

2009 March Status Report of the Auditor General of Canada

Chapter 2—The Governor in Council Appointment Process

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Chapter 2—The Governor in Council Appointment Process

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Main Points

What we examined

A Governor in Council (GIC) appointment is an appointment made on the recommendation of the responsible minister and approved by the Governor General in Council—the Cabinet and the Governor General acting in a legal capacity. GIC appointments are made to positions in a wide array of federal organizations—Crown corporations, agencies, boards, tribunals, commissions, granting councils, and departmental corporations. Appointment positions include chief executive officers, board chairs, board directors, agency heads, and members of various tribunals, councils, and commissions. Overseeing the GIC appointment process is a core function of the Senior Personnel and Special Projects Secretariat in the Privy Council Office; the Secretariat establishes and administers policies and services for Governor in Council appointments on behalf of the Prime Minister's Office.

Our audit looked at the federal government's process for making Governor in Council appointments to Crown corporations, small federal entities, and the Immigration and Refugee Board of Canada. We examined the extent of progress made in implementing recommendations on the appointment process from our 2000 and 2005 reports on Crown corporation governance. In the small entities we examined, we looked at appointment-related issues raised in our 2003 audit of the Office of the Privacy Commissioner and our 2006 audit of the Office of the Correctional Investigator. We also followed up on a related recommendation from our 1997 audit of the Immigration and Refugee Board that the government improve its practices for appointing Board members. We did not audit the appointment decisions made by the Governor in Council or the roles played by ministers, ministers' offices, or the Prime Minister's Office.

Officials of the Privy Council Office have expressed their view that aspects of our audit report go beyond the Auditor General's mandate and encroach on the exercise of discretion by ministers and the Governor in Council. We are satisfied that the findings in our report fall entirely within the mandate of the Auditor General. The audit focused on the mechanics of the appointment process and the chapter suggests opportunities for improvement.

Why it's important

Governor in Council appointees occupy senior positions in Crown corporations and federal agencies, boards, tribunals, commissions, granting councils, and departmental corporations—organizations that, whatever their size, can have a considerable impact on the health, safety, and quality of life of Canadians. It is therefore important that the appointees be qualified, that appointments be timely, and that proposed candidates be considered in an open, transparent, and competency-based selection process. Deficiencies or delays in the appointment of these officials could have significant consequences for the governance of the organizations and for Canadians. Problems in the appointment process could also discourage qualified individuals from accepting positions or renewals of their terms.

What we found

- Overall, progress in responding to our 2000 and 2005 recommendations to improve the appointment process in Crown corporations is unsatisfactory. Some measures in the Crown corporation Governance Framework announced in 2005 responded to concerns we had raised and have been implemented. For example, the Privy Council Office has created a website to publicize GIC appointment vacancies. However, progress on the timeliness of appointments to Crown corporations is disappointing. There are still many appointees serving whose terms have expired, and there are still delays in filling vacancies. In addition, there are lengthy delays in making appointments to small entities and to the Immigration and Refugee Board. Such delays can compromise the ability of these organizations to function effectively.
- Neither the appointment process nor the results of the process are communicated adequately to the entities and individuals involved. The level of involvement expected of Crown corporations and small entities in the appointment process needs to be clarified. The government has not determined what is a reasonable period for advance notice of appointments and reappointments of full-time appointees (chief executive officers of Crown corporations, heads of small entities, and tribunal members). The lack of communication among the Privy Council Office, ministers' offices, appointees, entities, and candidates for appointment has resulted in considerable dissatisfaction among appointees and entities. For example, the government does not always give entities advance notice of the date when it will announce appointments, or even the new appointee's starting date. This makes it difficult to manage new appointments efficiently, including orientation for new appointees and their participation in the work of the organization.
- At the Immigration and Refugee Board of Canada, turnover and vacancy rates for GIC-appointed positions are higher now than in 1997, when we first raised them as serious concerns. They have significantly contributed to increased delays in rendering decisions and an exceptionally high inventory of unprocessed refugee claims and immigration appeals. The result is uncertainty for claimants and significant costs to social programs.
- Orientation and training for new appointees are functioning well in Crown corporations, small entities and the Immigration and Refugee Board of Canada. This is an improvement over previous audit findings.

The Privy Council Office has responded. The Privy Council Office has stated that it will continue to support the Government in the administration of its policies on appointments and provide guidance to deputy ministers, Crown corporations, small federal entities, and the Immigration and Refugee Board of Canada on roles and responsibilities of stakeholders in the appointment process. Their detailed responses follow the recommendations at the end of the chapter.

Introduction

What is a Governor in Council appointment?

2.1 A Governor in Council (GIC) appointment is an appointment made on the recommendation of the responsible minister and approved by the Governor General in Council—the Cabinet and the Governor General acting in a legal capacity. Through the GIC process, the government appoints individuals to Crown corporations and a wide array of federal entities: agencies, boards, commissions, and tribunals, including the Immigration and Refugee Board of Canada (IRB). These appointees include heads and members of small federal entities and chief executive officers, board chairs, and directors of Crown corporations. Their responsibilities are diverse, ranging

from making quasi-judicial decisions and socio-economic development recommendations, to managing large, diversified corporations. There are about 400 full-time and 1,000 part-time GIC appointees in the 43 Crown corporations and 52 small entities that we examined and in the IRB.

The process for appointments

2.2 The process for GIC appointments involves identifying appointment positions where incumbents' terms will be expiring, determining selection criteria, assessing qualifications, and recommending a candidate. Overseeing the GIC appointment process is a core function of the Senior Personnel and Special Projects Secretariat in the Privy Council Office (PCO). The Secretariat, on behalf of the Prime Minister's Office, is responsible for establishing and administering policies and services that promote high-quality GIC appointments. The Secretariat tracks vacancies and upcoming term expiries and communicates these to departments. It also publishes the *Governor in Council Appointments Guide*, which contains information on provisions for GIC appointments and lists of appointees by entity. In addition, the Secretariat provides advice to the Governor in Council on remuneration and terms and conditions of employment for all appointments, and communicates the terms and conditions, including salary, to potential full-time GIC appointees.

2.3 For appointments to key positions—board chairs, CEOs, and agency heads—PCO's role also includes reviewing and recommending selection criteria and recruitment strategies. For these positions, PCO manages the selection process on behalf of the Prime Minister's Office, including receiving applications, screening candidates, and conducting interviews and reference checks.

2.4 For some of the steps in the process, multiple stakeholders, other than the applicants and incumbents themselves, may be involved (Exhibit 2.1).

Exhibit 2.1—Roles of players other than the Privy Council Office in the appointment process

Office	Role
Entity (Crown corporation, small entity, or the Immigration and Refugee Board)	<ul style="list-style-type: none"> • Tracks upcoming vacancies. • Participates in the development of selection criteria. • In some cases, submits names of candidates for appointment. • In some cases, participates in assessment of qualifications of candidates.
Portfolio department (department reporting to the same minister as the entity)	<ul style="list-style-type: none"> • May track upcoming vacancies and support minister's office on appointment processes. • Prepares documentation to be sent to Privy Council Office for submission to the Governor in Council, including information on the candidate, a recommendation signed by the responsible minister, and a draft order-in-council.
Portfolio minister's office (the minister's staff members)	<ul style="list-style-type: none"> • May track upcoming vacancies. • May participate in the selection process, including assessment of the qualifications of candidates. • Works with Prime Minister's Office to develop recommendations for GIC appointments. • Performs background checks.

Portfolio Minister	<ul style="list-style-type: none"> • Makes recommendations to appoint or reappoint individuals. • Announces appointments.
Prime Minister's Office	<ul style="list-style-type: none"> • Performs background checks to ensure that candidates have the trust and confidence of the government. • May participate in the selection process, including assessment of the qualifications of candidates.
Prime Minister	<ul style="list-style-type: none"> • May make recommendations to appoint or reappoint individuals for key positions. • Authorizes recommendations to go forward to Cabinet.
Cabinet	<ul style="list-style-type: none"> • Reviews appointment recommendations. If Cabinet supports the recommendations, they are sent to the Governor General.
Governor General	<ul style="list-style-type: none"> • Formally approves the order-in-council (the legal instrument by which an appointment takes effect).

2.5 As indicated in “Accountable Government: A Guide for Ministers of State—2008,” GIC appointments are recommended by the appropriate minister and are subject to the Prime Minister’s approval before they go forward to the Governor in Council. The Governor in Council’s authority to appoint is conferred by statute and formally given effect by an order-in-council. According to PCO, it is important for appointees to have the trust and confidence of the government of the day. A new government may wish to take time to determine the direction and approach desired for government organizations, which could affect the timeliness of the appointment process.

What we found in past reports

2.6 Our 2000 and 2005 audit reports on Crown corporation governance addressed the timeliness and staggering of appointments, board involvement in the search process, and the need to develop board profiles to define the qualifications and characteristics required. These audits also noted the importance of providing adequate orientation and training to GIC appointees. The government indicated that it intended to address these issues.

2.7 Our 2003 audit of the Office of the Privacy Commissioner identified serious risks to governance and administration of small federal entities. Among these risks, our audit noted that the former Commissioner had been given little or no orientation or training in the public service culture beyond being provided with two information booklets. Our 2006 audit of the Office of the Correctional Investigator found that the former Correctional Investigator never received any advice about his responsibilities or the expectations of the Privy Council Office, Treasury Board of Canada Secretariat, the minister or the portfolio department, and was reappointed several times without a formal review of his performance.

2.8 Our 1997 audit of the Immigration and Refugee Board (IRB) looked at the appointment process for members of the Refugee Protection Division. We raised serious concerns about the high turnover among members and the delays in appointing replacements, which resulted in a high number of vacant positions. Although we noted in our 2001 follow-up report that the turnover rate for members and the number of vacant positions had decreased significantly, we remained concerned at the time that the Board may not have the necessary complement of staff to deal with an increasing inventory of unprocessed refugee claims. We recommended that the government improve its practices for appointing board members to address the delays.

