancies arise. These studies recognized that the required mix of directors may change with changes in the corporation’s operating environment and highlighted the importance of the nominating committee in the development and maintenance of an up-to-date board profile for the recruitment of new members. Several studies also stressed the importance of succession planning to the ongoing effectiveness of the board. These studies suggested that board members usually need two to three years to get “fully up to speed” and some suggested that a director needed to be a member of the board for several years to be fully effective.

At the federal government level, improvements to the way board members are selected has been instituted. Board profiles have been developed for all federal boards with input from the CEO and chair of the corporation. These job profiles, describing the responsibilities and selection criteria used in appointments, are published and vacancies are announced in the Canada Gazette.

At the provincial level, the Appointment Office for Agencies, Boards and Commissions in the Premier’s Office, provides support to ministers in making recommendations to Cabinet for the appointment of board members. The Appointment Office tries to maintain a resume on file for each potential candidate and provides a list of candidates to the Minister when a vacancy arises. The Office is developing a directory of all boards, agencies and commissions that will be available to anyone interested in serving on the board of a public body.

The 1996/97 Report of the Auditor General of British Columbia on crown corporations governance reviewed the current appointment process and found it wanting. The Report found that “awareness of the operations of the Appointment Office was limited”. It also found that, because there is no statutory or formal role for the existing board of directors in the recruitment of new board members, current practice varies widely. The report made three suggestions for improvement based on the belief that “the chair and the board
are in a good position to understand the needs of the board at any one point in time and therefore should have a role in the appointment process.” The suggestions were:

- the board should be consulted during the process;
- the board should identify the skills and interests needed on the board; and
- the board should suggest potential nominees.

The report was also critical of the fact that there is no formal guideline respecting board turnover. Unlike the federal government, which limits board turnover to 50 percent of the board in any one year, the provincial government can and has replaced the entire board of various provincial government organizations. The report recommended “a more gradual approach to board turnover ... so that continuity in budget development, strategic planning and dealing with key initiatives can be maintained.”

**Board Training and Orientation**

Several studies addressed the issue of board training and orientation and came to the common conclusion that adequate orientation and training for new recruits is essential to maintain board continuity and effectiveness. New board members need information on their fiduciary obligations as a member of a board of directors in general as well as information on their specific responsibilities and duties as a member of the board of a particular organization. All directors, both new directors and continuing directors, need to be kept up-to-date about the current issues facing the corporation and the overall corporate strategy.

**Board Evaluation**

Many studies outlined the critical need for an internal process for assessing the effectiveness of the board as a whole, the various committees, and the individual directors. This self examination process viewed by many as critical in terms of providing the board with feedback on whether it is effectively managing the affairs of the corporation and how its governance processes can be enhanced to improve overall corporate performance.
Disclosure of Governance Processes

Several studies suggested that a board of directors should have as one of its established committees a committee on corporate governance which would be responsible for ensuring that the board’s governance processes are effective and up to date in relation to best practice. A key recommendation of the Dey Report was for mandatory disclosure of corporate governance processes. The Toronto Stock Exchange and Montreal Stock Exchange have implemented this recommendation in Canada. The boards of publicly traded companies are now required to prepare, on an annual basis, a “statement of corporate governance practices.” The statement must cover eight aspects of governance:

- board mandate (board’s duties and objectives);
- composition of the board;
- description of board committees, mandates, and their activities;
- description of decisions requiring board approval;
- procedures for recruitment of new directors;
- evaluation of board performance;
- measures for receiving shareholder feedback and for addressing shareholder concerns; and
- board’s expectations of management.

At the federal government level, all parent Crown corporations and other corporate interests of the Government of Canada are required to report annually to Parliament and describe the major activities that have taken place in the portfolio of the corporation in the preceding year, including “initiatives that are taking place in the area of corporate governance”.

Accountability Regimes

Accountability for Performance in British Columbia

All of the governance reports reviewed highlighted the importance of performance monitoring and evaluation. Evaluating and reporting on the
performance of the organization in meeting its objectives, and on the
performance of the board of directors’ stewardship of the organization, were
considered to be critical elements in terms of “closing the accountability” loop
and ensuring the overall effective governance of an organization.

As noted in the 1996 Report of the Auditor General and Deputy Ministers’
Council “accountability for performance, with a focus on results” is a relatively
new concept for governments. The move to introduce a form of performance
based accountability framework for government programs responds to a
growing public perception that government programs are not delivering
“enough value for the tax dollars being spent ... [and] As fiscal pressures grow,
and government is forced to decide which programs to keep and which to
reduce or eliminate, such decisions become more difficult when the results of
those programs are not clear”.

The accountability and performance management framework for the British
Columbia public sector developed jointly by the Office of the Auditor General
and the Deputy Ministers’ Council includes the following elements:

- the establishment of clear objectives by the government and government
  ministry, agency or crown corporation;

- the establishment and documentation of effective strategies and plans;

- the alignment of management structures and systems to support the
  realisation of the objectives and the strategies;

- the measurement and reporting of performance and achievement;

- the existence of consequences if objectives and strategies are not met.

The 1996 Report points out that the governance structure of a crown corporation,
through a board of directors, complicates the accountability regime for crown
corporations and recognizes that “because the governance responsibilities are
shared, there is a need to clarify the roles and decision making authorities, as
well as the degree to which each governing agent is accountable for certain
directions or decisions”. The report notes that a further study to look at these
issues is currently underway and that the “accountability regime for Crown corporations will not be complete until these issues are resolved.”

Other jurisdictions, both national and international, have processes and requirements in place to ensure that crown, or government, corporations are accountable to government and subject to the strategic direction of government.

**Accountability in Other Jurisdictions**

At the federal level in Canada, the federal *Financial Administration Act* was amended in 1984 to establish an enhanced framework for control and accountability for crown corporations. The key components of the federal accountability regime for crown corporations are

- a clear portrayal of “who is responsible for what” (parliament, government, the board and management);
- improved planning and reporting provisions; and
- a well-defined, rigorous audit regime.

In New Zealand, comprehensive reform of the public service begun in 1984 introduced a new accountability and reporting regime for “state owned enterprises” (SOE). “The changes in accountability were based on ministerial responsibility for broad policy objectives - and ministerial approval of the strategy for achieving them - and SOE management independence to get on with the job with minimum political interference”\(^{18}\). The main features of the New Zealand accountability system are:

- establishment of specific objectives and performance measures for each SOE, in consultation with ministers;
- development of “Statements of Corporate Intent” outlining performance objectives and plans (and targets) which are made public at the beginning of

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the reporting period. Statements of Corporate Intent are tabled in the House of Representatives and may be examined by Committees of the House;

- regular reporting of actual performance against targets, with monitoring of SOE performance by Treasury and other government departments carried out through reviews of longer-term strategy; Statements of Corporate Intent and quarterly results; and

- incentives (and sanctions) for senior management (including performance pay).

**Responsiveness to Government Direction and Oversight**

For the past several years, the British Columbia government has had in place a formal strategic planning process for the crown corporations sector which is designed to ensure that crown corporations develop and maintain a strategic plan that is consistent with broader government direction\(^\text{19}\). The strategic planning process for the crown corporations sector “provides the opportunity for government and crown corporations to come to an agreement on the corporation’s mandate and its public policy objectives”\(^\text{20}\).

Under the strategic planning regime, the Minister responsible for the public corporation or agency is responsible for ensuring that directions are communicated and that the board of directors of the corporation is advised of government plans. However, as noted in the Auditor General Report on crown corporations’ governance, because of frequent changes in the responsible minister “getting consistent messages” can be a challenge. As well, there is no formal or legislated provision requiring documentation of expectations between

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\(^{19}\) The *Financial Information Act* requires crown corporations to provide the Minister responsible for the corporation, the Minister of Finance and Corporate Relations, Cabinet, and any Cabinet committee with a copy of its strategic plans, business plans, capital and operating budgets, and any other information requested by the Minister responsible for the crown corporation. The WCB is included in the list of corporations to which the FIA applies.

the board of a crown corporation and the minister responsible for the corporation. In practice, this means that at present there is considerable variance amongst crown corporations in terms of the amount and level of contact between the board and the minister.

3.5 Overview of Select Public Sector Organizations

Following is a brief overview of the governance and accountability framework for three different forms of public corporation: BC Transit, a non-traditional provincial Crown corporation; the BC Securities Commission, a provincial government commission; and, the Vancouver International Airport Authority (YVR), a federal local authority.

This overview is not intended to provide a definitive description of all the possible institutional models for service delivery that can be used by government, but is simply intended to be illustrative of some of the different organizational models, and their corresponding governance and accountability systems, presently in existence.

B.C. Transit

Type of Business and Scope of Operations

B.C. Transit is a provincial crown corporation responsible for the urban transit systems throughout the province of British Columbia.

The corporation’s mandate includes

... planning, funding, constructing, marketing and operating, either directly or indirectly, the Vancouver and Victoria regional transit systems and local transit systems in designated communities throughout the province.

B.C. Transit supports the social, economic and environmental goals of the customers and communities that it serves (1996 Annual Report).
For the fiscal year 1995/96, B.C. Transit had total expenditures of $611.7 million. Operating and investment revenue was $205.2 million and funding from provincial and municipal sources contributed over $405.5 million in revenue. The authority has total assets of $2.1 billion.

**Financial Dependence on Government**

B.C. Transit receives contributions from the provincial government, the municipalities of Vancouver and Victoria and other designated municipalities that it serves. The provincial share of expenditures and debt service costs ranges from 33.8% in Victoria, to 46.2% in Vancouver and 50.3% in for the other municipalities. The municipalities contribute to the authority through their tax sources which include, in Vancouver, a levy on residential hydro accounts, a fuel tax and a property tax on non-residential property and, in Victoria, a fuel tax and a general property tax.

**Governance Structure and Accountability Framework**

The overall governance structure for B.C. Transit is two-tiered:

- there is a board of directors charged with the overall duty of managing or supervising the management of B.C. Transit; and

- there is provision in the legislation for local and regional transit commissions to represent transit service areas designated by B.C. Transit.

At present, there are two regional transit commissions, the Vancouver Regional Transit Commission and the Victoria Regional Transit Commission. Each regional transit commission consists of not less than seven members appointed by the Lieutenant Governor in Council form among members holding elective office under the Municipal Act and the Vancouver Charter. The commissions are responsible for preparing, planning, setting fares and determining the service and performance standards for their regions and for making recommendations to B.C. Transit respecting the annual operating and capital budgets for the regional transit systems.

The board consists of members appointed by the Lieutenant Governor in Council. There is no specific number of directors specified in the legislation (in
1995/96 there were 14 directors), but there is a requirement that the board include at least one member of each regional transit commission established under the legislation.

The Lieutenant Governor in Council may designate the chair of the board of directors of B.C. Transit as the CEO, but at present the chair and CEO are separate individuals. The board has explicit authority to delegate the exercise of any of its powers or duties to officers and employees of the corporation.

The Vancouver Regional Transit Commission consists of the mayors of the 17 municipalities, including Vancouver, and the three villages, and a locally elected representative of the three electoral areas within the Vancouver Regional Transit System boundary. The Victoria Regional Transit Commission consists of the mayor of Victoria, a Victoria councillor, the mayor of Esquimalt or Oak Bay, the mayor of Saanich and a Saanich councillor, a locally elected representative of the Gulf Islands electoral area of the Capital Regional District and a locally elected representative of the Sooke electoral area of the Capital Regional District. All members of the Regional Transit Commissions serve for a term of two years.

