What are Crown Corporations and why do they exist?

Kazi Stastna, CBC News, Apr 2012

Crown corporations have been a part of Canadian life for almost a century, and for as long as they've existed, there has been debate about whether they should exist at all.

On the eve of the auditor general's spring report, which will examine the finances of three Crown corporations, we take a look at some basic facts about Crown corporations and how they operate.

Are they a business or a government agency?

Crown corporations are peculiar hybrid entities — somewhere between a government body and a private enterprise. They are wholly owned by the state but operate at arm's length from government.

Crown corporations are created to advance certain policy objectives and in this sense are "instruments of public policy," in the words of a Treasury Board report on the subject. But some of them also have to operate in a business capacity, meaning they have commercial interests and competitive pressures to contend with that can, at times, conflict with their policy mandate.

They are generally created to fill a need the government feels is not being met by the private sector, which is either unable or unwilling to provide certain services the government deems necessary or in the national interest.

Often, Crown corporations provide services that would not be economically feasible for a private enterprise to undertake, such as delivering mail in or providing passenger transport to remote or sparsely populated parts of the country. Examples of these types of corporations would be Canada Post or Marine Atlantic, which operates a ferry service between Newfoundland and Labrador and Nova Scotia.

In other instances, they provide public services or functions that don't quite fall under the purview of a federal or provincial ministry and that the government feels would be best administered through a corporate structure — but not entirely within the commercial sphere.

For example, the Atlantic Pilotage Authority, a federal Crown corporation, licenses and employs the marine pilots who navigate vessels through waterways in and around the Atlantic provinces (other pilotage authorities, registered as separate Crown corporations, operate in other parts of Canada).

The BC Assessment Authority, a provincial Crown corporation, produces independent annual property assessments for all property owners in the province.

The Canada Pension Plan Investment Board invests the assets of the Canada Pension Plan.

Crown corporations are distinct from “departmental corporations” such as the National Research Council, the Canada Revenue Agency or the Canadian Food Inspection Agency, which also operate independently of government departments but perform only administrative, research, advisory, supervisory or regulatory functions. (These are listed in Schedule II of the Financial Administration Act.)

In which sectors do they operate?

Crown corporations have been most common in sectors such as transportation, telecommunications, utilities and power generation, but they extend into many parts of the economy, including alcohol sales, gaming, finance, business development, insurance, agriculture and culture.

Some Crown corporations provide administrative, support or oversight services to certain industries — the Canadian Dairy Commission, for example, sets reference prices and monitors supply for the dairy industry; the Canadian Commercial Corporation brokers defence contracts between foreign governments and Canadian companies.

Are they government funded?

The degree of financial support and government control of Crown corporations varies. Some are fully funded by government appropriations; others are financially self-sufficient or profit-making corporations that pay dividends, which the government, as the sole shareholder, collects.

Profit-making corporations that operate in a competitive environment are classified in a separate category from other Crown corporations and have greater autonomy in how they operate and how much government oversight they are subject to. They do not have to submit an annual operating budget for government approval, for example, like other Crown corporations do.

Currently, there are three such organizations: Canada Post, the Royal Canadian Mint and the Canada Development Investment Corporation. (Listed in Schedule III Part II of the Financial Administration Act.)

How much control does the government have over them?

Crown corporations are created through either an Act of Parliament or by articles of incorporation under the Canada Business Corporations Act.

They are accountable to Parliament through the minister responsible for that particular corporation.

The minister responsible, with approval of the federal cabinet, appoints the corporation’s board of directors, and the cabinet (technically, the “governor in council”) appoints the CEO and determines the rate of pay for all directors and the CEO. The board and MPs have some input into the appointment of CEOs and board chairs, but the government makes the ultimate decision.

All Crown corporations have to undergo an annual audit, and most have to submit annual corporate plans, operating budgets and capital budgets for approval by the minister responsible, who then tables them in Parliament. As of 2011-12, they also have to submit quarterly financial reports.

The government can intervene in the management of a Crown corporation by having the minister responsible issue a directive to the board of directors ordering them to take some specific action. This directive must be tabled in both houses of Parliament within 15 sitting days of being issued.

Most Crown corporations have to undergo a “special examination” at least every 10 years to verify that their finances are in order and that they are being managed “economically and efficiently.” It is usually carried out by the auditor general, who on April 3 will make public the results of three such examinations as part of his spring report.

The government also carries out periodic mandate reviews to assess a corporation’s performance, its cost-effectiveness, whether it’s meeting the objectives of its mandate and whether there is a continuing need for it. It was such a mandate review that led the current Conservative government to decide to sell off the commercial portion of Atomic Energy of Canada Limited (AECL).

Are all Crown corporations treated equally?

Crown corporations are governed by their constituent legislation and by Section X of the Financial Administration Act. That act sets out three classifications of Crown corporations: those listed in Schedule III Part I, which covers the bulk of Crown corporations; those listed in Schedule III Part II, which covers the three profit-making corporations that function the most like businesses; and nine corporations that are exempt from most Section X requirements.

Part II corporations don’t have to submit an operating budget to the government like other corporations, but they do have to submit a capital budget and corporate plan, which must include a dividend proposal. Unlike for the corporations listed under Part I, the results of their “special examination” are not conveyed to the responsible minister or Parliament, only to their board of directors.