Recent developments in the appointment process

2.9 A significant development in GIC appointments was the passing of the *Federal Accountability Act* in 2006, which provided for the establishment of the Public Appointments Commission. The Act provides that the Commission will “oversee, monitor, review and report on the selection process for appointments and reappointments by the Governor in Council . . . to ensure that every such process is widely made public and conducted in a fair, open and transparent manner and that the appointments are based on merit.” The government was originally planning to have a Code of Practice governing the appointment process in place by early fall 2006. In May 2006, the government announced the nomination of the new chair and appointed three other members of the Commission. The chair’s nomination was reviewed that month by the House of Commons Standing Committee on Government Operations and Estimates, which did not approve the proposed Chair nomination. The three appointed members then resigned from the Commission.

2.10 A Public Appointments Commission Secretariat to support the Commission was established within the portfolio of the Prime Minister. The Secretariat’s role is to provide advice and support on the development of the Commission and, once it is established, to provide it with policy and operational support. The Secretariat was asked to review the appointment process at the Immigration and Refugee Board (IRB), and presented its report to the Minister of Citizenship and Immigration in January 2007. From April to November 2007, there were no personnel in the Secretariat; a staff of two was assigned in November 2007 and is developing the draft Code of Practice for the Commission.

2.11 Many other jurisdictions have public appointment bodies with codes of practice, guiding principles, or appointment guidelines that govern the appointment process for the jurisdiction. In the United Kingdom, the Code of Practice of the Office of the Commissioner for Public Appointments sets out a framework for the public appointment process. The Code provides departments with a clear and concise guide to the steps they must follow in order to ensure a fair, open, and transparent appointment process. In British Columbia, the Board Resourcing and Development Office applies Appointment Guidelines that set out a comprehensive process for appointing directors to public sector organizations. The BC Office recognizes that although the ultimate selection of appropriate candidates is solely within the prerogative of government, the appointment process needs to be collaborative, with both government and the organization taking an active role in the recruitment and evaluation of candidates. In Ontario, through its Public Appointments Secretariat and its principles governing the appointment process, the government has committed to a more open and transparent system for filling the positions on the province’s 630 agencies.

Focus of the audit

2.12 The focus of this audit was to assess whether the government had implemented our previous audit recommendations on the process for GIC appointments in Crown corporations, small entities, and the Immigration and Refugee Board of Canada. We looked at appointments and reappointments of heads of agencies, chief executive officers (CEOs), chairs, board directors, tribunal members, and other types of members. We also assessed whether appropriate management systems and procedures were in place to support those appointments. We assessed the extent to which the appointment and reappointment processes are timely, transparent, and competency-based, and the extent to which appointees receive appropriate orientation and training to perform their duties. We examined the support for the appointment process provided by PCO, departments, and the entities themselves. The Governor in Council has a broad discretionary authority and responsibility conferred by statute to make appointments. Accordingly, we did not audit the appointment decisions made by the Governor in Council or the roles played by ministers, ministers’ offices, or the Prime Minister’s Office.

2.13 The audit period for our file review was 1 January 2006 to 31 March 2008. For our analysis of vacancies and term expiries, however, we included data up to 20 September 2008. Information from Crown corporations and entities was obtained through the use of a detailed information gathering instrument, signed off by Crown corporation CEOs and agency heads. We refer to the instrument in this report as a detailed questionnaire.

2.14 Officials of the Privy Council Office have expressed their view that aspects of our audit report go beyond the Auditor General's mandate and encroach on the exercise of discretion by ministers and the Governor in Council. We are satisfied that the findings in our report fall entirely within the mandate of the Auditor General. The audit focused on the mechanics of the appointment process and the chapter suggests opportunities for improvement. More details on the audit objectives, scope, approach, and criteria are in **About the Audit** at the end of this chapter.

Observations

2.15 It is essential that Governor in Council (GIC) appointees be well qualified; appointments be timely; the appointments be made following an open, transparent, and competency-based selection process; and appointees receive appropriate orientation and training. It is also important to appropriately communicate with incumbents, candidates, and organizations, including notifying them of appointment and reappointment decisions so that they may arrange their personal and professional affairs and operational priorities.

Appointments to Crown corporations

2.16 Crown corporations are distinct legal entities, created through federal enabling legislation, that are wholly owned by the government. They deliver important public programs and operate in many sectors of the Canadian economy. We included 43 federal Crown corporations in our audit. These Crown corporations employ about 90,000 people and manage more than \$185 billion in assets, not including the assets of the Bank of Canada, the Canada Pension Plan Investment Board, and the Public Service Pension Investment Board.

2.17 The laws that govern Crown corporations set out different requirements for the number and types of GIC appointments. All Crown corporation chairs and directors and most chief executive officers (CEOs) are GIC appointees. The CEO is responsible for the day-to-day management of a Crown corporation. The chair of the board and the board of directors oversee the management and activities of the corporation. The timely appointment of qualified CEOs, chairs, and directors is, therefore, a critical component in Crown corporation governance—the direction, oversight, and management of a corporation.

2.18 In 2004, the President of the Treasury Board announced a new “merit-based” process for appointments in Crown corporations. The new process called for several changes, including greater board involvement in selecting new directors and CEOs.

2.19 Our February 2005 report on Crown corporation governance recommended that the government should implement this new appointment process, paying particular attention to timeliness and the proper staggering of appointments. The government's response stated that many of the issues identified by us were being examined in the context of the government's review of Crown corporation governance that would respond to our recommendations. In 2005, after we tabled our audit report, the President of the Treasury Board released a report entitled *Review of the Governance Framework for Canada's Crown Corporations: Meeting the Expectations of Canadians* (2005 Governance Framework), which included specific measures to make the GIC appointment process competency-based, professional, and transparent.

2.20 In this audit, we focused on the Privy Council Office (PCO) as one of its roles is to oversee the GIC appointment process and administer policies and services for appointments. The government has implemented, or partially implemented, some of the measures in the 2005 Governance Framework related to appointments. Others, particularly those related to the appointment process for CEOs and directors, have not been addressed.

There are many expired terms and delays in filling vacancies

2.21 Our 2005 audit report on Crown corporation governance noted that appointments of directors were not being made on a timely basis, and that the length of time directors continued to serve after their terms had expired had actually increased since we raised this concern in 2000. While legislation permits incumbent directors of most Crown corporations to continue in office after their terms expire until a successor is appointed, in our

view, it is not desirable to leave directors and the corporations concerned uncertain for lengthy periods about their continued presence on boards. This uncertainty does not allow for efficient planning for transitions. Nor does it take into account the fact that directors spend considerable time and effort on their duties, including reviewing materials for board and committee meetings, not knowing if they will still be directors when the meetings are held.

2.22 To calculate vacancies, we included all positions listed as vacant in the *Governor in Council Appointments Guide* produced by PCO as updated by the orders in council database on the PCO website. PCO officials take the view that a distinction should be made between a calculation of vacancies based on the maximum number of positions set out in statute and the positions that the government intends to fill. Four of 41 Crown corporations have determined that, for operational efficiency, the ideal number of directors is less than the maximum complement stated in their respective legislation. PCO officials have stated their intention to determine the optimal number of appointees for each Crown corporation. However, this determination has not yet been made. In the meantime, we have taken the approach used in the *Governor in Council Appointments Guide*, which calculates vacancies based on the maximum number of positions.

2.23 For this audit, we expected to see that appointment or reappointment decisions are made in a timely manner, that is, on or before incumbent appointees' terms expire, and vacancies are filled in a reasonable time frame.

2.24 We found that timeliness of appointments is still a problem. We looked at periods of vacancy during our audit period and the number of vacancies as of 20 September 2008.

2.25 During our audit period, for 175 of 430 appointments in the 43 Crown corporations (41 percent), the appointment terms ended and the appointees were not replaced or reappointed at the end of the term. Of those, 125, or 29 percent, were not replaced or reappointed for 90 days or more. The average number of days between expiry of the term and the start of a new term, through reappointment of the director or appointment of a new director, was 346. The median period was 211 days.

2.26 As of 20 September 2008, 30 of 430 director positions (7 percent) in the 43 Crown corporations were vacant. This number on its own is not necessarily a matter of concern. However, 65 of 400 appointees (16 percent) had expired terms and new appointments or reappointments were not made in a timely manner. The average time since their terms had expired was 373 days; the median was 146 days.

2.27 As of 20 September 2008, among the 15 largest Crown corporations we examined in our 2005 audit, 16 percent of directors had expired terms, compared with 36 percent in September 2004. However, the average interval of time since terms had expired increased from 235 days to 259 days for these 15 corporations (the median number of days was 133).

2.28 For CEO and chair positions, the situation was better than for directors. As of 20 September 2008, all but 3 of the 43 Crown corporations had a permanent CEO. These 3 permanent CEO positions were vacant for an average period of 590 days. There were no corporations with a chair vacancy. In some cases, there were long periods of vacancy prior to the appointment of the current incumbents. For example, the Federal Bridge Corporation was without a permanent CEO for almost a year and Ridley Terminals Inc. was without a chair for 18 months.

2.29 PCO recognized that there was a high number of expired terms and delays in filling vacancies and, in March 2007, it sent a letter to deputy ministers encouraging them to address any remaining backlog of appointments within their portfolios as a priority. A similar letter was sent to portfolio ministers responsible for recommending appointments. PCO also told us that it held a workshop in March 2007 with departmental staff to discuss vacancy management.