**B.C. Securities Commission**

*Type of Business and Scope of Operations*

Established in 1987, the British Columbia Securities Commission (Commission) is responsible for the regulation and enforcement of securities legislation in the province.

*Governance Structure and Accountability Framework*

The Commission may have up to 11 part-time and full-time members appointed by the Lieutenant Governor in Council. There are no statutory requirements respecting the qualifications or composition of the Commission, though in practice the number of part-time members is greater than the number of full time members.

Beginning in 1995, part-time appointments were made following a competitive selection process in which the Commission was closely involved. The selection...
of part-time Commissioners was made on the basis of criteria relating to knowledge, skills and experience relevant to the securities field, but with no current direct interest in the securities industry.

The Lieutenant Governor in Council may designate one full-time member of the Commission as Chair and CEO and up to two other full time members as Vice Chairs. The Commission must appoint a person to be the executive director who is the chief administrative officer of the Commission and must obey the policy directives given by the Commission.

The Act provides for the establishment of a B.C. Securities Commission Securities Policy Advisory Committee, whose members are appointed by the Minister responsible for the Act, to provide advice to the Commission on administrative, regulatory, legislative matters relating to trading in securities and to the securities industry.

Revenue obtained by the Commission for fees and for administrative penalties is retained by the Commission for the administration of the legislation and to cover operating costs of the Commission. However, the Commission is an agent of government and is accountable to government. An auditor appointed by the Lieutenant Governor in Council audits the accounts of the Commission each year.

At least once each year the Commission must submit a business plan to Treasury Board for review and approval. The business plan must include a proposed budget for the next three-year period, management objectives for the next three years and any other information that Treasury Board may specify. Annually, the Commission must prepare and submit a report to the Minister summarizing the Commission’s operations for that past year and providing a financial statement.

The Commission is charged under the legislation with acting in the public interest in the exercise of its powers. According to BCSC Governance Policy, in order to fulfil its statutory duties and powers, the Commission must function and be seen to function with an appropriate degree of independence from government, the securities industry, other securities market participants and other interests.
Vancouver International Airport Authority

Type of Business and Scope of Operations

The Vancouver International Airport Authority is a not-for-profit community based corporation that oversees the operation of the Vancouver International Airport (YVR). The Authority has a sixty-year lease with the federal government with an option to extend for an additional 20 years for the lands making up Sea Island.

In 1996, YVR had total revenue of $189.7 million, with expenses of $119.1 million. It handled 14.0 million passengers, 216.9 thousand tonnes of cargo and 289,000 movements.

Governance Structure and Accountability Framework

The Vancouver International Airport Authority is incorporated under the Part II of the Canada Corporations Act which provides for the incorporation of "a body corporate and politic, without share capital, for the purpose of carrying on, without pecuniary gain to its members, objects, to which the legislative authority of the Parliament of Canada extends, of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character, or like objects".

The board of directors is comprised of individuals nominated by the following entities:

- City of Richmond
- City of Vancouver
- Greater Vancouver Regional District
- B.C. Institute of Chartered Accountants
- Law Society of B.C.
- Association of Professional Engineers and Geoscientists of B.C.
• Vancouver Board of Trade,

• up to seven members of the general public, appointed by the board itself.

All members are appointed for a fixed term of three years. Members are eligible for reappointment. The Authority is required to prepare an audited annual statement on its operations and financial performance that must be made available to the public. The Authority meets annually with the nominating entities and must ensure that at least one-third of directors are in attendance at this meeting.

The Airport Authority is required by its bylaws to hold an annual public meeting at which at least one-third of the board of directors must be in attendance. The Authority also undertakes year-round comprehensive consultation with the community. It has in place several broadly based consultation forums including the Annual Public meeting, Environmental Advisory Committee, Noise Management Committee, and special meetings with organizations like the B.C. Aviation Council.

At least once every five years, the Authority must retain a recognized independent consulting firm to conduct a review of the Authority’s management, operations and financial performance. If the consultant’s report reveals that the Authority has acted improperly, has not conducted itself in accordance with its letter patent or by-laws or is not conducting its affairs in a manner likely to achieve the objects of the Authority, the board of directors must convene a special meeting with the consultants and nominating entities for the purpose of discussing the report and determining corrective action to be taken.
4 Governance of Workers' Compensation Across Canada

4.1 Introduction

This chapter provides a comparative review of the governance and accountability in the workers’ compensation systems of the twelve Canadian jurisdictions.

The chapter compares the workers’ compensation systems in the 12 Canadian jurisdictions on the basis of the following basic elements of any governance arrangement, based on the analysis in Chapter 3 of this report:

Governance Structure, including the mandate of the organization, the structure of the governing body, the duties and powers of the governing body and management, liability, conflict of interest provisions, meeting requirements and committee structure;

Governance Processes, including training and orientation of governing body members, evaluation of the governing body, performance assessment of the organization, policy development and strategic planning; and

Accountability, including reporting and control mechanisms and ways that the organization is held accountable to stakeholders, government and the public.

The remainder of the chapter includes the following sections:

- Approach and Methodology — a discussion of the approach taken to complete the comparative summary for each jurisdiction.
- Comments and Observations — comments and observations arising from the governance information collected.
- Summary Matrix — an executive summary matrix of the governance information collected.
4.2 Approach and Methodology

Information collected on the governance framework for each of the Canadian workers’ compensation systems has been organized according to common topic headings to facilitate a comparative review of the systems. The result is notionally a matrix, with the jurisdictions forming one axis, and the topic headings forming the other axis.

It was only practical to present a brief summary of the information collected in matrix form, with the bulk of the information being included in detailed comparative review documents prepared for each jurisdiction. The summary matrix forms part of this report while the detailed information underlying the summary matrix has been provided to the Commission as a separate volume.

A five-step approach was taken to collect the information:

1. An outline of the types of information to be compared was prepared and provided to the Commission for approval. The purpose of this step was to ensure that, to the extent possible, the information collected would address relevant issues.

2. Relevant information about each jurisdiction was collected. This included a review of available published material and initial contact with appropriate officials in each jurisdiction to request information relating to the governance framework of the workers’ compensation system.

3. A draft of the comparative review document was prepared for each jurisdiction using all available information.

4. The draft comparative review documents were provided to the appropriate officials in each jurisdiction to confirm information and clarify outstanding issues, if any.

5. Comments received were incorporated into the final version of each of the comparative review documents.

To the extent possible, given the parameters of the project, the accuracy and currency of the information in the summaries has been verified by confirming the information with contacts in the various jurisdictions. However, given the
complexity of this area and the pace at which change can take place, that is not a guarantee that all of the information is completely accurate or that it will still be current six months after the information was collected.

It should also be noted that no attempt has been made to determine why the various situations are as they are, the degree to which the various governance arrangements are considered to effective or whether there are any differences in practice from documented governance arrangements. Although all interesting questions, they are all beyond the scope of this project.

### 4.3 Observations and Findings

At present, there are two distinct types of governance models in place in Canadian workers’ compensation systems: the board of commissioners structure in place in Saskatchewan and the board of directors corporate governance model in place in all the other Canadian jurisdictions\(^2\).  

Under the Saskatchewan board of commissioners structure, the policy making, direction setting, operational and appellate functions are all the responsibility of the board of commissioners. In other words, the full-time commissioners are also the executive management of the organization.

Under the board of directors model in the other 11 jurisdictions, the policy making and operational functions have been separated. The board of directors has authority for the stewardship of the corporation and the senior executive officer has responsibility for the day to day administration and operations of the organization, subject to the supervision of the board of directors.

A separate body is responsible for the appeal function in nine of the eleven jurisdictions with a board of directors model, and in five of those jurisdictions

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\(^{2}\) Throughout the 1980s, all Canadian jurisdictions, except Saskatchewan, moved from a board of commissioners model to a corporate governance board of directors model which included the separation of the policy making and administrative functions, and in most cases the creation of a separate appeal body. The reasons for this change are varied but it has been suggested that they include concerns regarding the quality of commissioners’ appointments and security of tenure, stakeholder feelings of disenfranchisement, and increasing demands for greater openness and accountability.
the entire appeal process is independent from the board of directors (Alta., Ont., Que., NS, PEI). In British Columbia there is an independent medical review function but the general appeals function is separate from, but not independent of, the board. Saskatchewan has an independent medical review function only. Manitoba, New Brunswick and Newfoundland all have separate but not independent appeal functions. In the Northwest Territories an Appeals Tribunal chaired by a member of the board of directors hears appeals and in the Yukon an Appeals Panel of the board of directors has responsibility for the appellate function.

In Québec, the chair also has the title of chief executive officer and has specific statutory duties associated with policy development and liaison with government and interested parties. However, the primary day-to-day management function rests with the president.

In comparing the results of this work against the attributes of an effective governance framework outlined in the Phase I report, there seems to be considerable variance in the degree to which those attributes are evident. Some jurisdictions, including Québec, New Brunswick and Ontario, have a relatively comprehensive governance framework including many of the necessary attributes. Other jurisdictions have a detailed legislative framework addressing many of the structural components of the governance framework, but it is not clear through the available information to what extent the additional supporting mechanisms or processes are in place.

It appears that the issue of governance is a timely one for workers compensation systems across Canada. Contact with officials in various jurisdictions has revealed that several boards have either just recently reviewed the issue of governance, including Ontario and Alberta, or are in the process of reviewing the governance structure and processes for their organisations, including Nova Scotia, the Northwest Territories and the Yukon.

Following is some analysis the information collected on the various elements of the governance arrangements of the Canadian jurisdictions

\[22\] Ibid.
Governance Structure

Duties, Authority and Powers

One of the key findings of Chapter 3 on the components of an effective governance framework is the importance of clearly defined roles and responsibilities of the board of directors, executive management and other players in the governance system, including the government itself.

The legislation varies in the approach taken to vesting powers, duties and responsibilities in the governing body of the organization. The legislation in some jurisdictions simply assigns the board of directors with the responsibility for administering the legislation. The legislation in other jurisdictions puts more emphasis on responsibility by specifically providing that the board of directors is responsible for the stewardship of the organization. Some legislation is very comprehensive, outlining not only a detailed list of responsibilities for the governing body under the Act, but additional duties and responsibilities beyond the strict scope of the legislation.

The legislation in most jurisdictions states specifically that the president and/or chief executive officer is responsible for the day to day administration or management of the organization, subject to the supervision and direction of the governing body. Several acts establish a specific list of responsibilities for the senior executive officer.

In many jurisdictions the legislation is supported by policies and by-laws of the board of directors that further clarify and describe the roles, responsibilities and duties of the various players.

In only two jurisdictions is there a legislative provision regarding the required standard and duty of care of board members. The Ontario act contains an explicit provision requiring the board of directors to exercise the care and diligence of a reasonable person while at all times acting in the best interest of the organization as a whole. The New Brunswick legislation contains a clause requiring board members to operate in the best interests of the organization notwithstanding their appointment as a representative of workers, employers or the general public. In British Columbia, the Panel of Administrators Manual outlines the common law standards and duty of care for directors and requires
the panel members to operate in a manner consistent with these standards, including operating at all times in the best interest of the organization. This is in contrast to a former by-law of the board of governors, which indicated that the role of board members was to represent the interest of the constituent group that they represented.

**Governing Body Representation**

There are basically four models for representation on the governing body found in Canada – pure equal representation\(^{23}\), predominant equal representation, non-predominant representation and fiduciary (no representation).

A pure equal representation board model is used in Saskatchewan, Québec, Nova Scotia, Prince Edward Island and the Yukon.

In New Brunswick, Newfoundland and in the board of governors provisions in the British Columbia legislation there is predominant equal representation of employers and workers and some representation of the public interest.