The nine exempt corporations are governed only by their constituent acts and include entities such as the Bank of Canada, the Canadian Broadcasting Corporation, Telefilm Canada, the Canada Council for the Arts and the Canada Pension Plan Investment Board.

They do not have to submit annual corporate plans and budgets for government approval or undergo a special examination but have generally incorporated governance structures into their own constituent acts that are similar to those outlined in Section X.

The aim of exempting these organizations from having to have their corporate plans approved by government is to shield them against “potential political interference,” according to the Treasury Board.

Is there enough oversight of Crown corporations?

Following the 2003 auditor general's report into the federal sponsorship program, which highlighted concerns about financial management at several Crown corporations, including Via, Canada Post and the Business Development Bank of Canada, questions were raised about accountability, financial management and transparency at Crown corporations.

As a result of that report and the subsequent inquiry by retired judge John Gomery into government contracts and appointments, the government instituted a series of reforms, including some that were passed in the form of the 2006 Federal Accountability Act.

As part of its effort to tighten oversight and improve accountability and transparency at Crown corporations, the government:

- Split the CEO and the chairperson of the board into two distinct positions and made the CEO the sole representative of management before the board.
- Restricted the participation of public servants on the boards of Crown corporations.
- Appointed the auditor general as the sole or joint internal auditor for all Crown corporations except the Bank of Canada.
- Instituted new guidelines for the process of appointing directors and CEOs that allowed for greater input from the board of directors and members of Parliament, but it fell short of allowing the board itself to appoint the CEO, as Gomery had recommended (Gomery also recommend that while the initial appointments to the board be left to the government, the filling of subsequent vacancies should be made the responsibility of the board.)
- Made several Crown corporations subject to the Access to Information Act that previously were not.

How do federal and provincial Crown corporations differ?

Provincial Crown corporations function similarly to their federal counterparts. They are accountable to the provincial government and their directors are appointed by the provincial cabinet (technically, the lieutenant-governor on advice of the cabinet).

Some of the areas in which provincial Crown corporations have traditionally been involved are gaming (e.g. Ontario Lottery and Gaming Corporation, BCLC), liquor stores (e.g. LCBO in Ontario, SAQ in Quebec.), utilities (e.g. Hydro-Québec, NB Power) and culture (Royal Ontario Museum, Film Nova Scotia).

Provincial Crown corporations have also had their share of controversy. In 2006, two vice-presidents of Quebec's liquor control board, the SAQ, were found to have been involved in a price-fixing scheme, prompting the provincial government to introduce new governance rules for Crown corporations.

In Ontario, the scandal over wasteful spending and untendered consulting contracts at eHealth, a provincial Crown corporation charged with creating an electronic health records system, cost Health Minister David Caplan his job.

How many are there?

The first Crown corporation of the modern era was the Canadian National Railway Company, created in 1922 out of more than 200 companies four years after the government bought the Canadian Northern Railway Company. The Bank of Canada was made a Crown corporation in 1938, four years after it was created as a privately owned corporation.

Today, Canada has 49 federal Crown corporations (plus dozens of subsidiaries). One of the more recently created ones is the Canadian Air Transport Security Authority, or CATSA, which provides passenger and baggage screening at airports. It was created in 2002 in the wake of the attacks of Sept. 11, 2001, as the government became increasingly concerned about airport security and decided it would take over the responsibility for security from the airlines.

Which Crown corporations have been privatized?

Notable privatizations of Crown corporations

- Atomic Energy of Canada Limited (commercial division) — 2011
- Highway 407 (Ontario) — 1999
- Canadian National Railway — 1995
- Alberta Liquor Control Board — 1993
- Nova Scotia Power — 1992
- Petro-Canada — 1991
- Potash Corp. (Saskatchewan) — 1989
- Air Canada — 1988
- De Havilland Aircraft Co. — 1986
- Canadair — 1986

Every few years, there are renewed calls from various camps within Canada to privatize Crown corporations. Some of the most significant privatizations of the past few decades took place under Progressive Conservative Prime Minister Brian Mulroney.

Inspired by Margaret Thatcher’s sell-off of state assets in Britain in the 1980s, Mulroney oversaw the privatization of two of the country’s most iconic Crown corporations: the national airline, Air Canada, and the national gasoline supplier, Petro-Canada, as well as other state-owned companies such as De Havilland Aircraft Co. and Canadair.

Since then, entire sectors that used to be dominated by Crown corporations, such as telecommunications, have been almost fully privatized. Most provinces sold off their phone companies in the 1990s, although Saskatchewan’s telecommunications provider, SaskTel, is still a Crown corporation.

In other sectors, privatization has been more mixed. Alberta privatized its liquor stores in 1996, but most other provinces have not followed suit and still have liquor control boards that are run as provincial Crown corporations. One exception is B.C., which has allowed some private liquor stores but has not gone entirely out of the alcohol-selling business.

Some parts of the energy and natural resources sector that had traditionally operated as Crown corporations have been fully or partially privatized: B.C. has sold off parts of BC Hydro; Saskatchewan privatized Potash Corp., the world's largest producer of fertilizer; Nova Scotia has privatized its electricity company Nova Scotia Power.

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