2.30 Although the situation has improved since our 2005 audit, the fact that 22 percent of board positions in Crown corporations are either vacant or are occupied by incumbents with expired terms indicates an ongoing problem. Because a board requires a certain number of directors to make valid decisions (known as a quorum), a high number of vacancies can affect board decision making and create corporate management and governance

issues. In our special examinations of Crown corporations, we have noted instances where delays in the appointment process have had an adverse impact on the governance of Crown corporations. For example, our special examination report in March 2008 on the International Development Research Centre noted that the board's composition was not in compliance with the law creating it. For almost one year, the board did not have a majority of Canadian governors, as is required by its legislation, due to government delays in filling board vacancies.

2.31 In addition to having board appointments made in a timely manner, it is important that directors are not all replaced at the same time. Best practices for boards of directors favour a mixed board composed of new and veteran directors. Replacement of a large proportion of directors may lead to loss of stability and continuity. We expected to see that appointments and reappointments were appropriately staggered. We found that in several corporations, more than half of directors' terms expired or will expire in the same year. Six Crown corporations had more than half of their directors' terms expiring in 2008, two corporations have a majority of directors' terms expiring in 2010, and two others have a majority expiring in 2012. While some of these appointments were made prior to our audit period, we noted that for those made during our audit period, attention to staggering appointments remains an issue. PCO indicated that it tries to ensure staggering of appointments, and we noted that for some corporations, some terms were made shorter than others as a way of staggering future appointments. There needs to be a sustained high-level consideration of staggering appointments to avoid continued issues in this area.

The expectation for the level of board involvement in director and CEO search and selection needs to be clarified

2.32 In our 2005 report on Crown corporation governance, we noted that most Crown corporation boards had in place board profiles outlining the skills and abilities needed on the board to oversee the affairs of the corporation. We observed that boards used the profiles to identify gaps in the needed mix of skills and to inform responsible ministers and PCO of their requirements. The appointment process announced by the government in 2004 stated that the boards themselves, through their nominating committees, would play a significant role in board renewal by screening and recommending suitable candidates for director positions. We recommended that the government implement the 2004 process, and the government indicated that the process outlined in the 2005 Governance Framework would address our recommendations.

2.33 For this audit, we expected to see that board input was being taken into account, and that the GIC appointment process for directors for each corporation was focused on addressing the appropriate mix of skills. Responses to our detailed questionnaire indicated that 38 of 41 Crown corporations have developed a board profile, setting out the skills or competencies needed for their boards to function effectively. Corporations carry out a formal or informal analysis of the types of expertise needed and lacking among current board directors.

2.34 However, we found that the extent to which board input was provided varied widely, from considerable board input to none at all. Some boards submit a list of required competencies or qualifications as well as names of individuals. Other boards submit a list of qualifications but no names. Responses to our questionnaire indicated that 26 of 41 Crown corporations suggested director candidates' names to the minister's office; 38 suggested overall competencies; and 32 communicated current gaps in competencies. Only 11 Crown corporations considered that their input was taken into account during the appointment process.

2.35 The government's expectation for the level of board involvement needs to be clarified. Crown corporations and their boards have taken a variety of approaches. The government's 2004 and 2005 changes to the appointment process set certain expectations for board involvement. Crown corporations were told to establish nominating committees and submit names. As stated above, a large percentage of Crown corporations provide some form of input to the minister's office. Others have noted that their suggestions for candidates are consistently not acted on, without any feedback, and they have ceased to provide input.

2.36 At the Public Service Pension Investment Board, a committee that is separate from the board and led by an independent chairperson, submits names of individuals with the competencies to fill gaps in the board profile, and legislation requires the minister to appoint from this list.

2.37 The 2005 Governance Framework called for the board of directors to determine the selection process for CEOs, including establishing a nominating committee to suggest candidates. We found that the government's expectation for the level of board involvement in recommending candidates for CEOs is unclear. For example, only 14 of 33 Crown corporations where the CEO is appointed by the GIC, through their board nominating committee or otherwise, submit a list of names of CEO candidates to the minister.

The recruitment and selection of chairs and CEOs has become more transparent

2.38 Based on the measures set out in the 2005 Governance Framework we expected to see improved transparency and openness of candidate searches for CEOs and chairs. Selection criteria were to be made public and the government was to develop a central website to advertise chair positions. The CEO selection process was to include, at a minimum, advertising the position and the selection criteria in either or both the *Canada Gazette* and the corporation's website. Boards were also to establish a nominating committee to identify candidates for the position of CEO and carry out CEO reference checks.

2.39 PCO has created a website to advertise GIC positions and its policy is to post all chair and CEO positions on this site, on the corporation's website, and in the *Canada Gazette*. PCO stated that vacancies and selection criteria for these positions have been posted on this website since April 2006. We also noted that CEO and chair positions were advertised in the *Canada Gazette*.

2.40 A selection committee or interview panel is created that is generally composed of senior representatives from the Prime Minister's Office, the portfolio minister's office, the portfolio department (typically an assistant deputy minister or director general), a representative of the Crown corporation's board (usually the chair), and PCO. The selection committee is responsible for assessing the applications received, identifying the candidates to be interviewed, and conducting the interviews.

2.41 PCO told us that reference checks are conducted on candidates for CEO and chair positions. CEOs and chairs we interviewed confirmed that for each of their own appointments, several references at the level of peer, superior, and subordinate, were called and asked in-depth questions.

Orientation and training are functioning well

2.42 Appointees require appropriate orientation and support upon appointment to enable them to be effective in discharging their duties as GIC appointees. Our 2005 report on Crown corporation governance emphasized the need for continuing education of board directors in public sector developments, governance practices, finance, and risk management. The 2005 Governance Framework stated that the Canada School of Public Service would establish additional training and professional development programs on public sector management and Crown corporations.

2.43 For this audit, we expected that required orientation and training for appointees would have been identified, and that appointees would receive this orientation and training. We found that orientation and training for appointees was functioning well. For example, PCO and the Canada School of Public Service have developed new training programs for GIC appointees, which 57 percent of new appointees completed during 2007 and 2008. In April 2008, PCO reinstated a program of one-on-one meetings between newly appointed chairs and CEOs and senior officials of PCO and other central agencies for briefing sessions on various subjects tailored to the individual appointees.

2.44 Almost all Crown corporations responding to our detailed questionnaire indicated that CEOs, chairs, and board directors received orientation upon appointment, from the organization itself. Some also received orientation from PCO. The chairs and CEOs we interviewed noted overall satisfaction with the orientation and

training they received.

2.45 We expected that orientation would include information on the requirement to comply with the required conflict of interest rules and ethical and political activities guidelines. We found that this information was provided, and that appointees were informed of the expected standards of conduct.

Communication regarding appointments and reappointments is insufficient

2.46 **Communication of decisions.** Appointment and reappointment decisions for full-time appointments need to be appropriately communicated to incumbents and candidates to allow them to manage their personal and professional affairs. Corporations must also receive information to manage operational priorities. Moreover, candidates need to be aware of the timelines for the entire process so that they know what to expect at each stage leading up to appointment. Late notification of appointment or reappointment decisions shows a lack of respect for the appointees. To address these issues for provincial appointments, the Ontario Public Appointments Secretariat requires that provincial appointees receive three to six months' notice of reappointment decisions. If it is not provided, the Secretariat will require a reappointment for a period equal to that notice period.

2.47 We expected that a reasonable length of time for notifying candidates, incumbents, and Crown corporations of appointment and reappointment decisions would be determined and that decisions would be communicated within this period. There was no indication that any notice period had been determined. Crown corporations and appointees told us that they received insufficient notice of appointments. In particular, 21 of the 45 chairs and CEOs of Crown corporations whom we interviewed said there is a general lack of communication. Fifteen described the process as a "black box" or a "black hole." Twelve commented on the lack of communication being especially evident as they or members of their boards approached the expiry of their terms.

2.48 For chairs and CEOs, eight commented that they received late communication of their original appointment. Two of those informed us that they learned of their appointments through the media. Two of 11 chairs and CEOs who were reappointed were notified of the reappointments after their terms had expired.

2.49 Twenty-two of 41 Crown corporations noted that new directors were notified of their appointments within one month of the start of their terms. For reappointments of directors, 16 of 41 Crown corporations indicated that incumbent directors were notified of their reappointments only after their terms had expired. Chairs and CEOs of three Crown corporations told us of instances where directors learned at a board meeting that they had been replaced days earlier. For example, this happened to three directors at Canada Post Corporation and the board meeting had to be declared invalid because there was no quorum of current directors present.

2.50 It is also essential to notify the corporations themselves of appointments. Changes in board membership have a significant impact on the board's operations and work. Board operations are affected by the relative experience of directors. Senior management has to prepare orientation and training sessions for new directors and briefing materials for all directors for each meeting. Results from our detailed questionnaire indicated that more than half of the Crown corporations (26 of 41) considered that they did not receive sufficient notification of board member appointments.

2.51 We were informed by PCO that it is the role of the minister's office to inform appointees that their names are being put forward for appointment or reappointment and to inform incumbents when they will not be reappointed. PCO has stated that, given that GIC appointments are for fixed terms, there is no entitlement to reappointment. In an attachment to its March 2007 letter to deputy ministers, PCO stated that "... it is important to give adequate notice to full-time incumbents who will not be reappointed so that they may in turn arrange their personal and professional affairs."

2.52 **Communication about the appointment process.** We expected that the appointment process would be clearly communicated in a manner that would permit all stakeholders involved to understand the process and its various steps and their timing. However, many Crown corporations were not able to answer questions about different aspects of the appointment process, such as whether positions were advertised, what methods were used

to assess candidates, and whether PCO assessed candidates for conflicts of interest. Of 41 corporations, five did not know who notified individuals of their appointment, and nine did not know who notified individuals of their reappointment. More than one third did not know when individuals had been notified. This lack of information can make it difficult for the corporations to make efficient transitions. Exhibit 2.2 shows the progress made in addressing the recommendations from our 2000 and 2005 chapters on Crown corporation governance.