A non-predominant representation model exists in Alberta, Manitoba and Northwest Territories with equal representation of workers, employer and the public interest.

Ontario is the only jurisdiction in Canada to have in place a permanent fiduciary model, although the British Columbia Panel of Administrators provisions have temporarily imposed the fiduciary model in British Columbia at present. Note that the fiduciary model does not imply that board members with ties to interest groups will not be chosen, just that the members are not chosen specifically to represent a particular interest.

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\(^{23}\) of workers and employers.
Size

The size of the board of directors varies across jurisdictions from a low of possibly just one member under British Columbia’s Panel of Administrators provisions to a high of 15 voting members in Québec.

Only in Saskatchewan are all of the members full-time, though a few jurisdictions have a full-time chair (notably, Québec).

Selection and Appointment

Several jurisdictions have some form of process to solicit names of potential board members from traditional stakeholder groups and four jurisdictions have a nomination and selection process set out in the legislation requiring consultation with labour and employer groups in the selection of the board members to represent their interests.

Regardless of the selection process or lack thereof, in all jurisdictions the governing body is appointed by elected officials, either the Lieutenant Governor in Council or the equivalent, or a Minister.

In most jurisdictions the legislation establishes a maximum term of office for board members (ranging between three and five years). Most jurisdictions provide for the reappointment of board members. In some jurisdictions, the legislation specifically provides that board members serve at the pleasure of the Lieutenant Governor in Council and can be removed for cause (Prince Edward Island and Yukon).

Conflict of Interest

Eight jurisdictions have a specific requirement in their legislation regarding conflict of interest or have specifically addressed the issue in by-laws or rules adopted by the governing body itself. The Yukon legislation specifically requires that the board of directors must address the issue of conflict of interest and establish disclosure rules and conflict of interest guidelines for board members.
**Remuneration**

In all cases, remuneration for members of the governing body is set by whoever appoints the governing body.

**Meetings**

The legislation for many jurisdictions addresses the issue of meetings of the governing body in a general way, empowering the board to meet and conduct its business as the group sees fit. Several jurisdictions then supplement this general requirement through by-laws or guidelines that establish detailed provisions regarding meetings and the conduct of business. The legislation for other jurisdictions prescribes in more detail the meeting requirements for the board of directors, including the number of meetings that must be held, where the meetings must be held and in what manner.

Most legislation establishes the quorum requirements for meetings as a simple majority. In several cases, the Chair plus a simple majority constitute a quorum.

**Selection and Appointment of the Senior Executive Officer**

The legislation in the different jurisdictions contains a range of approaches for appointing the senior executive officer of the organization (i.e. the president or chief executive officer). In one jurisdiction the senior executive officer is appointed solely by the Lieutenant Governor in Council. In two jurisdictions the senior officer is appointed by the board of directors, subject to the approval of the Lieutenant Governor in Council. In three jurisdictions the Lieutenant Governor in Council appoints with the approval of the board of directors. In six jurisdictions the board of directors has sole legal authority for appointing the senior officer.

It is not clear, in those six jurisdictions, how much independence the board actually has to appoint the senior executive, in spite of the legal authority.
Senior Management Structure

Québec is the only jurisdiction where the government plays a role in the appointment of management below the senior officer level. In Québec, the government appoints the chief operating officer and the vice-presidents as well as the chair/chief executive officer.

Recruitment and Employment of Staff

The legislation in most jurisdictions addresses the issue of employment of staff and either generally provides the board with the authority to hire the employees necessary to carry out the duties under the legislation, or more specifically, provides that the chief executive officer or equivalent is responsible for hiring staff. Four jurisdictions provide that staff of the organization are subject to the Public Service Act.

Organizational models vary widely from highly centralized organizations to relatively flat organizational structures.

Governance Processes

Training and Orientation

Five jurisdictions have a formal, standard training and orientation program, though several jurisdictions indicated that there was some degree of briefing provided to new board members and some level of ad hoc training provided to keep board members up to date.

Evaluation of Governing Body

The information collected indicated that three jurisdictions specifically address the issue of evaluating the performance of the board of directors. The board of director’s governance manual for New Brunswick indicates that a key governance function of the board was to “assess its own effectiveness in delivering its mandate.” British Columbia is currently developing a self-evaluation framework and Newfoundland conducts period self-evaluations.
Policy Development

All jurisdictions have some form of standard, formal policy identification and development process. The complexity of the process, and the degree of required consultation with interested parties, varies across jurisdictions.

Strategic Planning and Direction Setting

Most jurisdictions indicated that they have formal strategic planning process for establishing goals and objectives for the organization. In many jurisdictions, this plan is used to establish broad corporate objectives upon which the organization monitors its performance. In some jurisdictions, notably Manitoba and Ontario, there is a specific provision in the legislation requiring that the board annually submit a five-year plan for the organization to the minister responsible for workers’ compensation.

Accountability

Accountability to Government

A few jurisdictions have a legislated reporting relationship between government and the workers’ compensation agency and board of directors. In many cases the nature of the reporting relationship with government is simply the preparation and submission of an annual report. Other jurisdictions require more detailed reports to be submitted to government (Manitoba, Ontario, New Brunswick, Northwest Territories and the Yukon).

In most jurisdictions the legislation provides that the workers’ compensation agency is subject to an audit by the provincial auditor or an auditor appointed by government. In several cases, the board is also subject to an actuarial assessment.

Accountability to Interested Parties

There were few specific accountability mechanisms from the governing body to the interested parties identified. Many jurisdictions consult with employers, workers, and other interested parties on an as required basis in the development
of policy but few jurisdictions have any systematic process to report to interested parties and the public on the ongoing performance of the organization, obtain feedback and allow input. Newfoundland holds an annual general meeting at which interested parties can be heard.

Under the British Columbia legislation, the board is required to consult regarding changes to the occupational health and safety rules and regulations. Under the Yukon act, the board must hold an annual meeting for the purposes of reporting to its stakeholders.

**Performance Evaluation**

Most jurisdictions indicated that they have a formal strategic planning process to develop goals and objectives and establish priorities. In most cases these are internal processes that do not involve either government or interested parties.

British Columbia, Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia and Newfoundland indicated that they have a corresponding organization-wide performance evaluation process designed to assess the performance of the organization and indicate corrective action.

**Review Requirement**

Four jurisdictions require by statute a regular review of the workers’ compensation system in the province, including the operations of the board and the legislation. This review is to be carried out by an independent committee established by government specifically for this purpose.

### 4.4 Summary Matrix

The following table sets out the highlights of the comparative review of governance provisions for Canadian jurisdictions. The detailed comparative review documents have been provided to the Commission in a separate volume.
<table>
<thead>
<tr>
<th><strong>Governance Structure</strong></th>
<th>B.C.</th>
<th>Alberta</th>
<th>Saskatchewan</th>
<th>Manitoba</th>
</tr>
</thead>
</table>
| **Governing Body**  
Representation | Since 1995, Panel of Administrators, no representation requirements. Board of Governors - predominant, equal representation | Equal representation of workers, employers and the general public | Commission model combining management and stewardship functions, Equal representation of workers and employers with neutral chair | Equal representation of workers, employers and the general public |
<p>| <strong>Appeal Mechanism</strong> | General appeals separate but not independent. Independent medical review. | Independent | Independent medical review only. | Separate but subject to board decisions and ultimate hearing by the board |
| <strong>Duty of Care</strong> | No legislative provision but Panel of Administrators Manual outlines common law duty of care of directors | No mention of required duty of care | No mention of required duty of care | No mention of required duty of care |
| <strong>Composition &amp; Size</strong> | Panel of Administrators - one or more persons appointed by LGIC. Board of Governors - 13 members, chair, 5 worker representatives, 5 employer and 2 public | 10 members appointed by LGIC, independent chair, 3 members each workers, employers public interest | Up to five full-time members appointed by LGIC, Chair and equal number of members representing workers and employers | 10 members appointed by LGIC, independent chair, 3 members each workers, employers public interest |
| <strong>Selection and Appointment</strong> | No legislated requirements | No legislated requirements | LGIC must appoint members from list of names submitted by employer associations and labour organizations | LGIC must consult with employer and worker organizations respectively to appoint representatives and both to appoint chair |
| <strong>Term of Office</strong> | Panel of Administrators - terms up to 12 months or longer. Board of Governors - appointed for up to six years, subject to extension. | Appointed for up to three years, one reappointment allowed. | Members appointed for up to four years and may be reappointed. Chair appointed for up to five years and may be reappointed | Appointed for up to five years, no express provision regarding reappointment |
| <strong>Conflict of Interest</strong> | No legislated provisions, Panel of Administrators Manual outlines code of conduct for disclosing conflicts | No legislative provisions | No legislative provisions | Act requires board of directors to pass a by-law defining conflict of interest and establishing conflict of interest rules |
| <strong>Remuneration</strong> | Set by LGIC | Prescribed by LGIC | Fixed by LGIC | Prescribed by LGIC |
| <strong>Committees</strong> | Panel of Administrators have established audit, human resources and compensation, and priorities and governance committees | Audit Committee required under Act, Act requires Chair to be a member of all committees established by board | No legislative requirements respecting committees | Act enables establishment of committees and requires policy and investment committees |
| <strong>Meetings</strong> | Meetings at call of Chair but Panel meets at least monthly. Quorum — majority of members | Meetings at call of Chair, at least every two months. Quorum — majority of members | Board may meet and conduct its business as it see fit. Quorum — majority of members | Meetings held at call of Chair with at least ten meetings a year. Quorum — majority of members |
| <strong>CEO/Staff Appointments</strong> | Panel/Governors | Board of directors | Board of directors | Board of directors |</p>
<table>
<thead>
<tr>
<th><strong>Governance Structure</strong></th>
<th><strong>Ontario</strong></th>
<th><strong>Quebec</strong></th>
<th><strong>N.B.</strong></th>
<th><strong>N.S.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Governing Body Representation</strong></td>
<td>Fiduciary model, no specific representation</td>
<td>Equal representation of workers and employers</td>
<td>Predominant, equal representation</td>
<td>Equal representation of workers and employers, and non-voting representatives of public</td>
</tr>
<tr>
<td><strong>Appeal Mechanism</strong></td>
<td>Independent</td>
<td>Independent</td>
<td>Separate but not independent</td>
<td>Independent</td>
</tr>
<tr>
<td><strong>Duty of Care</strong></td>
<td>Act requires that board members act in the best interests of the organization and exercise the care of a reasonably prudent person</td>
<td>No mention of duty of care</td>
<td>Act requires that despite representation members must act in best interests of the organization</td>
<td>No mention of duty of care</td>
</tr>
<tr>
<td><strong>Composition &amp; Size</strong></td>
<td>Chair, minimum of three and up to seven members appointed by LGIC, and the President</td>
<td>15 members appointed by government, neutral full-time chair and 7 members each representative of workers and employers</td>
<td>At least 10 members appointed by LGIC, Chair, at least 3 worker and 3 employer representatives, 1 public director President and Chief Appeal Commissioner non-voting members.</td>
<td>No more than 11 members, including a chair, a deputy chair, equal numbers of worker and employer representatives and up to 2 non-voting members of public at large</td>
</tr>
<tr>
<td><strong>Selection and Appointment</strong></td>
<td>No legislated requirements</td>
<td>Act requires government to consult with employer and union associations in appointment of members</td>
<td>No legislated requirements</td>
<td>No legislated requirements, in practice business and labour groups put forward nominations</td>
</tr>
<tr>
<td><strong>Term of Office</strong></td>
<td>No legislated term of office</td>
<td>Chair appointed for term not to exceed five years, subject to renewal; other board members appointed for 2 year terms, subject to renewal</td>
<td>Chair up to 4 years, subject to reappointment with approval of board, and members 3 years, subject to reappointment</td>
<td>Chair and deputy chair appointed for terms of up to 5 years and members for terms of up to 4 years, subject to reappointment</td>
</tr>
<tr>
<td><strong>Conflict of Interest</strong></td>
<td>Act prohibits chair and president from having certain investments, board of directors by-laws establish disclosure and conflict of interest rules.</td>
<td>Chair and president prohibited from having a conflicting personal interest, others must disclose any interest and not vote when there is a conflict.</td>
<td>Board members must disclose potential conflicts to chair</td>
<td>Board of directors have adopted guidelines for the disclosure of conflict of interest</td>
</tr>
<tr>
<td><strong>Remuneration</strong></td>
<td>Prescribed by LGIC</td>
<td>Fixed by government</td>
<td>Prescribed by LGIC; board sets expenses</td>
<td>Prescribed by LGIC</td>
</tr>
<tr>
<td><strong>Committees</strong></td>
<td>Board has established finance and investment, audit, compensation, human resources and OHS committees.</td>
<td>Executive and audit committees required Management, budget and OHS committees also established</td>
<td>Board has established finance and investment, audit, appeals, human resources and OHS committees</td>
<td>Chair establishes committees which include audit, finance, investment and governance committees</td>
</tr>
<tr>
<td><strong>Meetings</strong></td>
<td>Meetings held at call of chair, but at least every two months. Quorum — majority of members.</td>
<td>Board meets monthly. Quorum — eight members including chair</td>
<td>Meetings at call of the chair, at least six per year. Quorum — ½ of members including an employer and worker representative and chair</td>
<td>Meets on a monthly basis except in summer. Quorum — majority of members plus chair</td>
</tr>
<tr>
<td><strong>CEO/Staff Appointments</strong></td>
<td>CEO - LGIC in consultation with board Staff Board of directors</td>
<td>Government appoints senior officers, staff subject to public service legislation</td>
<td>CEO - Board subject to LGIC approval Staff - Board</td>
<td>Board of directors</td>
</tr>
<tr>
<td>Governance Structure</td>
<td>P.E.I.</td>
<td>N.F.L.D.</td>
<td>N.W.T.</td>
<td>Yukon</td>
</tr>
<tr>
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<td>-------</td>
</tr>
<tr>
<td>Governing Body Representation</td>
<td>Equal representation of workers and employers</td>
<td>Predominant, equal representation</td>
<td>Equal representation of workers, employers and the public</td>
<td>Equal representation of workers and employers</td>
</tr>
<tr>
<td>Appeal Mechanism</td>
<td>Independent</td>
<td>Separate but not independent</td>
<td>Interlocking membership with Board</td>
<td>Appeals heard by panel of the board</td>
</tr>
<tr>
<td>Duty of Care</td>
<td>No mention of duty of care</td>
<td>No mention of duty of care</td>
<td>No mention of duty of care</td>
<td>No mention of duty of care</td>
</tr>
<tr>
<td>Composition &amp; Size</td>
<td>LGIC appoints chair and equal numbers of members representing labour and employers</td>
<td>LGIC appoints chair, equal number of labour and employer representatives and 2 public directors, CEO and ADM. Environment and Labour are non voting members</td>
<td>Minister responsible appoints up to 7 directors: chair, and up to two representatives each of workers, employers and the general public</td>
<td>Commissioner in Executive Council appoints up to 5 voting members: independent chair and 2 representatives each of labour and employers</td>
</tr>
<tr>
<td>Selection and Appointment</td>
<td>No legislated requirements, in practice minister makes recommendations based on nominations received from stakeholders</td>
<td>No legislated requirements</td>
<td>No legislated requirements, in practice consultation with worker and employer associations</td>
<td>Minister must consult with employer and worker organizations respectively to appoint representatives and both to appoint chair</td>
</tr>
<tr>
<td>Term of Office</td>
<td>Members appointed for terms of up to 3 years, subject to reappointment</td>
<td>No legislated set terms of office</td>
<td>Members appointed for terms of up to 5 years, subject to reappointment</td>
<td>Members appointed for terms not to exceed 3 years, subject to reappointment</td>
</tr>
<tr>
<td>Conflict of Interest</td>
<td>Board of directors have adopted a policy for the disclosure of conflict of interest</td>
<td>Addressed in board by-laws</td>
<td>No provisions identified. Board members must sign a confidentiality agreement</td>
<td>Act requires board of directors to create disclosure and conflict of interest rules for board members</td>
</tr>
<tr>
<td>Remuneration</td>
<td>Prescribed by LGIC</td>
<td>Prescribed by LGIC</td>
<td>Receive government rate for members to agencies, boards or commissions</td>
<td>Unknown</td>
</tr>
<tr>
<td>Committees</td>
<td>No legislated requirements, at present there are no committees</td>
<td>Board has established finance, investment and compensation policy committees</td>
<td>No legislated requirements, board has established a Finance Committee and a Policy Committee</td>
<td>No legislated requirements, at present there are no committees</td>
</tr>
<tr>
<td>Meetings</td>
<td>Meets monthly. Quorum — majority of members</td>
<td>Board meets as required</td>
<td>Meets every 6 weeks. Quorum — 3 members</td>
<td>Board meets at least once a month</td>
</tr>
<tr>
<td>CEO/Staff Appointments</td>
<td>CEO - LGIC in consultation with board Staff - Board of directors</td>
<td>CEO - Board subject to LGIC approval Staff - Board of Directors</td>
<td>Board of directors, staff subject to public service legislation</td>
<td>Commissioner in Executive Council, on recommendation of board, staff subject to public service legislation</td>
</tr>
<tr>
<td>Governance Processes</td>
<td>BC</td>
<td>Alberta</td>
<td>Saskatchewan</td>
<td>Manitoba</td>
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</tr>
<tr>
<td>Training &amp; Orientation</td>
<td>No provisions identified</td>
<td>No programs identified</td>
<td>No programs identified</td>
<td>No programs identified</td>
</tr>
<tr>
<td>Evaluation of Governing Body</td>
<td>Panel is developing a self-evaluation process - considered by governance committee in April, 1998</td>
<td>No programs identified</td>
<td>No programs identified</td>
<td>No programs identified</td>
</tr>
<tr>
<td>Policy Development</td>
<td>Formal process</td>
<td>Formal process</td>
<td>Formal process</td>
<td>Formal process</td>
</tr>
<tr>
<td>Strategic Planning/ Direction Setting</td>
<td>Formal strategic plan and strategic planning process</td>
<td>Formal strategic plan and strategic planning process</td>
<td>No program identified</td>
<td>Formal, rolling five year strategic plan</td>
</tr>
</tbody>
</table>

**Reporting & Accountability**

<table>
<thead>
<tr>
<th>Reporting &amp; Accountability to Government</th>
<th>BC</th>
<th>Alberta</th>
<th>Saskatchewan</th>
<th>Manitoba</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual report to Legislature, financial statements audited by Auditor General or auditor appointed by LGIC</td>
<td>Annual report to Legislature; financial statements audited on an annual basis by Auditor General, every five years actuarial evaluation of liabilities</td>
<td>Annual report to Legislature; financial statements audited on an annual basis by Provincial Auditor</td>
<td>Annual report to Minister and Legislature, including five year plan, financial statements audited by Provincial Auditor or auditor appointed by LGIC</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Accountability to Interested Parties</th>
<th>BC</th>
<th>Alberta</th>
<th>Saskatchewan</th>
<th>Manitoba</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paneligovernors must consult with public before adoption of new health and safety regulations</td>
<td>No legislative provisions</td>
<td>Act requires board to make its policy directives available to the public</td>
<td>No legislative provisions</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Organizational Performance Assessment</th>
<th>BC</th>
<th>Alberta</th>
<th>Saskatchewan</th>
<th>Manitoba</th>
</tr>
</thead>
<tbody>
<tr>
<td>Panel of Administrators duty under Administrator's Manual is to monitor and assess WCB's performance</td>
<td>Corporate objectives adopted annually, established &quot;corporate scorecard&quot; to measure performance</td>
<td>No program identified</td>
<td>Strategic plan sets out key performance areas and specific measures of success</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Review Process</th>
<th>BC</th>
<th>Alberta</th>
<th>Saskatchewan</th>
<th>Manitoba</th>
</tr>
</thead>
<tbody>
<tr>
<td>No legislative requirement</td>
<td>No legislative requirement</td>
<td>At least once every five years, LGIC must appoint committee of review</td>
<td>LGIC may appoint a worker/employer advisory committee to conduct review</td>
<td></td>
</tr>
</tbody>
</table>
## Governance Processes

<table>
<thead>
<tr>
<th></th>
<th>Ontario</th>
<th>Quebec</th>
<th>N.B.</th>
<th>N.S.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Training &amp; Orientation</strong></td>
<td>No programs identified</td>
<td>No programs identified</td>
<td>Standard orientation program and training materials for new directors</td>
<td>Standard orientation program and briefing materials</td>
</tr>
<tr>
<td><strong>Evaluation of Governing Body</strong></td>
<td>No programs identified</td>
<td>No programs identified</td>
<td>Board policy indicates that role of board is to evaluate its own effectiveness</td>
<td>No programs identified</td>
</tr>
<tr>
<td><strong>Policy Development</strong></td>
<td>Formal process</td>
<td>Formal process</td>
<td>Formal process</td>
<td>Formal process</td>
</tr>
<tr>
<td><strong>Strategic Planning/ Direction Setting</strong></td>
<td>No process identified</td>
<td>Formal strategic plan and planning process</td>
<td>Formal strategic planning process</td>
<td>Recently initiated strategic planning process to prepare five-year rolling plan</td>
</tr>
</tbody>
</table>