Exhibit 2.2—Progress in addressing our recommendations on Crown corporations

February 2005 Status Report of the Auditor General, Chapter 7	
Recommendation	Progress
As the government establishes new expectations for good governance practices for Crown corporations, it [the government] should . . . effectively implement the revised appointment process for directors, chairs, and chief executive officers, paying particular attention to the timeliness and proper staggering of appointments. (paragraph 7.101, third bullet)	Unsatisfactory
December 2000 Report of the Auditor General, Chapter 18	
Each responsible minister and the corporation should reach an understanding on how the board will be engaged in the selection and appointment of directors. (paragraph 18.45)	Unsatisfactory
The government, with Crown corporations, should ensure that newly appointed directors are provided with adequate orientation and training in their responsibilities to the corporation, the corporation's relationship with the government, compensation policies for Crown corporation executives, and board procedures. (paragraph 18.54)	Satisfactory
<p>Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.</p> <p>Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.</p>	

Appointments to small federal entities

2.53 We examined Governor in Council appointments in 52 small federal entities, responsible for administrative, research, advisory, investigatory, regulatory, or quasi-judicial functions. We adopted the approach to defining small entities that was used in our December 2008 chapter on Governance of Small Entities. We included organizations with fewer than 500 employees or with total annual funding of less than \$300 million. Despite their relatively small size, these organizations can have a significant impact on the health, safety, and quality of life of Canadians.

2.54 GIC appointments in small entities include agency heads and members of various tribunals, councils, and commissions. Some small entities have only one GIC appointment: the head of agency. Others also have boards of members who carry out the entity's operations, or act in an advisory capacity. Others are administrative tribunals whose members make quasi-judicial decisions.

2.55 We included appointments to small federal entities in this audit because agency heads had raised issues similar to those experienced by Crown corporations in relation to their GIC appointments. In addition, we looked at appointment issues raised in our 2003 audit of the Office of the Privacy Commissioner of Canada. We also considered the February 2008 report of the Standing Committee on Public Accounts, tabled in relation to our

2006 audit of the Office of the Correctional Investigator. The Committee recommended improved checks and balances to prevent inappropriate activities of appointees in small federal entities, including improved orientation and training of appointees and a review of the performance of agency heads prior to reappointment.

2.56 As with Crown corporations, the appointment process for small entities involves multiple stakeholders. The Privy Council Office and staff in ministers' offices liaise with departments and entities regarding appointments. Security and reference checks are also conducted, and the ministerial recommendation is submitted to the Governor in Council.

There are significant delays in filling vacancies

2.57 As with Crown corporations, delays in appointing agency heads or members to small entities could impair their ability to carry out their mandates. We expected to see that appointments in small entities are made in a timely manner.

2.58 Members of small entities are generally not permitted to stay in their positions and exercise their duties after their terms expire. When a member's term ends and there is no immediate reappointment or replacement, the entity has a vacancy.

2.59 While we observed a relatively low number of vacancies among members in small entities, timeliness of appointments and reappointments is a significant issue. We found that as at 20 September 2008, 65 of 765 positions (8 percent) were vacant in the entities we examined. This does not include over 30 vacancies at the Royal Canadian Mounted Police External Review Committee, the RCMP Public Complaints Commission, and the Canadian Polar Commission. The only filled positions in these entities were the agency heads and, in one case, a vice-chair. PCO officials told us the mandates for these entities are under review and as such, the government is keeping appointments to a minimum.

2.60 During the audit period, there were 54 member reappointments, whose positions had been vacant for an average of 91 days (the median period was 43 days).

2.61 For agency heads, although there was only one vacancy as of 20 September 2008 (at the Canadian Forces Grievance Board), this position had been vacant for 207 days. During our audit period, there were 13 appointments or reappointments of heads of agency. Of the 13, 2 were made within a week of the expiry of the term of the previous incumbent. There were varying lengths of vacancy for the other 11, the longest being 640 days. The 13 positions had been vacant for an average of 296 days (the median period was 217 days).

Search and selection processes for small entities vary

2.62 We expected search and selection processes for members of small entities to be clear and consistent and focused on qualifications. In most respects, the appointment process mirrors that used for Crown corporations. However, there were differences depending on the type of entity.

2.63 **Process for tribunals.** For tribunals, we noted rigorous, clear, and competency-based processes. Openings are advertised on an ongoing basis on the GIC appointments website. For some tribunals, such as the Veterans Review and Appeal Board, the selection criteria and steps in the process are clearly laid out on the tribunal's website. The tribunal screens applicants, administers a written exam, conducts interviews, and carries out reference checks to arrive at a list of qualified candidates, sometimes taking into account geographical or other considerations. Names remain on the list of qualified candidates for a set period of time. We have been informed by some tribunal chairs that their input is assured because there is an understanding with the minister that he or she will recommend only candidates whose names are on the chairs' lists.

2.64 **Process for other small entities.** GIC appointments in small entities other than tribunals follow the general appointment process, including identification of appointment positions where incumbents' terms will be expiring, determining selection criteria, assessing qualifications, and recommending a candidate to the Governor

in Council.

2.65 We expected to see evidence of selection criteria for members of small entities. For 13 small entities, we expected the criteria to also include their specific statutory requirements for qualifications, knowledge, or experience. While the files we reviewed contained curriculum vitae, we found evidence of selection criteria in only 3 of 20 members' files. Consequently, we were unable to determine whether candidates' applications were being appropriately assessed. We saw evidence that reference checks were conducted in only 4 of 20 files that we reviewed.

2.66 As with Crown corporations, the government's expectation for the entities to suggest candidates was not clear. While 15 of 19 entities suggested candidates, only 8 considered that their suggestions were taken into account.

Orientation and training are functioning well

2.67 Appointees to small entities require appropriate orientation and support upon appointment to enable them to be effective in discharging their duties as GIC appointees. Our 2003 Audit of the Office of the Privacy Commissioner of Canada recommended that appointees be briefed on the government's legislative, policy, and control frameworks and on the standards of conduct expected of them. For this audit, we expected that required orientation and training for appointees would have been identified and appointees would receive this training.

2.68 The Public Accounts Committee has noted that orientation and training of appointees in small entities was a particular concern. In its February 2008 report on the Office of the Correctional Investigator, the Committee recommended that all full-time GIC appointees be appropriately trained, and requested a response from PCO. The government response to the Committee's report sets out the training provided to heads of agencies, including one-on-one orientation sessions for agency heads, and orientation courses given at the Canada School of Public Service.

2.69 Almost all small entities indicated that agency heads and members now receive, upon appointment, orientation on several topics. These topics include the entity itself, the federal government, the entity's relationship with government, the appointee's obligation to comply with standards, and conflict of interest guidelines. Almost all small entities reported that the entity provided orientation and training. In addition to the same one-on-one training through PCO, as is provided to chairs and CEOs of Crown corporations, the Canada School for Public Service estimates that during 2007 and 2008, 46 percent of newly appointed heads of agencies took the orientation courses it offers. Interviewees found the external training to be of varying use to them, usually depending on their previous experience in or exposure to the federal government.

2.70 Agency heads we interviewed noted that they received detailed information on complying with conflict of interest rules and ethical and political activities guidelines once they were appointed. The July 2008 government response to the report of the Public Accounts Committee notes that GIC appointees are required to certify in writing that they will comply with the guidelines and the *Conflict of Interest Act*. This requirement for certification applied to 15 of the 18 files we reviewed, and 14 contained the certification.

Performance is not consistently considered in reappointment decisions

2.71 In our 2006 audit, we observed that the former Correctional Investigator was reappointed several times without formal review of his performance. The Public Accounts Committee noted in its February 2008 report that PCO needs to follow a more thorough process to make sure that individuals who are being considered for reappointment are appropriately fulfilling their duties before reappointment is recommended.

2.72 The government's response to the Standing Committee's report states that the responsible minister determines whether or not an incumbent should be recommended for reappointment based on overall performance. Agency heads other than those responsible for quasi-judicial tribunals are evaluated based on the Performance Management Program for Heads of Agencies that was developed by PCO. This program is used to

determine performance pay for heads of agencies other than tribunals. Regardless of whether the appointee was eligible to receive performance pay, we expected to find some written record in the appointment file to indicate that performance was considered in making reappointment decisions. However, in the files we reviewed, we found no such record.

2.73 For tribunal heads, PCO officials told us that because these positions are quasi-judicial in nature and are required to be independent of government, it is not appropriate that tribunal heads be subject to formal performance evaluations. They informed us that for these positions, the minister typically assesses performance through informal consultations with stakeholders before recommending reappointments and that, as a result, there is no written evidence of performance evaluations in most of their files.

Communication regarding appointments and reappointments is insufficient

2.74 As noted for Crown corporations, we expected that there would be a standard for communication of appointment and reappointment decisions. Such a standard would ensure that candidates and appointees would receive reasonable notification of decisions and be aware of the process timelines to allow them to manage their personal and professional affairs. Reasonable notification would also allow entities to manage operational priorities.

2.75 We found that there was no standard determined and notification of appointment and reappointment decisions was late. Responses to our questionnaire indicated that 2 of 11 agency heads (about one fifth) reappointed during the audit period were informed of their own reappointment decisions only after their terms had expired. For other appointees, this rose to one third. For new appointments, more than half of agency heads and other appointees were notified within one month of the start of the term.