## Reporting & Accountability

<p>| Reporting &amp; Accountability to Government | Every five years MOU between Minister and board; Minister may issue policy directions, annual report, annual audit and annual review of fund by Supt of Ins. | Chair accountable to National Assembly; non-voting public officials on the board; annual budget submission and audit | Chair reports to minister on administration of legislation; annual report to Legislature, annual audit | Annual report to Legislature, Board is subject to review by Provincial Auditor |
| Accountability to Interested Parties | No legislative provisions | Partnership with community and other agencies regarding provision of OHS | No legislative provisions | Standard process to identify required level of consultation with stakeholders and public; 1997 annual report includes corporate performance measures |
| Organizational Performance Assessment | Annual program review or program evaluation | No program identified | Board policy indicates that role of board is to evaluate monitor and evaluate performance of organization | Strategic plan is intended to generate annual corporate objectives |
| Review Process | No legislative requirement | No legislative requirement | No legislative requirement | New Act must be reviewed after three years (expected in 2000) |</p>
<table>
<thead>
<tr>
<th>Governance Processes</th>
<th>P.E.I.</th>
<th>N.F.L.D.</th>
<th>N.W.T.</th>
<th>Yukon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Training &amp; Orientation</td>
<td>In house training and orientation sessions are held for new and current directors</td>
<td>Orientation provided to new members</td>
<td>Board of director's orientation manual under development</td>
<td>No programs identified</td>
</tr>
<tr>
<td>Evaluation of Governing Body</td>
<td>No programs to evaluate performance of board of directors</td>
<td>There is a periodic self-evaluation process</td>
<td>No programs to evaluate performance of board of directors</td>
<td>No programs to evaluate performance of board of directors</td>
</tr>
<tr>
<td>Policy Development</td>
<td>All policies require board approval</td>
<td>Formal process</td>
<td>Formal process</td>
<td>Formal process</td>
</tr>
<tr>
<td>Strategic Planning/ Direction Setting</td>
<td>No formal strategic planning process in place</td>
<td>Annual corporate goals approved by board of directors</td>
<td>Formal, rolling three year strategic plan</td>
<td>Formal strategic plan</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reporting &amp; Accountability</th>
<th>P.E.I.</th>
<th>N.F.L.D.</th>
<th>N.W.T.</th>
<th>Yukon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reporting &amp; Accountability to Government</td>
<td>Annual report to minister and Legislature</td>
<td>Annual report to Minister and Legislature, subject to audit by auditor appointed by LGIC</td>
<td>Board reports to minister, annual report to Legislature, annual audit, every 3 years actuarial evaluation</td>
<td>Board of directors must make annual report to Minister, Annual reports tabled in Legislature, board also reports on specific matters as directed</td>
</tr>
<tr>
<td>Accountability to Interested Parties</td>
<td>No legislative provisions; no standard process but will meet as necessary</td>
<td>Annual General Meeting held in April with interested party participation. Corporate goals for 1997 published</td>
<td>No legislative provisions; no standard process but will meet as necessary</td>
<td>Act requires annual public meeting to report to workers and employers on administration and policies under the legislation</td>
</tr>
<tr>
<td>Organizational Performance Assessment</td>
<td>No standard performance evaluation program in place</td>
<td>Formal assessment based on previous annual strategic plan</td>
<td>No standard performance evaluation program in place</td>
<td>No standard performance evaluation program in place</td>
</tr>
<tr>
<td>Review Process</td>
<td>No legislative requirement</td>
<td>LGIC must appoint a review committee every five years</td>
<td>No legislative requirement</td>
<td>Sunset clause requires a review every 10 years</td>
</tr>
</tbody>
</table>
5 Governance and Accountability in the BC System

5.1 Introduction

Background

Many would say that this Royal Commission is largely the result of a failure of the governance system of the Workers’ Compensation Board of BC.

The fundamental governance structure was changed in 1991 from a “commission” model with full time governors responsible for the day-to-day operations to a “board of directors” model. Under that model, part-time governors representing employer, worker and the public interest were responsible for policy development as well as the direction and stewardship of the organization.

In 1995 the government decided that the board was not functioning properly and replaced it with a temporary “Panel of Administrators,” pending the results of the Royal Commission established in late 1996. The Royal Commission’s recommendations about the fundamental governance model will be perceived as one of the most important elements of the Commission’s final report.

In the meantime, the Panel of Administrators have made some significant changes in the more detailed, Tier Three elements of the governance framework. Although perhaps not as contentious or as high profile as the fundamental governance model, Chapter 3 suggests that these elements are essential to provide effective governance and accountability. The comparative review summarized in Chapter 4 indicates that British Columbia now deals with as many of these issues as almost any other jurisdiction in Canada.²⁵

²⁴ The Panel of Administrators operates as a board of directors but need not include representatives of various interests. In fact, it has been primarily comprised of career public servants.

²⁵ However, Chapter 4 does not make any comment on the effectiveness of the governance in regime in British Columbia or any other jurisdiction.
Purpose

The purpose of this chapter is to consider what elements might be included in an appropriate and effective governance and accountability framework for the British Columbia workers’ compensation system. It does that by:

- proposing an objective for the governance and accountability framework,
- describing the current and former governance systems,
- reviewing comments on governance in written submissions to the Royal Commission,
- identifying some governance issues with the workers’ compensation system that tend to make it unique among British Columbia public bodies,
- examining the options for the fundamental governance elements (Tier Two governance elements), and
- discussing additional elements of the governance and accountability framework (Tier Three governance elements).

5.2 Objective

As context for the remainder of the chapter, an objective of the governance and accountability framework is being proposed. The following is proposed for discussion purposes and is not intended to reflect the views of the Commission, as yet. Rather, using this proposal as a basis for discussion it is hoped that the Commission can develop a statement of objective for governance that does reflect their views.

Such a statement can be useful as a touchstone to help ensure that the set of recommendations that the Commission ultimately makes on governance is integrated and internally consistent.

It is proposed that the objective of the governance and accountability framework be:
To provide structures and processes that create an environment within which

- the workers' compensation system can be provided with leadership and the direction of the organization can be clearly and transparently set,
- "public policy" can be established and changed in a timely way, consistent with the mandate of the system and the public interest,
- the performance of the system can be continuously improved, and
- the interested parties have an appropriate role that is clearly defined and the tools to fulfil that role, consistent with the mandate of the system and the public interest.

Note that the objective is limited to creating an environment within which certain things can happen. No governance or accountability framework will ever be able to ensure that these things happen. There are, especially in the public sector, many variables beyond the control of the organization which impact on the ability to achieve objectives such as these. These variables include such things as personalities and corporate culture that can have a tremendous positive or negative impact but may not be amenable to being influenced by governance structures and processes.

Therefore, no set of governance provisions will ensure that the objectives will be met. However, by creating an appropriate environment, it is more likely that the objectives will be met.

5.3 **The History of Workers' Compensation Governance in BC**

The following provides the highlights of the history of governance in the workers' compensation system in British Columbia. For a more thorough

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26 The definition of "public policy" and the distinction between public policy and administrative policy are discussed below.
summary, see “Governance – A Briefing Paper” April 7, 1997 prepared for the Royal Commission by the Workers’ Compensation Board.

**Meredith Commission, 1913**\(^{27}\) - in Ontario, proposed a mandatory workers’ compensation insurance system based on the principles of collective liability, no fault guaranteed work injury insurance for workers and protection from lawsuit for employers and workers.

- The system was governed and administered by a three-person government appointed board, with complete jurisdiction for all decisions and no right of appeal.\(^{28}\)

**Pineo Committee, 1916**\(^{29}\) - recommended a system in British Columbia based on the model put forward by Meredith, which was implemented in 1917.

- The key governance elements of the initial system were:
  - The system was governed and administered by a government appointed Board of three non-partisan full-time Commissioners with a term of office of a least 10 years, with termination for cause only;
  - The Board had responsibility for occupational safety and health as well as the compensation system;
  - No appeal from Board decisions;
  - The Board had complete authority over the appointment and dismissal of employees, subject only to government approval of salaries;
  - The Board had complete rule making authority, with no requirement for government approval; and

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\(^{28}\) That is, there was effectively an appeal from staff decisions to the Commission but no appeal of Commission decisions.

\(^{29}\) The Pineo Committee also recommended that the board have responsibility for occupational health and safety in the province, as well as workers’ compensation.
• The Board’s accounts were subject to an annual audit by the Auditor General and the board was required to submit an annual report to government.

**Sloan Royal Commission, 1942**\(^{30}\) - addressed the governance issues of representation by interest groups, particularly labour, on the Board, and the right of appeal from final decisions of the Board.

• Sloan rejected any form of representation on the Board because that would put the independent chair in an untenable position and would conflict with the quasi-judicial role of the Board in rendering final decisions on disputed cases.

• Sloan also recommended that there continue to be no appeal from Board decisions, arguing that appeal would be inconsistent with the principles of no fault insurance and protection from lawsuit.

**Sloan Royal Commission, 1952**\(^{31}\) - The key governance issue was a reconsideration of the appeal question. Sloan recommended the creation of an external Medical Review Panel to resolve disputes related to medical issues, which was implemented in 1954.

**Tysoe Royal Commission, 1966**\(^{32}\) - The key governance issues addressed by Tysoe and the resulting legislation were:

• Commissioner’s tenure — The original approach was terms of office of at least 10 year with termination for cause only, to limit political interference. That had been replaced by 1954 with Commissioners holding office at the pleasure of the Lieutenant Governor in Council and mandatory retirement at 70. Tysoe did not recommend any change.

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\(^{30}\) The Report of the Commissioner Relating to the Workmen’s Compensation Board, 1942

\(^{31}\) The Report of the Commissioner Relating to the Workmen’s Compensation Act and Board, 1952

• Appeals — Tysoe did not recommend any external appeal mechanism in addition to the Medical Review Panel but recommended that the internal Board of Review process, implemented by policy, be improved. The legislation formalized the Board of Review with a chair appointed by government.

• Administration — Tysoe recommended that the resources be added to improve efficiency and effectiveness to achieve a balance between cost control and service.

• Number of Commissioners — increased from three to a maximum of four Commissioners, through the possible appointment of an additional vice-chair.

1973 Legislative Amendments — made the boards of review independent, with members appointed by government, but with board of review decisions appealable to the Board of Commissioners.

1977 Legislative Amendments — removed government approval of staff salaries and increased the maximum size of the Board to five.

Ombudsman Report, 198733 — The report dealt with the quality of adjudication and appeals as well as accountability for claims decisions. It recommended an independent, expert and final appeal system because of the conflict among the policy, administrative and appeal functions all performed by the Board. The report argued that a truly independent appeal function is required to hold the WCB accountable for adjudication of individual claims.

• The report also called for a public discussion of the full range of workers' compensation issues.

Munroe Committee, 198834 - The 13 member representative committee reached a consensus that the governing body should “superintend the general direction


34 The Report and Recommendations to the Minister of Labour and Consumer Services by the Advisory Committee on the Structure of the Workers’ Compensation System of British Columbia, October 31, 1988
and policies of the WCB” and should have equal predominant representation of employers and workers, with some public interest representation. The main governance recommendations and elements of the resulting legislation were:

- A part-time board of directors with a Chair, two public members and members each representing workers and employers.

- A Chief Appeal Commissioner appointed by the board but independently responsible for deciding appeals, who is a non-voting member of the board.

- A President/CEO appointed by the board, responsible for day-to-day administration, who is also a non-voting board member.

- The new legislation was intended to separate the functions of policy making and general direction setting from administration and appeals.

- One particular element of the legislation was a requirement that the board of governors establish “policy” that would be binding on the organization and form the basis for adjudication and appeal decisions. In response to that requirement, the board decreed that the existing manuals, which are a combination of policy and procedures and which had previously been considered to be guidelines would represent formal board policy.

The Korbin/O’Callaghan Report, 199535 - Korbin and O’Callaghan were asked to review governance because it was perceived not to have the confidence of traditional stakeholders36 or to be effective. The report found that the

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36 Throughout this report, the term “traditional stakeholders” is used to refer to the workers and employers, who have traditionally been seen to be the primary groups with a direct interest in the workers’ compensation system. When references could include other groups with a legitimate interest in the workers’ compensation system, term “interested parties” is used.
governance problems were the result of a number of factors but concluded that the current structure could prove workable if supported by appropriate process and systems intended to reduce the board workload and encourage the board to work together.

- The main recommendations were to:
  - add a purpose statement to the legislation;
  - define governance and its application at the WCB, including the development of terms of references for the key roles within the governance system and Board guidelines outlining the major governance activities of the Board;
  - require an annual review of Board effectiveness;
  - clarify that the primary responsibility of Governors is to act in the best interests of the WCB - BC and all of its interested parties;
  - ensure in the appointment and selection process that governors are the most senior people from each of their constituencies; that they are well qualified and that they have the support of their representative groups;
  - establish a Board Governance Committee, a Human Resources and Compensation Committee and an Audit Committee;
  - improve the quality and consistency of the information provided to Governors including the creation of a Policy Bureau reporting to the Board;
  - clarify the role of the Chair, including the importance of being perceived as fair and impartial with the ability to forge consensus but also to take a leadership role when necessary;
  - reduce the time commitment of governors; and
  - develop a terms of reference and code of conduct for individual governors, including a description of their broad duties (for example, to act in good faith; to avoid conflicts of interest) and practical guidelines regarding expectations around attendance, participation, preparation, standards of decorum and communication and interaction.

- Although government directed that the report be implemented, it was not implemented because the board became deadlocked on this and other issues.
1995 Legislative Amendment – In response to the inability of the board to make progress on governance and other issues, the legislation was amended to allow the Lieutenant Governor in Council to appoint one or more “administrators” to discharge the powers, duties and functions of the board of governors.

- Immediately upon enactment of the legislation, the government announced the dissolution of the current board of governors and the appointment of a panel of administrators to act in their place.

- The Panel of Administrators have implemented many of the Korbin/O'Callaghan recommendations, including developing a Panel of Administrators Manual that deals with several of the recommendations.

- The Panel of Administrators are intended to be a temporary measure, pending the results of the current Royal Commission.

5.4 Analysis of Submissions That Reference Governance

The issue of governance is a significant issue for many of the individual employers, employer organizations and labour organizations that have made submissions to the Royal Commission. In fact, the Employers’ Coordinating Group indicated that, for employers, governance is the most important issue of this Royal Commission.

Fundamental Governance Model

In most of the submissions that reference governance, the primary issue is the fundamental governance model and, in particular, the issue of whether the governing body should be representative of the interested parties or not.

As a group, labour organizations that have made submissions to the Royal Commission strongly favour the maintenance of equal and predominant representation of workers and employers on the governing body.\(^{37}\) Speaking on

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\(^{37}\) See submissions from the B.C. Federation of Labour, BCGEU, Labour Councils and individual unions.
behalf of labour, the B.C. Federation of Labour maintains that the governance system put in place as a result of the Munroe Report is appropriate and workable. They agree with the assessment in the Korbin/O’Callaghan report that the initial failure of the system was not due to any inherent flaw in the system itself but rather was the culmination of a number of other factors and issues. The argument is that, with the cooperation and commitment of labour and employers, the system can work in a more receptive environment. Furthermore, labour believes that any other arrangement would effectively give control of the board to employer representatives or to governors who are more sympathetic to employers’ interests.

The Workers’ Compensation Advocacy Group submission suggests a significant but limited role for injured workers in the governance and policy development process. They argue that labour does not adequately represent the interests of injured workers and suggest that injured workers be specifically represented on the governing body. They suggest minority representation for injured workers on a board that is predominantly representative of labour and employers. The B.C. Federation of Labour has supported this position by proposing a 15-member board that includes two injured workers representatives.

Submissions from several employer organizations\(^\text{38}\) support some form of broadly representational or “multi-stakeholder” board model. Interested parties represented would include organized and non-organized labour, large industry, small business and relevant professional groups including the legal, insurance, banking/investment and medical communities. No one group or pair of groups would have a majority position. The argument is that a multi-stakeholder model is the only model that provides assurance that the overall interests of the organization and the public interest will be paramount.

Other employers and employer groups\(^\text{39}\) favour a “fiduciary” model -- a board of directors composed of individuals chosen solely on the basis of their experience

\(^{38}\) including the B.C. Business Council, Coalition of B.C. Business, Employers’ Forum, Electrical Contractors Association of British Columbia, members of the mining industry, Rogers Sugar, Alliance of Manufacturers and Exporters of Canada, Canadian Restaurant and Foodservices Association.

\(^{39}\) including the Council of Forest Industries, MacMillan Bloedel, and Chambers of Commerce
and qualifications to be effective members of the governing body of a large organization. These individuals would have general business and financial acumen and good judgement. Board membership would include legal, engineering, actuarial, banking, investment, insurance and medical expertise. These employer respondents did not favour specific representation of special interests on the board of directors. However, they indicated that if there had to be some degree of representation of labour and employers, this should in total constitute a minority position on the board.

Employer groups also argued that, regardless of the fundamental governance model, all governors should be senior, experienced people with the skills and abilities to carry out the complex duties of a governor of the WCB. The B.C. Business Council, in its January 28, 1998 submission to the Royal Commission, said:

> Irrespective of the permanent governance model put in place ... the primary objective must be to ensure that appointments are based solely on the integrity, neutrality, qualifications and experience of the person.

In verbal presentations to the Commissioners on April 16, 1998 the spokesperson for the Employers’ Coordinating Group indicated that employers are very unlikely to accept any governance model based on equal and predominant representation of labour and employers given the experience under the former board of governors structure.

**Other Governance Issues**

*Ex-officio Non-Voting Board Members*

The B.C. Federation of Labour supports the inclusion of both the President/CEO and the Chief Appeals Commissioner on the board of governors as ex-officio, non-voting members. The Federation believes that it is important for the President to be a member of the board in order to understand and clearly communicate to management the policies and direction of the board of governors. The Federation believes that the Chief Appeals Commissioner needs
to be a member of the board to ensure the effective implementation of board policies at the adjudicative level.

Employer groups support the inclusion of the President/CEO as an ex-officio, non-voting member on the board of governors for the same reasons put forward by the Federation, but do not support the inclusion of the Chief Appeals Commissioner. Employers do not believe that it is appropriate or necessary for the Commissioner to sit at all board deliberations. Rather, they suggest that the necessary communication of policies and information on the operations of the appeal body can be achieved by establishing a formal reporting relationship of the Commissioner to the board of governors.

**Full-time or Part-Time Appointments**

The B.C. Federation of Labour believes that the job of the board of governors is too complex and onerous to be effectively accomplished through a part-time board of governors. They have therefore proposed that several members of the board of governors serve on a full-time basis. They argue that this would also provide for a degree of objectivity and neutrality in these positions as the incumbents would not have any competing interests.

Employer organizations favour a traditional corporate board model, with the board of governors serving part-time, but meeting regularly. Employer organizations believe that it would be impossible to recruit senior, qualified, experienced people to full time governor positions. As well, they argue that the role of the board of governors is to superintend the management of the organization. Concern was expressed that full-time governors could be drawn into the day-to-day administration of the organization. There was also a concern expressed about the relationship between full and part-time governors.

**Term of Appointments**

Submissions from both labour and employer groups suggest that the appropriate term of office for board members is somewhere in the range of three to five years with the potential for reappointment. The argument is that any term less than three years would be too short due to the complex nature of workers' compensation issues.
Mandate, Roles and Responsibilities

Both labour and employer group submissions have stressed the importance of establishing a purpose statement in the legislation to provide guidance to the governing body and the organization. The groups are also unanimous in supporting the need for clarification of the roles and functions of the board of governors. Labour and employers agree that the duty of the board of governors should be to administer the legislation in the best interest of the workers’ compensation system as a whole. Employers groups have suggested that there should be a statutory provision requiring governors to act as “public trustees” of the workers’ compensation system in order to emphasize this point.

Following is a table summarizing the specific proposals of the B.C. Federation of Labour and the Employers’ Coordinating Group on the governance structure for the WCB:

<table>
<thead>
<tr>
<th>Labour Proposal</th>
<th>Employer Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Composition of the Board</strong></td>
<td></td>
</tr>
<tr>
<td>Fifteen members in total:</td>
<td>Nine members in total:</td>
</tr>
<tr>
<td>• five labour</td>
<td>• two labour</td>
</tr>
<tr>
<td>• five employer</td>
<td>• two employer</td>
</tr>
<tr>
<td>• two public interest (as determined by the government of the day)</td>
<td>• four public interest (from relevant professional groups)</td>
</tr>
<tr>
<td>• two injured worker</td>
<td>• independent Chair</td>
</tr>
<tr>
<td>• independent Chair</td>
<td>• President/CEO, ex-officio, non-voting</td>
</tr>
<tr>
<td>• President and CEO, ex officio, non voting</td>
<td></td>
</tr>
<tr>
<td>• Chief Appeals Commissioner, ex officio, non voting</td>
<td></td>
</tr>
</tbody>
</table>
Full-Time Part-Time

Four Full-time
One labour, one employer, one public interest or injured worker representative and the Chair

All Part-time
Chair may be full-time at some point

Policy Setting

The policy-making function of the board of governors was an issue addressed in several submissions made to the Royal Commission. There is a common understanding that a key function of the governing body of the WCB is to establish policy based on the Act and regulations that is necessary to provide direction to WCB officials in carrying out their functions under the Act.

Many respondents, both employer and labour, were strongly critical of the current policy development process at the WCB, under which proposals are developed and consultation with interested parties is undertaken by the Policy and Regulation Development Bureau. Many felt that their interests are not adequately considered in the current process because the process keeps interested parties removed from the governing body and does not give interested parties any real influence. One respondent suggested that there was no need for the Bureau and that members of the governing body should get their information direct from management. However, major labour and employer groups accept the need for a staff policy support function to support the governing body of the organization.

Policy and the Appeal Commission

The role of the Appeal Commission in policy making is an issue for both labour and employer respondents to the Royal Commission. Of particular issue was the question of whether the Appeal Commission should have the authority to find board policies to be unlawful.
The Workers’ Compensation Advocacy Group argued that the Appeal Commission should have authority to find a policy to be unlawful, with the result that the policy would be void and no longer applied by the WCB. However, respondents for the B.C. Federation of Labour and Employers Coordinating Group maintained that it is the governing body’s responsibility to make policy, and decisions of the appeal body should not be able to affect the applicability of the policy.  

The Employers Coordinating Group suggested that there should be a formal process to address these issues in a timely manner. They proposed that a provision be added to the statute requiring that an appeal board finding of an unlawful policy be dealt with by the governing body within 30 days. Following that, if no action is taken, the issue would be sent to the Supreme Court for resolution.

5.5 Workers’ Compensation Governance Issues in BC

This section attempts to analyse the primary governance issues that must be addressed to meet the objective proposed above for the governance of the British Columbia workers’ compensation system.

The main elements of that objective are that the governance and accountability framework enable effective direction setting for the organization, appropriate and timely public policy decision-making, continuous operational performance improvement and appropriate interested party involvement.

Arguably the pre-Panel of Administrators governance and accountability framework did not effectively accomplish any of the elements of this proposed objective. That is not to say that the governance and accountability framework are wholly to blame for the governance crisis that led to the appointment of the panel of Administrators and eventually to the current Royal Commission. The importance of factors such as personalities, corporate culture and historical baggage should not be discounted as causes for the governance crisis.

That is, the Appeal Commission should have authority to rule on questions of the lawfulness of policy, but not the ability to make a policy void.
In fact, Korbin and O’Callaghan believed that the basic governance structure was sound. They believed that changes to governance structures and processes could make the governance framework more effective by fully implementing the complex model proposed in the Munroe Report. The Panel of Administrators have implemented many of the Korbin/O’Callaghan recommendations. However, from the submissions, it is clear that governance continues to be an issue.

The following examines three governance issues that seem to hold the key to the governance puzzle.

**Public Policy**

*The Issue*

One of the things that makes workers’ compensation governance almost unique in the public sector is the longstanding, independent authority of the governing body of the system to establish public policy in an area with important economic and social policy implications.

Historically, it was seen as very important that the governors be free from political influence in all aspects of their responsibilities, including their role in establishing public policy. In most other areas, the responsibility of setting public policy lies directly with the government, which is accountable to the voter. Initially, the governors of the workers’ compensation system were accountable to no one. That has changed over time, first by giving government the right to replace governors at any time in their sole discretion and later by making governors representative of, and thus accountable to, the interested parties.

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41The report notes the significant accomplishments of the Board of Governors during the period 1991 to 1994 and the fact that the British Columbia system is seen as one of the best run systems in Canada.
Public Policy and Administrative Policy

Prior to examining this issue further, perhaps it would be useful to explore the meaning of “policy” and “public policy.” “Policy” is a term that means different things to different people. It can be used to describe a single decision by one individual on a specific issue or the theme underlying a Provincial budget or a set of interconnected government initiatives.