2.76 During our audit period, there were 11 full-time GIC appointees to small entities whose terms were not renewed following a positive recommendation by their agency head. We spoke to seven of these former appointees. In all cases, the appointees had communicated to their head of agency or responsible minister their desire to be reappointed, and the appointees had been informed by their head of agency that their reappointments had been recommended. Three of the seven individuals received what they considered to be late, disrespectful notice that they would not be reappointed. Another three received no notice other than a call from the agency's payroll department asking about termination arrangements.

2.77 We expected that the entities would also receive reasonable notice of appointments or reappointments to positions in the entities. Twenty-two of 51 entities noted that they did not receive sufficient notification of appointments of agency heads and 20 of 51 noted the same for reappointments. Sixteen of 37 entities with members said they received insufficient notification of member appointments; 22 of 37 entities said notification of member reappointments was insufficient. Exhibit 2.3 shows the progress made in addressing our recommendations from our 2006 chapter on the Protection of Public Assets (Office of the Correctional Investigator) and our 2003 Report on the Office of the Privacy Commissioner.

Exhibit 2.3—Progress in addressing our recommendations in small entities

November 2006 Report of the Auditor General, Chapter 11	
Recommendation	Progress
The Privy Council Office should ensure that it appropriately advises and trains full-time Governor in Council appointees about their expected standards of conduct as holders of public office. (paragraph 11.100)	Satisfactory
September 2003 Report of the Auditor General— Report on the Office of the Privacy Commissioner	

The Privy Council Office should ensure that Governor in Council appointees are appropriately briefed on the government's control framework and its legislative and policy framework and on the standards of conduct expected of them. (paragraph 211)	Satisfactory
<p>Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.</p> <p>Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.</p>	

Appointments to the Immigration and Refugee Board

2.78 The Immigration and Refugee Board of Canada (IRB) was established in 1989 as an independent administrative tribunal that has quasi-judicial functions. The Board is accountable to Parliament through the Minister of Citizenship, Immigration and Multiculturalism. In the 2007–08 fiscal year, as Canada's largest federal tribunal, the IRB had an operating budget of \$113.7 million, was funded for 1,025 people, and had an approved complement of 164 members—the largest number of full-time Governor in Council appointees of all federal organizations. (The approved complement does not include the Chairperson, also a GIC appointee.)

2.79 The IRB consists of three divisions, each with its own mandate under the *Immigration and Refugee Protection Act*:

- The Refugee Protection Division decides claims for refugee protection made by people who are already in Canada, through hearings or other processes.
- The Immigration Division conducts admissibility hearings for foreign nationals or permanent residents who seek entry into Canada, or who are already in Canada, and are alleged to be inadmissible. It also conducts detention reviews for people who are detained for immigration reasons.
- The Immigration Appeal Division hears and decides appeals on various immigration matters, including appeals by sponsors whose applications to bring family members to Canada have been refused by Citizenship and Immigration Canada and appeals of removal orders made against permanent residents, refugees, and other protected persons.

2.80 While each division is responsible for making decisions on different immigration or refugee matters, they all follow an administrative tribunal process similar to, but less formal than, a court process. The process is flexible and can take many forms as long as it ensures that the IRB makes well-reasoned, efficient, and fair decisions. The IRB tribunal process is based on Canadian law, Canada's international obligations, and Canada's humanitarian traditions.

2.81 Decisions at the Immigration Division are made by IRB employees who are federal public servants. Decisions at the Refugee Protection Division and the Immigration Appeal Division are made by Board members who are GIC appointees.

2.82 The IRB carries out its work in a complex and rapidly changing global environment. Board members conduct proceedings and render decisions that have a profound impact on the lives, freedom, and security of claimants and on the integrity of our immigration system. Members require an extensive knowledge of immigration and refugee law, and administrative law, principles, and procedures. Selection standards for new members must ensure that they are qualified and possess the appropriate skills and competencies. Members must be free of outside influence as they are required to render decisions with the highest level of independence.

2.83 We looked at the appointment process for members of the Refugee Protection Division in our 1997 audit of the IRB. We raised serious concerns at the time regarding the high turnover among members and the delays in appointing replacements that resulted in a high number of vacant positions. Although we noted in our

2001 follow-up report that the turnover rate for members and the number of vacant positions had decreased significantly, we remained concerned at the time that the Board may not have the necessary complement of staff to deal with an increasing inventory.

A well-defined process is in place to recommend Board members to the government

2.84 The government has put in place a specific process for appointing members to the IRB that has evolved over time. In our 1997 report, we raised a number of concerns about the selection process for Board members. We stressed the need for the government to ensure that the process provides greater certainty that appointments and reappointments are based on the qualifications needed to respond to the complexity and the importance of the task. In our 2001 follow-up audit, we noted that a number of improvements had been made to the selection process. The process has been modified twice since then.

2.85 In March 2004, the Minister of Citizenship and Immigration announced changes to the appointment process for the IRB aimed at “eliminating political patronage and strengthening the criteria for the Board.” The revised process included five key steps: an initial screening of candidates, a written test, a screening by an advisory panel of outside experts, an interview by a selection board that included external experts, and reference checks. Members of the Advisory Panel were nominated by the Chairperson of the IRB and the Minister and included lawyers, academics, members of organizations that assist newcomers to Canada, and human resources experts.

2.86 The role of the Advisory Panel was to assess the applications received and the results of the written test, and to recommend candidates for interview by the Selection Board, chaired by the IRB Chairperson and made up of experts with in-depth understanding of the IRB and its decision-making processes. These experts, primarily senior-level IRB officials and external experts, were appointed by the IRB Chairperson. Following reference checks, recommended candidates were added to the list presented by the IRB Chairperson to the Minister of Citizenship and Immigration for consideration in recommending appointments to the GIC. Recommended candidates remain on that list for two years, after which they are removed from the nomination process and must reapply. The new process also provided for the IRB Chairperson to make recommendations to the Minister on reappointments of members whose terms were coming to an end based on an assessment of their performance.

2.87 In November 2006, the Minister announced that an independent review of the selection process would be conducted by the newly created Public Appointments Commission Secretariat. The review was to assess the effectiveness of the changes made in 2004. The Minister stated that, in the interim, the government would continue to appoint qualified individuals to the IRB.

2.88 In January 2007, the Commission Secretariat released its report *Governor in Council Appointments Process—Immigration and Refugee Board of Canada*. It made nine recommendations, including merging the Advisory Panel and the Selection Board into a new Selection Advisory Board consisting of an even number of IRB and external representatives, and requiring candidates to achieve a pre-determined passing mark for the written test to be considered further. It recommended that the Minister and the IRB Chairperson should each appoint half of the external representatives to the new Selection Advisory Board. The report also recommended that Board appointees serve an initial term of three years, followed by subsequent five-year and two-year terms, if performance evaluations are favourable. The Secretariat’s report also recognized the prerogative of the Minister and the Governor in Council to decide whether a member should be reappointed, and noted that positive performance does not automatically lead to a renewed term. The government accepted all the Commission Secretariat’s recommendations and, in July 2007, the Minister announced a revised selection process incorporating the recommendations.

2.89 As part of a review of various issues facing Canada’s refugee determination system, the House of Commons Standing Committee on Citizenship and Immigration also examined the appointment process for IRB members. The Committee’s report, tabled in Parliament in May 2007, included a number of recommendations to which the government responded in October 2007.

2.90 We examined a sample of recommendations for new appointments made by the IRB between 1 January 2006 and 31 March 2008. We expected that the established process to solicit and assess candidates would be consistently followed. Our review covered both the 2004 process and the one revised in July 2007. Our file review revealed that for all sampled recommendations put forward to the Minister, the process then in place was followed.

There is a serious shortfall and high turnover of Board members

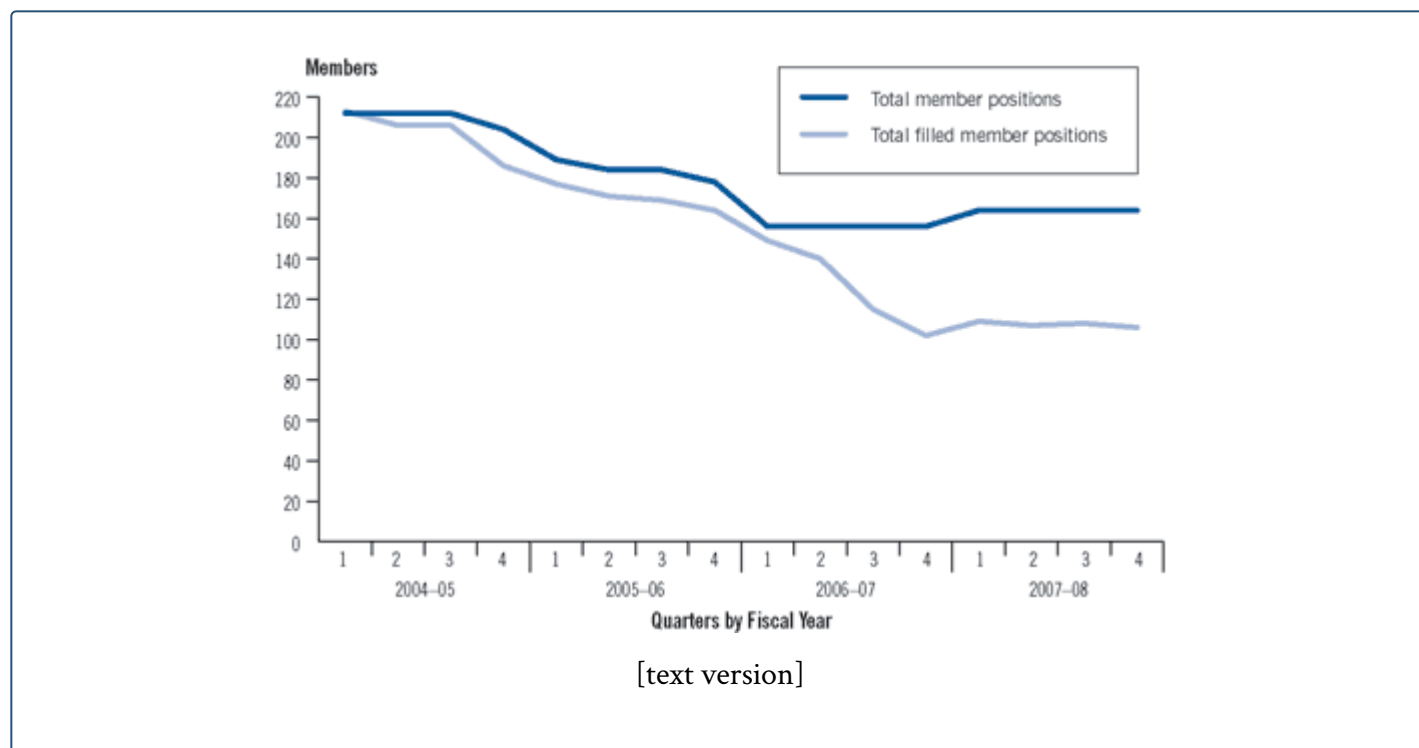
2.91 **Number of Board vacancies.** We noted in our 1997 report that the government needed to improve its practices for appointing Board members in a timely manner in order to ensure that the IRB has a sufficient number of decision makers available when they are needed. Vacancies at the Board can have a significant impact on its ability to process refugee claims and immigration appeals.