“Public policy,” at least to the authors, has a more narrow meaning. It is the approach taken by government or a public body to deal with an issue that is fundamental to the objectives and responsibilities of government. We distinguish this from “administrative policy” which is the more detailed set of rules and procedures through which public policy is implemented.42

The crucial difference, in the authors’ opinion, between public policy and administrative policy is that the former should be directed at meeting broad social and economic objectives, with a strong public interest flavour and administrative policy should be intended to implement public policy as efficiently and effectively as possible. Administrative policy should be, quite appropriately, focused on the convenience and effectiveness of administrators, but should be circumscribed by the public policy that is being implemented. The public policy, which puts the public interest first, should limit the scope of administrative policy to ensure that the goals of the public policy are not inadvertently circumvented by its implementation.

Current Situation

In the British Columbia workers’ compensation system, the governors have always been responsible for both the public policy and administrative policy associated with workers’ compensation issues. Initially that was because the governors were responsible for both policy direction and administration functions. When the functions were eventually separated by statute, the

42 Some prefer a distinction between “policy” and “procedure.” Clearly, all procedure falls within the author’s definition of administrative policy, but there may be elements of administrative policy which go beyond procedure to include for example, the values and principles which will be used in exercising discretion.
governors chose to define their policy setting role to include administrative policy and procedure.

The creation of a Policy Bureau reporting directly to the Panel of Administrators and dealing with public policy has attempted to separate the functions within the system. It has not, as yet, fully addressed the issue of what should be considered policy of the board and what is appropriately left as procedure or guidelines. The issue of rule making will be a key issue for the Commission to address.

In most other areas where the provincial government has chosen to use a public sector organization to deliver a government program, the public sector issues associated with program objectives and basic design remain the responsibility of the provincial government. The administrative policy issues are the responsibility of the governing body of the organization delivering the program.

Within the context of the distinction between public and administrative policy, the system may initially have been set up with such a broad independent public policy role for two reasons:

• Initially, the only real public policy issue may have been perceived to be the establishment of a system based on the principles of employer funded no fault insurance for worker injuries, protection of workers and employers from lawsuit and collective liability. Protecting the governors from political interference may have been seen as a way of protecting the system from having the principles diluted by politically motivated administrative policy; and

• The politicians may have wished to be protected from the fact that the two traditional interested parties are politically active and almost always in conflict over every significant issue.

That raises the question of whether issues that the governors of the workers' compensation system must deal with include public policy issues. There are two parts to that.

First, are there public interest aspects to the workers’ compensation system? Although the system is funded fully by employers and the beneficiaries of the
system are limited to workers, nevertheless, there are important public interest aspects to the system. The system has implications for the economy of the Province in terms of competitiveness and productivity. It is also related to the major social policy areas of health care and the social safety net. In fact, the linkages were so clear to the initial creators of the system that it was partially funded by general revenues until 1931.

The second question is whether decisions currently with the governors include public policy or are limited to administrative policy. At one time, when there were fewer and simpler government programs, it may have been that governors’ policy setting role was primarily in the nature of administrative policy. However, it is clear that the type of regulations now being made by the governing body of the workers’ compensation system have broad implications for and linkages to both economic and social policy.

Implications

The implications of this analysis for workers’ compensation governance include:

• The fact that the governing body of the system has an important public policy role makes the job more complex and difficult than most governance roles in the public sector. Not only must the governors direct and supervise the operation of a large, complex organization, which is what the governance of most public organizations entails. The governors of the workers’ compensation system must also make public policy decisions that balance competing objectives and take account of the public interest within the context of the overall public policy framework of the provincial government and specific public policy in several interrelated government program areas.

• The public policy role makes accountability even more crucial than normal, but it is obviously difficult to make the governors directly accountable to the public.

• It is vital that the distinction between the public policy and administrative policy functions be maintained to ensure that administrative convenience is not the driving factor in public policy decisions.
• The public policy role also means that the importance of clarifying roles and responsibilities is enhanced and that it may be appropriate to consider the appropriate split of public policy responsibility between the governing body and the government.

 Appeals

The issue of whether or not there should be an appeal from administrative decisions and, if so, how independent the appeal body should be from the rest of the workers’ compensation system has been a contentious issue since the system was put in place. While the structure of the system has evolved over time, the issue has yet to be fully resolved. The issue is clearly a significant part of the current Royal Commission’s mandate and is being dealt with in detail through separate projects.

Largely the issues around appeals are independent of governance issues. However, there are three areas of significant overlap.

First, it is important that the roles and responsibilities of all parties associated with the governance of the system be clearly set out. That includes the appeal functions.

Second, as the Ombudsman indicated in 1987, an effective and independent appeal function is an important accountability mechanism, required to keep the system fair and to prevent abuse of administrative authority.

Finally, there is a natural tension between the appeal function and the policy setting function. If there is an appeal mechanism, regardless of how independent, that will bring to light gaps in policy. At its best, such a tension can be very productive, helping to identify policy issues and providing useful information about how the issues might be resolved. At its worst, the tension can be quite counter-productive, if the appeal function effectively fills policy voids or attempts to overturn legitimate policy put in place by the government or the governing body.

Dating back to the origins of workers’ compensation, the principle of an administrative adjudication system has led to the principle that the system
should be completely separate from the justice system. The debate over whether the appeal body should be able to overturn policy set by the governors highlights the problem. If the courts are not to be involved at all and the appeal body’s role is to fulfil an accountability function then it follows that the appeal body should rule on the legality of policy. However, not everyone believes that conclusion is the right answer. Perhaps the problem is with the axiom that the courts should not be involved at all. An alternative is to give the courts the role of being arbiter of the legality of policy but not the adjudication of the substance of claims.

The implication of this analysis is that the deliberations of the Royal Commission about appeal issues should specifically consider the governance implications of the appeals issues.

**Interested Party Involvement**

There are really two issues here:

- Who are the appropriate interested parties; and

- How to give the interested parties a significant and important role without conferring on them the right and ability to circumvent the governance system or render it ineffective.

On the first issue, traditionally the interested parties have been defined as workers and employers, with perhaps the general public as a third group. More recently injured workers, especially those who are permanently disabled and not as likely to be represented by labour, have been seen by some as another legitimate interested party. Perhaps another legitimate interested party are the WCB employees themselves, who clearly have an interest in the success of the organization.

Both workers and employers seem to be able to effectively paralyze the governance of the system at will through the exercise of their political influence, regardless of the stripe of the current government. At the same time, both are now complaining about a lack of influence on policy development. To achieve the proposed objective for the governance framework somehow the ability of
workers and employers to paralyze the system must be constrained. However, that must be done without eliminating the ability of the interested parties to make their interests known and be assured that legitimate interests will be taken into account to the extent possible in the circumstances.

5.6 Fundamental Governance Structure

The Issue

As defined in Chapter 2, the “Tier Two” issues that the Royal Commission must consider include the basic governance structure and the roles and responsibilities of the various participants.

To many, that comes down to the issue of whether or not there should be members of the governing body who represent the traditional stakeholders and, if so, whether those members should comprise a large proportion of the governing body membership. While that is obviously a key issue related to governance, to make it the only issue would be a gross over-simplification.

The intention of this section is to support the development of a governance and accountability framework that can meet the objective proposed above regardless of whether a representative model or a fiduciary model is chosen for the governing body. There are two reasons for this:

- Regardless of what the Royal Commission recommends about the structure of the governing body, the government in implementing the report may choose another model. The rest of the governance and accountability framework should be designed to meet the proposed objective, regardless of the structure chosen; and

- Arguably, any governance structure can work, so long as it has strong support from the government and the interested parties, and is backed up by a comprehensive, modern governance and accountability framework. In this, the authors agree with the Korbin/O’Callaghan Report. However, given the submissions received so far by the Royal Commission, it does not seem likely that there is any fundamental governance model that would initially have the
support and commitment of all parties. The question may be, “In the absence of such a consensus, which fundamental model is most likely to be sustainable?”

Perhaps the desire for predominant representation of traditional stakeholders on the governing body is primarily an accountability mechanism. If so, then perhaps if there are other effective accountability and governance mechanisms the organization can be effective regardless of the model chosen. For example, if there is predominant representation, then those mechanisms might reduce the pressure placed on representative governing body members and the governing body might be effective. Alternatively, if there is not predominant representation, effective accountability and governance mechanisms might eventually reduce the demand from traditional stakeholders for a predominantly representative governing body, if the model can be demonstrated to be workable and the interested parties have an acceptable degree of influence.

**Options**

The following are not a comprehensive set of options. There are many permutations and combinations that are not considered. These options are being proposed to elicit discussion.

*Option A — Predominant Equal Representation*

This model would continue the model set out in the existing legislation for the Board of Governors. Adjustments could be made to parameters such as the number of board members but the principle would be that representatives of the two traditional stakeholder groups would comprise the predominant number of board members. All members would be appointed by Lieutenant Governor in Council. The roles and responsibilities would be as set out in the current legislation, with the governors responsible for workers' compensation public policy and stewardship of the organization. The appeal function would continue to have the same degree of independence and the same amount of linkage to the organization as under the existing legislation.

In other words, this option is the pre-Panel of Administrators status quo, with possibly some minor adjustments to the fundamental model.
The argument for using this model might be that the model was developed by a multi-stakeholder committee and the governors made some significant progress before running into difficulty. The additional governance and accountability measures proposed by Korbin and O’Callaghan have not been tested because there was a fundamental lack of trust in 1995 that prevented any change from being effective. With an intervening period of governance by the Panel of Administrators and the Royal Commission to clear the air and with a comprehensive set of additional governance and accountability measures also implemented, perhaps the model should be given another chance.

The argument against the model might be that, regardless of what sort of supporting governance framework is put in place and what sort of initial commitment there is to making the model work, it is too susceptible to becoming deadlocked or to being made ineffective by personality issues. In addition, there might be concerns that the decisions taken might not overall best serve the public interest if decision-making is based on balancing the number of decisions that serve the interests of the traditional stakeholders.

**Option B– Segregated Board of Governors**

This model would see the Board of Governors divided into two panels. One panel would be responsible for the stewardship of the organization governance function, including approving administrative policy, appointing the President/CEO, monitoring the organization’s performance and having input into the public policy function. The other panel would be responsible for the public policy function, in particular setting the overall direction for the organization and setting public policy through the approval of regulations or other rule-making functions.

The Stewardship Panel, as we will call it, could be representative of the interested parties. It could include representation of interests in addition to workers, employers and the public, such as injured workers. It could either be...

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43 For this to work, there would have to be clear working definitions of what is public policy and what is administrative policy, with a clear enforceable requirement that administrative policy must be consistent with the letter and spirit of the public policy.
“predominantly representative” like the existing Board of Governors model or could be “tri-partite” with equal worker, employer and other representation, plus a neutral chair or could be “predominantly public interest,” with a majority of members not representing either workers or employers.

The Public Policy Panel would have no representative members. All members would be intended to represent the public interest. It could also include the Minister or another government official as a voting member set by statute.

There would have to be some overlap across the Panels. That could be accomplished through:

• a common chair only, or
• a common chair plus all of the public interest members of the Stewardship Panel also being on the Public Policy Panel, or
• the Stewardship Panel being the full Board of Governors but the membership on the Public Policy Panel being limited to some members, and/or
• having completely separate membership on the two panels but with committees that advise both panels and which include members from both panels.

The argument in favour of this approach might be that this is a way of providing for representation which directly holds the organization accountable for performance and which ensures effective interested party input into public policy decision-making without the risks associated with the status quo model.

Another potential benefit of the model is that it may reduce the burden on individual governors by limiting their responsibilities. At least the Chair in this model would likely have to be full-time.

The arguments against this approach might include lack of support by interested parties as either too much or too little representation.

44 i.e. public interest and other interested party representatives.
**Option C – Tri-partite Board of Governors**

Under this model, the roles and responsibilities of the Board of Governors would be generally consistent with the existing legislation but the make-up of the Board would be adjusted. There would be equal representation by the traditional stakeholder groups and the “other” group comprised of public interest representatives and, possibly, representatives of other interested parties. There would also be a neutral chair.

This model would be intended to still allow specific representation by the traditional stakeholder groups but to reduce the control these groups have. Where the individual worker and employer governors engage in so-called “block voting” the decision would be made a majority of the non-aligned members. It would likely be best to have odd numbers of representatives in each of the three groups to prevent the chair from being put into the tie-breaking position on a regular basis.

The model could be criticised as either having too much representation and really no better than the status quo by those who oppose that model and as having too little representation by those who favour the status quo.

**Option D – Reduced Board Public Policy Role**

Under this model, the Board of Governors ability to set public policy and make rules would be eliminated or limited to a few specific areas. That role would then have to be assigned elsewhere, probably to the government (Lieutenant Governor in Council) as is the case in many other policy fields. The government’s new policy-making function would have to be supported by resources within a government ministry. The structure of the Board of Governors under this option could be as described in Option A, C or E.

This option would be intended to take the most contentious role played by the Board of Governors away and to assign it to a body that is more directly accountable to the public. Within that context, the structure of the Board of Governors might also be less contentious and the burden placed on individual governors would be reduced. It might lead to better stewardship of the organization because the board would be free to concentrate on that function.
The model could be criticised as opening the system to political interference. However, it could be argued that decision-making by elected officials is a central feature of a democracy and government already has similar responsibility in most other areas of provincial responsibility. However, given the contentiousness of the issues surrounding workers' compensation, it may be that government would be unwilling to accept the public policy responsibility directly, preferring to influence the decisions through Board appointments but to maintain some insulation from the direct implications of specific decisions.

**Option E – Non-Representative Board**

Under this model, the Lieutenant Governor in Council would appoint all board members and all members would have a duty to the broad public interest and the best interests of the organization. This is also referred to as the “fiduciary model.” Board members who are affiliated with employers or labour organizations, or who are injured workers, could be appointed to the Board of Governors but they would not be appointed to represent those interested parties.

The argument in favour of this model is that it would prevent the type of crisis that precipitated the Royal Commission.

The argument against the model is that the result could be an unbalanced board that could have either a majority of worker or employer affiliated members who would effectively make decisions in the interests of their interested party instead of in the public interest. That is, in spite of a duty to the public interest and the best interests of the organization, it would be difficult or impossible to independently hold the members accountable if the government chose to appoint an unbalanced board. Also, just by eliminating representation on the board may not prevent paralysis of decision-making by the traditional stakeholders.

**Conclusion**

There are a number of options between status quo and a non-representational board, but none of the options provides an assurance of effective governance. Whatever fundamental governance model is ultimately implemented, its effectiveness will still depend on the commitment and support of government.
and the traditional stakeholders, the personalities involved and the existence of a comprehensive set of supporting governance and accountability structures and processes.

5.7 **Tier Three Governance Elements**

This section is based on the attributes of effective governance and accountability identified in Chapter 3 and discusses the possible application of those attributes to the British Columbia workers’ compensation system.

This discussion is not intended to imply that any or all of these elements are currently not present. Some have been in place for some time, the Panel of Administrators has recently implemented some and others have yet to be considered. An evaluation of the degree to which the current governance and accountability framework is consistent with the ideal proposed by the literature and the effectiveness of the current governance framework are beyond the scope of this report. The discussion here is just intended to highlight some of the other governance features that the Royal Commission may wish to consider commenting on in their report.

**Board Size**

There is a balance to be struck on the issue of board size.

On the one hand, there are several functions that need to be performed by any board and the additional public policy function performed by the Board of Governors is a significant additional burden. There need to be enough members to ensure that all of the functions are performed and that the board has the mix of skills, experience and ability to effectively perform the functions.

On the other hand, there is a trend in the public and private sector to smaller boards from the large boards that had been common. Smaller boards are seen to be more efficient.
Duty of Care

Regardless of the fundamental governance model chosen, the literature strongly recommends that the board members have a clear duty of care to the organization and the “shareholders,” who in this case are the public. A clear statement to that effect in the legislation may have an impact on the behaviour of governors chosen as representative of an interested party. The result of having governors who are representative and also have a duty of care to the organization and the public, might be that those members would see their role as bringing the perspective of their constituency to the discussion but that their responsibility as governors ultimately lies with the organization, not the constituency. That may seem subtle but it may help to prevent future governance crises.

Independence from Management

This is put forward as a key element of public sector governance necessary to avoid a conflict between the function of managing the organization and the function of holding the organization accountable for its performance. However, there are public and private sector examples where the benefits of a firm linkage with the operations of the organization created by, for example a chair/CEO position were found to outweigh any problem due to conflicting functions.

Given the fragile and complex governance framework, it may be useful to reinforce the need for a separation between the governors and management.

At present, the governors appoint the CEO/President in British Columbia although this is a government appointment in many other jurisdictions. If the board is expected to hold management accountable for the performance of the organisation, it seems to be essential that the ability to appoint the CEO/President be maintained.

Director Qualifications

Having the right mix of skills, abilities and experience is an attribute of effective governance mentioned several times in the literature. Practically, that can be approached by creating a board profile which sets out what that mix of skills,
abilities and experience is and using the profile in the recruitment and selection process. Arguably, the board is best placed to develop such a profile and, once created, it should probably be updated at regular intervals.

Selection and Appointment Process

Currently all governors are appointed by Lieutenant Governor in Council. There is a central process for the selection of appointees to government boards, commissions and agencies. That process, at present, does not usually make use of profiles such as has been suggested above or of other techniques to ensure boards are competent to discharge the duties being given to them. However, there is some precedent, as described in the section on the BC Securities Commission in Chapter 3.

Although the current usual process does ensure gender, cultural and geographical diversity in board appointees, the Auditor General has indicated that it is not clear that the process is also effective at ensuring that an appropriate mix of skills, abilities and experience is available.

Recommendations of the British Columbia Auditor General that the board be involved in the recruitment process, coupled with a board profile, may help to ensure an effective selection process.

Board Turnover

Continuity is considered by many to be an important feature of effective governing bodies. Especially where the organization and the issues are complex, it will take board members some time to fully understand the issues. If members are not given that time or if too large a proportion of the accumulated knowledge on the board is lost at one time, it will be difficult for the board to be effective. That is one of the criticisms of the Panel of Administrators, which has seen considerable and constant turnover during its existence.

The issue can be dealt with by ensuring terms of office are not too short and by putting in a statutory prohibition against changing more than x% of the members in a given year, except for cause.
Board Training and Orientation

Orientation of new board members and ongoing training of existing board members have been recommended as important attributes of effective boards.

Board Evaluation

Self-evaluation by the board is recommended in the literature as an important attribute of effective governance. It is a process that can help the board work together as a cohesive unit and understand its own strengths and weaknesses.

Transparent Governance Practices

Confidence in the governance of a public sector organization requires that the interested parties and the public be able to understand how the organization is governed. The Panel of Administrators has taken an important step in making the governance of the workers' compensation system more transparent with the Panel of Administrators Manual, which covers most of the governance practices of the Panel. The Royal Commission may wish to consider recommending that the governors be required to maintain such a manual.

Full-Time/Part-Time Governors & Responsibility for Policy Development

This question is an important issue with the traditional stakeholders. Options include all part-time, full-time chair and other governors part-time, a full-time chair and some full-time governors with the remaining governors being part-time.

The reason for more full-time governors would be the workload involved with fulfilling the governance function given the complex issues and the public policy setting requirement. The reason for fewer or no full-time governors would be to ensure that the governors do not effectively usurp the role of management and return the governance of the system to the “Commission” model in place prior to 1991.
This issue is related to the issue of how policy should be developed. At present, the Policy and Regulation Development Bureau takes direction from the governors about policy priorities, undertakes the policy development work including deciding how or if consultations will be conducted, conducting consultation with interested parties and then bringing the issue back to the governors for decision. The traditional stakeholders generally feel that process does not fully take their interests into account.

An alternative is to have one or more full-time governors responsible for active supervision of the policy development process and interested party relations in general. If Option B, a segregated Board of Governors were implemented, the governors responsible for policy could all be full-time and responsible for these functions. Segregation of board functions would mitigate the concern about the board usurping the function of management. Alternatively, the chair could be the only full-time member, charged with this specific responsibility.\footnote{Note that this approach is used in Québec.} If government were directly responsible for policy development, this argument for at least one full-time member would no longer apply.

Having one or more full-time governors responsible for policy and interested party relations would serve to enhance the accountability for policy development. While it is important that there be a staff support function for policy development, it is also important that interested parties with a legitimate complaint be able to have some direct connection with decision-makers to hold those decision-makers accountable.

**Accountability**

As discussed in Chapter 3, accountability is more than just accounting. Reporting on performance is, of course, an essential element of accountability. However, there are other crucial elements of accountability.

First is that to be effective, the organization must be accountable for something specific. Of course, if there is a clear mandate, which is an essential prerequisite to effective governance and accountability, the organization should be
accountable for that mandate. However, under the general umbrella of mandates, purpose statements, mission statements and vision statements, there should be specific goals and objectives against which performance can be measured. These usually are found in strategic plans and/or annual plans. One of the difficulties for the workers’ compensation system has been that effective performance measurement of key indicators has proven elusive, but that is a practical issue that can be overcome with sufficient time, resources and incentive.

The second element of accountability is to whom the organization is accountable and what mechanisms there are for enforcing accountability. That is, implicit in the concept of accountability is that someone is involved in explicitly or implicitly setting the expectations for the organization and has some recourse if those expectations are not met.

In the private sector, it is the shareholders to whom the corporation is accountable and the shareholders have mechanisms, including the ability to elect or dismiss directors, to hold the organization accountable. In the public sector, by definition the organization is ultimately accountable to the public. Practically, public organizations are directly accountable to elected officials who are held to account by the public through elections.

This suggests that there should be an explicit periodic open exercise of setting the expectations for the workers’ compensation system with the approval of elected officials. That could take the form of a performance contract between the organization and the Minister responsible or a requirement for Cabinet approval of an annual operating plan or oversight by a committee of the legislature. However, whoever approves the plan should also have the power to appoint governors and rescind those appointments.

What about the interested parties? If the workers’ compensation system should be accountable to the interested parties, then the contract of performance or annual plan should be approved by the interested parties and the appointments of governors should be in the hands of the interested parties. However, if the system should be accountable to the public, then the role of the interested parties should be limited to having input into the setting of performance objectives, the development of public policy and the operation of the organization, but without a mechanism to directly hold the organization accountable.
In conclusion then, it is important that all three elements of accountability for the workers’ compensation system be clarified. It should be clear to whom the system is accountable and how the system can be held to account. It should be clear and public what the priorities and objectives of the system are on an ongoing basis, including how progress can be measured. And, it should be clear specifically what the reporting requirements are that would provide an appropriate accounting of performance.\[46\]

\[46\] This is one of the main objectives of the companion work being done on governance information flows.
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