2.92 Following changes made to improve the appointment process in the last four years, we expected that appointments would be made in a timely manner and that the IRB would be staffed with the number of decision makers it required to achieve its mandate.

2.93 In the 2003–04 fiscal year, the IRB put in place an activity-based budgeting model to estimate the number of members required to handle a given volume of cases. In the last four years, the approved complement of GIC appointees varied from 212 members in 2004–05 to 164 in 2007–08. The 2007–08 complement is based on the expected resolution of 25,000 cases at the Refugee Protection Division and 6,500 cases at the Immigration Appeal Division.

2.94 As shown in Exhibit 2.4, the number of GIC positions filled was in line with the approved complement until the second quarter of 2006–07, when the IRB started to experience a significant decline in the number of its decision makers. At 31 March 2008, only 106 positions out of a complement of 164 positions were occupied, resulting in a vacancy rate of 35 percent. By the end of September 2008, 127 positions were filled, for a vacancy rate of 23 percent.

Exhibit 2.4—The gap between total positions and filled positions widens starting in the second quarter of the 2006–07 fiscal year



2.95 The high level of vacancies is due to two factors: reappointments were not made for a large number of members whose terms expired, and the government did not appoint a sufficient number of new members to fill vacant positions.

2.96 Turnover of Board members. IRB members require special expertise that can be acquired through experience and, to a lesser degree, training. The IRB estimates that it takes between 6 to 12 months for new members to become fully productive. In addition to having a negative impact on productivity, a high turnover rate represents additional costs for relocation and training. The Board estimates that the cost of training a new appointee until fully productive is approximately \$100,000, including salary and benefits.

2.97 In our view, equilibrium between new appointments and reappointments is essential to ensure consistency and continuity in operations, and good performance by members should be a factor in recommendations for reappointment. Such an approach promotes both recruitment of high-quality candidates and retention of experienced members.

2.98 We expected that recommendations for reappointments made by the IRB to the Minister would be based on a thorough assessment of a member's performance. Our review noted that the IRB places a high degree of importance on the assessment of its members' performance. The performance evaluation process is well defined and relies on merit-based criteria. Our review of a sample of recommendations for reappointments made by the IRB between 1 January 2006 and 31 March 2008 revealed that, in all cases, members recommended were appraised as satisfactory, using that process. All appraisals were signed off by the member and the IRB Chairperson or appropriate Deputy Chairperson. We also noted that in all cases where a reappointment was recommended, the IRB Chairperson made the recommendation to the Minister at least six months in advance of the expiry date of the incumbent's term.

2.99 Of the 89 members whose terms ended between 1 January 2006 and 31 March 2008, and who were recommended by the IRB to the Minister for an additional term, the Governor in Council reappointed 37 members (42 percent).

2.100 In our 1997 report, we raised concerns about the high turnover of members at the IRB. This not only seriously hinders the Board's ability to achieve its mandate, but also results in significant costs to the organization. At 31 March 2008, half of the 106 members were serving for a first term and had less than three years of experience. In our view, it is important for the government to ensure that the IRB is staffed with a sufficient number of experienced decision makers, given the nature and complexity of the tasks that members carry out.

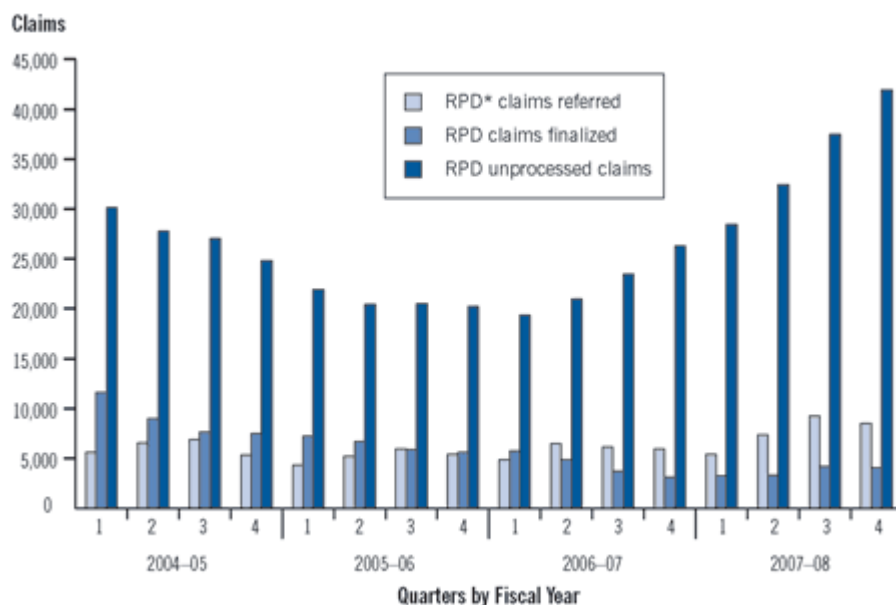
2.101 Finally, we noted that between September 2006 and 31 March 2008, the government made 43 new appointments. This was not sufficient to compensate for departures and terms that expired. We were informed that as of 31 March 2008, there were 99 individuals on the IRB's list of recommended candidates.

Board vacancies have significantly contributed to the high number of unresolved cases

2.102 The high number of Board member vacancies at the IRB had a significant impact on the Board's capacity to process cases on a timely basis. The inventory of unresolved cases has reached an exceptionally high level.

2.103 As shown in Exhibit 2.5, between the first quarter of the 2004–05 fiscal year and the first quarter of 2006–07, the Refugee Protection Division, with a fairly full complement of members, was able to finalize more claims than the number of new ones referred to it. The Division was consequently able to reduce its inventory of unprocessed claims to fewer than 20,000 at the end of that period.

Exhibit 2.5—The inventory of unprocessed refugee claims more than doubled between 2006 and 2008



[text version]

*RPD refers to Refugee Protection Division

2.104 Starting in the second quarter of 2006–07, there was a marked decline in the number of filled GIC positions, and the Division was not able to cope with its workload. As the situation evolved and the number of vacant positions remained high, the inventory of unprocessed claims more than doubled between 30 June 2006 and 31 March 2008, from 19,338 to 41,944. Updated figures obtained at the end of September 2008 indicate that the inventory surpassed 50,000 claims. The percentage of claims outstanding for more than one year increased from 21 percent to 31 percent between 31 March 2006 and 31 March 2008. During the same period, the average and median processing times went respectively from about 12 and 10 months to about 14 months for each.

2.105 At the Immigration Appeal Division, the number of appeals outstanding increased 20 percent in three years from 7,991 at the end of March 2005 to 9,602 at the end of March 2008. This represents the highest number of appeals awaiting a resolution since the establishment of the IRB. The average processing time of a claim increased from just over 9 months in 2005–06 to close to 10 months in the last quarter of 2007–08.

2.106 The ability to make decisions on a timely basis is critical to the fulfilment of the IRB's mandate—not being able to do so could have significant consequences for the claimant, the integrity of the immigration program, and the public purse.

2.107 Refugee claimants whose claims are ultimately accepted have often experienced very difficult circumstances in their country of origin and they are anxious to know whether Canada will offer them protection. People who have been refused permission to bring family members to Canada are also facing longer delays in having their appeals heard.

2.108 To prevent abuse of our immigration system, it is important that a refugee claim not be perceived as providing an automatic stay in Canada for a significant period of time. Applicants who are subject to a negative decision have access to a number of recourse procedures. They may apply for leave to seek judicial review of the negative IRB decision before the Federal Court, for a pre-removal risk assessment, or for permanent residence on humanitarian and compassionate grounds. Given the time now required to obtain a decision from the IRB and to go through these additional procedures, a person claiming refugee status could count on staying in Canada for at least two years.

2.109 In the last three fiscal years, 31,895 of 57,687 refugee claims (about 55 percent) were rejected by the IRB or withdrawn by the claimant. From the time claimants arrive in Canada, and for as long as they remain and their claim is making its way through the process, they qualify for many of the benefits granted to Canadians and landed immigrants, such as social assistance, legal aid, education, and health care. Lengthy delays in rendering decisions on unsupported claims therefore have significant cost implications for all levels of government.

The Board and its members receive late notification of appointment decisions

2.110 All GIC appointments at the IRB are now made to full-time positions. We expected that decisions on whether a member would be reappointed would be made and communicated in a timely manner. We were informed that it is the role of the Minister's office to do this.

2.111 The IRB has on a number of occasions publicly stressed the importance, from its perspective, of making and communicating appointment decisions well in advance of the expiry date of members' terms. The IRB considers that this would ensure that reappointed members remain actively focused on their adjudicative functions as independent decision makers, without interruption of active service. This would also provide members whose terms are not going to be renewed enough time to seek other full-time employment opportunities. The Public Appointments Commission Secretariat also stressed in its report the importance of timely communication of decisions and recommended that the government "undertake to keep potential candidates for appointment and re-appointment informed about their situation on an ongoing and timely basis. Board members whose term is coming up for renewal should be advised of the government's intent well in advance of the term's expiry."

2.112 We reviewed the communication of decisions to the 52 members whose terms were not renewed following a positive recommendation by the IRB. We found that 35 of them were informed in writing of that decision only after their term had expired. On average, they were informed 57 days after the expiry date. For the remaining 17 members, 10 were notified of the government's decision less than three weeks prior to their terms' expiry. In our view, these individuals should be treated in a more respectful manner.

2.113 We also expected that the IRB would be notified of appointment decisions on a timely basis. The IRB is not always informed of the start date negotiated with the new member. This can cause difficulties in arranging office space, managing the workload, and scheduling training. Each new appointee has to receive the Board's introductory training and it is difficult and costly to schedule individual courses.

Extensive training is provided to Board members

2.114 Given the particular nature of their positions and the expertise required of Board members, we expected that the required orientation and training would be identified and provided. We also expected that members would be informed of their expected standards of conduct as public office holders.

2.115 We found that the Board places considerable emphasis on the training of its new and existing members, and provides a complete training program that includes course training, ongoing professional development, information workshops, and mentoring. The training program is mandatory for all new members and ongoing professional development is mandatory for all members. This comprehensive program covers the key legal, procedural, and ethical components of a GIC appointee's role and is taught by experienced members, legal advisors, and other IRB staff.

2.116 From a legal and procedural perspective, the IRB reviews its training program and documentation whenever there are modifications to the *Immigration and Refugee Protection Act*, to supporting regulations and jurisprudence, or to IRB policies and rules.

2.117 Our review confirmed that all Board members are made aware of the federal government and IRB standards of behaviour and conflict of interest guidelines that apply to their position. All of them have agreed to these terms by signing the required documents, which are on file at the IRB, including, as appropriate, an oath

of office and by making a commitment to observe the requirements of the *Conflict of Interest Act* and applicable ethical and political activity guidelines for public office holders. Exhibit 2.6 shows the progress made in addressing the recommendations in our 1997 chapter on the Immigration and Refugee Board.

Exhibit 2.6—Progress in addressing our recommendations at the Immigration and Refugee Board

December 1997 Report of the Auditor General, Chapter 25	
Recommendation	Progress
The government should improve its practices for appointing Board members, in order to ensure that the Immigration and Refugee Board has a sufficient number of experienced decision makers available when they are needed. (paragraph 25.84)	Unsatisfactory
<p>Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.</p> <p>Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.</p>	

Conclusion and Recommendations

2.118 Our examination of the Governor in Council (GIC) appointment process focused on the support for the process provided by the Privy Council Office (PCO), departments, and the entities themselves. We did not audit the appointment decisions made by the Governor in Council or the roles played by ministers, ministers' offices, or the Prime Minister's Office. While overall, the government could demonstrate that it has management systems and procedures to provide for the timely appointment of individuals, results are disappointing. There are still lengthy delays in making appointments, resulting in vacancies and a high number of expired terms. These delays have the potential to compromise the effective governance and functioning of Crown corporations, small entities and the Immigration and Refugee Board of Canada. Moreover, issues related to the staggering of appointments have not been fully resolved.

2.119 Although management systems and procedures are in place, the processes to search for and assess candidates in Crown corporations and small entities do not reflect all the elements that we expected to find. The lack of communication among the PCO, ministers' offices, entities, and appointees has led to considerable frustration for entities and appointees. Communication to entities and appointees is especially poor. The complexity of the process and the involvement of multiple players make a clearly documented and consistent appointment process and effective communication among the stakeholders critical.

2.120 Some measures in the 2005 Governance Framework responded to concerns we had raised and have been implemented through improvements in areas such as orientation and training and the creation of the GIC appointments website to address transparency. However, many other measures have not been addressed and progress in responding to our 2000 and 2005 recommendations to improve the appointment process in Crown corporations is therefore unsatisfactory.

2.121 In our 1997 report on the IRB, we raised serious concerns about the high turnover among Board members and the delays in making appointments that resulted in a high number of vacant positions. While we noted improvements in our 2001 follow-up report, we observed the same issues in this audit.

2.122 The appointment process for IRB members has been modified twice in the last four years, but results are disappointing and the concerns remain. In fact, the number and percentage of vacant GIC positions is higher than what we found 11 years ago. This high number of vacancies and the high level of turnover have significantly

contributed to an exceptionally high inventory of unprocessed refugee claims and immigration appeals, resulting in costs to social programs, along with uncertainty for claimants wanting to start new lives in Canada. The government needs to ensure that in the future the IRB will be staffed in a timely manner with the required number of decision makers who have the knowledge, skills, and experience to carry out the Board's mandate and clear its significant inventory of unresolved cases.

2.123 The following are our recommendations to improve the GIC appointment process in Crown corporations, small federal entities, and the Immigration and Refugee Board.

2.124 **Recommendation.** The Privy Council Office should complete its project to determine the optimal complement of appointees for each Crown corporation.

The Privy Council Office's response. Agreed.

2.125 **Recommendation.** The government should clarify its expectation regarding the level of Crown corporation board involvement in director and CEO search and selection.

2.126 **Recommendation.** The government, supported by the Privy Council Office in view of its significant role in the GIC appointment process, should ensure that timely appointments are made to Crown corporations, small federal entities and the Immigration and Refugee Board of Canada.

2.127 **Recommendation.** The government should ensure that appointees (incumbents and applicants), Crown corporations, small federal entities, and the Immigration and Refugee Board of Canada receive appropriate and timely communication of GIC appointment and reappointment processes and decisions.

The Privy Council Office's response to paragraphs 2.125 to 2.127. As these recommendations are directed toward the exercise of Governor in Council discretion, it would be inappropriate for the Privy Council Office to respond to each recommendation. However, PCO will continue to support the Government in the administration of the policies and processes the Government establishes for Governor in Council appointments. PCO will continue to provide guidance for deputy ministers, Crown corporations, small federal entities and the Immigration and Refugee Board of Canada on the roles and responsibilities of stakeholders in the appointment process, in particular, on vacancy management and appropriate communication of GIC appointment and reappointment processes and decisions.

2.128 **Recommendation.** The Immigration and Refugee Board and the government, within their respective areas of responsibility, should determine an appropriate complement of members or other strategy to deal with the inventory of unprocessed refugee claims and unresolved immigration appeals on a timely basis, taking into account its current size and the projected number of new cases.

The Immigration and Refugee Board of Canada's response. The Immigration and Refugee Board of Canada will continue to work cooperatively with the Minister of Citizenship, Immigration and Multiculturalism and officials of Citizenship and Immigration Canada in order that the government may determine an appropriate complement of members or other strategy to deal with the inventory of unresolved cases on a timely basis, taking into account the current and projected number of new cases.

About the Audit

Objectives

The objectives of the audit were to determine whether the government

- can demonstrate that it has management systems and procedures that provide for the timely appointment of qualified individuals to Crown corporations, small entities, and the Immigration and Refugee Board of Canada; and

- has made sufficient progress in implementing the recommendations made in our February 2005 Report, Chapter 7, and in our December 2000 Report, Chapter 18, on Governor in Council appointments to Crown corporations.

Scope and approach

We examined the appointment process for 43 Crown corporations, 52 small entities, and the Immigration and Refugee Board of Canada. For the purposes of this audit, we defined small federal entities as those with fewer than 500 employees (or full-time equivalents), or total annual funding of less than \$300 million. We excluded advisory bodies that meet from time to time and entities that had only been recently created and had not yet started operations.

We began by reviewing documentation and data from the Privy Council Office (PCO), from portfolio departments responsible for the entities to which our sample appointment files related, and from the 2005 Review of the Governance Framework for Crown Corporations tabled by the President of the Treasury Board. We collected data on all appointments as of 31 March 2008, including current appointees and vacancies from the PCO website and Crown corporation or entity websites. This list was updated as of 20 September 2008.

We provided our audit approach and criteria to PCO and asked officials to provide relevant information and files. We conducted interviews with key individuals at PCO and portfolio departments to determine the steps, roles, and responsibilities in the appointment process. We also conducted interviews with the heads of 14 small entities, and with chairs and CEOs of 23 Crown corporations. We examined the Immigration and Refugee Board's process and the outcome of the process in terms of timely, qualified appointments. In addition, we interviewed several former full-time appointees who had not been reappointed to ask them about their experiences and when they were notified that they would not be reappointed.

We asked entities to respond to an information-gathering instrument that we developed on the appointment processes for Crown corporation CEOs, board chairs, heads of small entities, Crown corporation directors, members of small entities, and tribunal members. We refer to the instrument in this chapter as a detailed questionnaire. Written responses to the questions were received between June and September 2008 and each was formally signed off by the CEO or agency head. Forty-one Crown corporations responded to questions regarding the process for board directors; 33 responded to questions about the process for CEOs; and 38 responded to questions regarding the process for chairs. For small entities, 51 entities responded to questions regarding their heads, and 37 responded to questions regarding members, including 18 tribunals and 19 non-tribunals.

We conducted a review of a sample of files at PCO of appointments that were made to all 43 Crown corporations and 39 of the 52 small entities between 1 January 2006 and 31 March 2008. We looked at files on 20 Crown corporation CEO or chair appointments, 20 Crown corporation director appointments, 18 small-entity head appointments, and 20 other small-entity appointments (such as tribunal members). For appointments other than CEOs, small-entity heads, and chairs, we also looked at the files kept by the departments.

In addition, we looked at appointment practices in other jurisdictions, in Canadian provinces and abroad, to identify different practices and approaches related to appointments to government corporations, agencies, and tribunals.

We did not conduct examination work in ministers' offices or in the Prime Minister's Office (PMO), but we did consider the relationship and communications between ministers, PMO, and PCO. We did not audit the actual appointment decisions that are made by the Governor in Council, but rather the process that leads to the decision.

Criteria

Listed below are the criteria that were used to conduct this audit and their sources.

Criteria	Sources
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Timely and Qualified Appointments	
We expected that each of the Governor in Council (GIC) appointment processes would be based on established qualifications.	Privy Council Office, Accountable Government: A Guide for Ministers and Secretaries of State (2007).
We expected that the Privy Council Office (PCO) and departments would manage their respective responsibilities in the GIC appointment processes in a timely manner.	<i>Financial Administration Act</i> , Section 105.
We expected that GIC appointments would be made in a timely manner.	<i>Financial Administration Act</i> , Section 105.
We expected that appointments of board and tribunal members would be staggered to provide for continuity and experience.	<i>Financial Administration Act</i> and Treasury Board of Canada Secretariat, Review of the Governance Framework for Canada's Crown Corporations: Meeting the Expectations of Canadians (2005).
We expected that PCO would ensure that a process is in place, where appropriate, to evaluate the performance achievements of GIC appointees for the purposes of making reappointment recommendations.	Privy Council Office, Governor in Council Process Guide (2004).
Appointee Orientation and Training	
We expected that PCO, portfolio departments, Crown corporations, and entities would identify the required orientation and training needed by new appointees.	House of Commons, Protection of Public Assets—Office of the Correctional Investigator: Report of the Standing Committee on Public Accounts, February 2008.
We expected that individual appointees would receive appropriate orientation and training regarding their duties and responsibilities.	House of Commons, Protection of Public Assets—Office of the Correctional Investigator: Report of the Standing Committee on Public Accounts, February 2008.
We expected that appointees would be informed of their expected standards of conduct as public office holders.	House of Commons, Protection of Public Assets—Office of the Correctional Investigator: Report of the Standing Committee on Public Accounts, February 2008.
Notification of Appointments	

<p>We expected that PCO and departments would assess the length of notice of appointment decisions that is reasonable to permit candidates to manage their affairs.</p>	<p>Privy Council Office, The Role and Structure of the Privy Council Office (2007).</p>
<p>We expected that full-time appointees would be informed of appointment decisions in a timely manner.</p> <p>We also expected that full-time appointees would be informed of reappointment decisions in a reasonably timely manner.</p>	<p>Privy Council Office, The Role and Structure of the Privy Council Office (2007).</p>
<p>Implementation of Recommendations from Previous Reports</p>	
<p>We expected that the government would have taken steps to address the recommendations that we made regarding GIC appointments in Crown corporations in our 2000 and 2005 reports on Governance in Crown Corporations.</p>	<p>February 2005 Auditor General's Report, Chapter 7, Governance of Crown Corporations, paragraphs 7.101 and 7.102; the government's response to our recommendations on page 22; and December 2000 Auditor General's Report, Chapter 18, Governance of Crown corporations, recommendations at paragraphs 18.45, 18.54, 18.59, 18.78, and 18.79.</p>
<p>We expected that the government would have implemented the measures identified in its response to our recommendations made in our February 2005 report regarding GIC appointments in Crown corporations, or developed and implemented new measures in response to our recommendations, in keeping with the current government's approach.</p>	<p>February 2005 Auditor General's Report, Chapter 7, Governance of Crown Corporations, paragraph 7.101.</p>

Audit work completed

Audit work for this chapter was substantially completed on 30 September 2008.

Audit team

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Appendix A—List of recommendations

The following is a list of recommendations found in the Conclusion and Recommendations section of Chapter 2.

Recommendation	Response
<p>2.124 The Privy Council Office should complete its project to determine the optimal complement of appointees for each Crown corporation.</p>	<p>The Privy Council Office’s response. Agreed</p>
<p>2.125 The government should clarify its expectation regarding the level of Crown corporation board involvement in director and CEO search and selection.</p> <p>2.126 The government, supported by the Privy Council Office in view of its significant role in the GIC appointment process, should ensure that timely appointments are made to Crown corporations, small federal entities, and the Immigration and Refugee Board of Canada.</p> <p>2.127 The government should ensure that appointees (incumbents and applicants), Crown corporations, small federal entities and the Immigration and Refugee Board receive appropriate and timely communication of GIC appointment and reappointment processes and decisions.</p>	<p>The Privy Council Office’s response to paragraphs 2.125 to 2.127. As these recommendations are directed toward the exercise of Governor in Council discretion, it would be inappropriate for the Privy Council Office to respond to each recommendation. However, PCO will continue to support the Government in the administration of the policies and processes the Government establishes for Governor in Council appointments. PCO will continue to provide guidance for deputy ministers, Crown corporations, small federal entities and the Immigration and Refugee Board of Canada on the roles and responsibilities of stakeholders in the appointment process, in particular, on vacancy management and appropriate communication of GIC appointment and reappointment processes and decisions.</p>
<p>2.128 The Immigration and Refugee Board and the government, within their respective areas of responsibility, should determine an appropriate complement of members or other strategy to deal with the inventory of unprocessed refugee claims and unresolved immigration appeals on a timely basis, taking into account its current size and the projected number of new cases.</p>	<p>The Immigration and Refugee Board of Canada’s response. The Immigration and Refugee Board of Canada will continue to work cooperatively with the Minister of Citizenship, Immigration and Multiculturalism and officials of Citizenship and Immigration Canada in order that the government may determine an appropriate complement of members or other strategy to deal with the inventory of unresolved cases on a timely basis, taking into account the current and projected number of new cases.</p>

Appendix B—Crown corporations and entities included in our audit

Crown corporations	Small Entities
Atlantic Pilotage Authority Canada*	Administrative Monetary Penalties Review Tribunal
Atomic Energy of Canada Limited	Assisted Human Reproduction Canada
Bank of Canada	Canada Industrial Relations Board
Blue Water Bridge Canada	Canada Pension Plan/Old Age Security Review Tribunals
Business Development Bank of Canada	Canada School of Public Service
Canada Council	Canadian Artists and Producers Professional Relations Tribunal
Canada Deposit Insurance Corporation	Canadian Centre for Occupational Health and Safety
Canada Development Investment Corporation	Canadian Cultural Property Export Review Board
Canada Lands Company Limited	Canadian Environmental Assessment Agency
Canada Mortgage and Housing Corporation	Canadian Forces Grievance Board
Canada Pension Plan Investment Board*	Canadian Human Rights Commission
Canada Post Corporation	Canadian Institutes of Health Research
Canada Science and Technology Museum	Canadian Intergovernmental Conference Secretariat
Canadian Air Transport Security Authority*	Canadian International Trade Tribunal
Canadian Broadcasting Corporation	Canadian Nuclear Safety Commission
Canadian Commercial Corporation	Canadian Polar Commission
Canadian Dairy Commission	Canadian Radio-television and Telecommunications Commission
Canadian Museum of Civilization	Canadian Transportation Agency
Canadian Museum of Nature	Citizenship Commission
Canadian Race Relations Foundation	Competition Tribunal
Canadian Tourism Commission	Copyright Board Canada
Cape Breton Development Corporation	Courts Administration Service
Defence Construction (1951) Limited	Financial Consumer Agency of Canada
Enterprise Cape Breton Corporation**	Financial Transactions and Reports Analysis Centre of Canada

Export Development Canada	Hazardous Materials Information Review Commission Canada
Farm Credit Canada	Human Rights Tribunal of Canada
Freshwater Fish Marketing Corporation	Military Police Complaints Commission of Canada
Great Lakes Pilotage Authority Canada*	NAFTA Secretariat—Canadian Section
International Development Research Centre	National Battlefields Commission
Laurentian Pilotage Authority Canada*	National Defence and Canadian Forces Ombudsman
Marine Atlantic Inc.	National Energy Board
National Arts Centre Corporation*	National Farm Products Council
National Capital Commission	National Film Board
National Gallery of Canada	National Parole Board
Pacific Pilotage Authority Canada*	National Round Table on the Environment and the Economy
Parc Downsview Park Inc.	Office of Federal Ombudsman for Victims of Crime
Public Sector Pension Investment Board*	Office of the Commissioner for Federal Judicial Affairs**
Ridley Terminals Inc.	Office of the Co-ordinator, Status of Women Canada
Royal Canadian Mint	Office of the Superintendent of Financial Institutions Canada
Standards Council of Canada	Patented Medicine Prices Review Board
Telefilm Canada	Public Service Labour Relations Board
The Federal Bridge Corporation Limited	Public Service Staffing Tribunal
Via Rail Canada Inc.	Royal Canadian Mounted Police External Review Committee
	Royal Canadian Mounted Police Public Complaints Commission
	Science and Engineering Research Canada
	Security Intelligence Review Committee
	Ship-source Oil Pollution Fund

	Social Sciences and Humanities Research Council of Canada
	The Correctional Investigator Canada
	Transportation Appeal Tribunal of Canada
	Transportation Safety Board of Canada
	Veterans Review and Appeal Board
<p>* For these entities, the CEO is not a Governor in Council appointment.</p> <p>** These entities did not respond to our information-gathering instrument.</p>	