

PARLIAMENT AND THE PUBLIC CORPORATIONS IN CANADA:

A Study in Public Ownership and Accountability

by

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PREFACE

The present study is intended as a descriptive analysis of the problems of public ownership and control in Canada. The author has chosen for this study two major and controversial Crown Corporations - as they are called in Canada - mainly because of their interesting similarities and dissimilarities with each other. Both the Canadian National Railways and the Canadian Broadcasting Corporation represent a young country's determination to attack the problems of national and economic preservation in a bold and pragmatic way. This attack has been stimulated by the fact that Canada lives under the shadow of a giant neighbour, rich in culture and resources.

The story of the growth of public ownership in railways and broadcasting as narrated in this work reveals one interesting contrast - that of the change in the concept of state activity. The country's railways were nationalised not because of any danger of foreign domination in their operation, but to preserve what the over exuberant foreign as well as domestic private enterprise had already launched on the national scene. The railway expansion, it is true, proceeded with the blessings and even assistance of the government of the time but at no point was it considered desirable for the state to actively participate in the actual operation or ownership of the railways as a whole except with a few notable exceptions.

Broadcasting presents a rather different picture. In this case

it was not like the problems of saving a few faltering private railways unable to face competition in an expanded field, but something much more complex. The exuberance of private capital was missing in broadcasting and the country was faced with the threat of cultural invasion from the South. Whatever meagre private initiative was present in this field was devoted to commercial interests both domestic and foreign and the country was faced with the problem of channelling radio communications in a East-West direction rather than a North-South one. The bonds of steel which had united the young nation from the Atlantic to the Pacific needed to be reinforced by links of airwaves. Public ownership in this field was needed more badly than was true for the railways. With private capital shy, profit-minded and susceptible to foreign influence, public ownership and operation of the broadcasting facilities was the only solution.

Nonetheless a sense of realism continued in the final organization of this important medium. The country once again showed its non-ideological attitude by allowing the privately owned broadcasting stations to work alongside and in cooperation with the public owned ones towards the common goal of national integration. Throughout this increase in state participation, the problem of management and accountability was uppermost in the minds of students and leaders.

This thesis sets out to discuss the various instruments through which the public corporation is subjected to public control and

accountability. Parliament constitutes the main element in the spectrum of accountability and the study shows that the Canadian Broadcasting Corporation (CBC) and the Canadian National Railways (CNR) are subjected to an elaborate system of control exercised by the government and Parliament. Parliament although possessed of extensive techniques of control and opportunities for their use, has not used them very effectively.

This question of public ownership and accountability has not been tackled in Canada on so large a scale as in Great Britain, consequently insufficient secondary materials are available on the problem. The author has relied extensively on British experience in order to point out the contrast with Canadian practice. The author has also liberally consulted the recent work of Professor L.D. Musolf (Public Ownership and Accountability - The Canadian Experience, Harvard University Press 1959). The main sources, however have been government documents, Debates of the Canadian House of Commons and Reports on the Committee Proceedings.

The author finally wishes to thank the Reference Department and Inter-Library Loan Service of McGill University Library, the Librarians of the CNR Library in Montreal and of the Parliament Library in Ottawa for their invaluable help in locating the relevant materials. He is also obliged to Mr. J.D. Wahn, Chief Economist of the CNR in Montreal for his patience in answering technical questions. However, the views expressed in this work remain the responsibility of the author.

ABSTRACT

Management of public enterprise in Canada has been generally entrusted to a public corporation which, it is argued, provides the necessary managerial freedom from undesirable political control. It is also considered to encourage both productive competitiveness, and a sufficient degree of public control in accordance with the principle of responsible government.

The Canadian Broadcasting Corporation and the Canadian National Railways are under considerable public control through the media of regulatory and investigative agencies, both parliamentary and governmental. Parliament, which constitutes the apex of the administrative pyramid, possesses sufficient opportunities and methods to exercise its control on these corporations. It is however, suggested that Parliament has not utilized these opportunities to the full extent.

CHAPTER I

THE GROWTH OF PUBLIC OWNERSHIP IN CANADA

The history of public ownership in Canada can be in one sense termed a history of Canada itself. The object of the present study in the growth of this activity of Government, is to point out the essentially pragmatic and non-ideological approach that has been adopted in Canada since its entry into the modern age. This it shared with most countries of the Western world but added to the general task of industrialisation were two problems peculiar to Canada alone - those of geography and sparsity of population. In spite of the fact that Canadians have shown their dislike for governmental participation in business, they have agreed that in some spheres - on practical considerations - such participation can be and should be encouraged. This principle is present in the history of railways and broadcasting in Canada. The writer has chosen these two different but equally important segments of life because of their important contribution to the development of Canada as a nation.

To Canada both railways and broadcasting are much more special than in any other country. They explain a new but rich country's determination to preserve and promote its identity as a nation. Perhaps this fact becomes more important to Canada on account of its proximity to a culture and economy which flourished in almost similar environs. This is the reason why it is said that the history of the railways and other economic activities in Canada is the history of the nation.

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The present section is intended to deal with the development of railways in Canada and to events leading to government take over of private railways. The early history of the railways in Canada shows that the government has been reluctant to assume any direct responsibility for their development. But the idea of having a connecting link between the different parts of Canada is an old one. In 1827 the British Government was persuaded to take an interest in the provision of this much needed link between the British North American Colonies particularly in the Eastern section; but the main driving force behind the Imperial Government's move was defence. Later the Imperial Government approved the undertaking of a preliminary survey of the problems of linking the Maritimes to the other provinces of Canada, with one important condition that the proposed railway should not be built too close to the United States border. The move gained further impetus when in 1835 the Provinces of Nova Scotia and New Brunswick voted approval of a project to link St. Andrews, New Brunswick with Quebec. The home government granted 10,000 pounds towards the cost of the survey. The whole project, however, fell through in the wake of a hostile U.S. press campaign which claimed that some of the land, through which the proposed route was charted, belonged to the U.S.

This incident did not, however, dampen the spirits of those in favour of a rail link and the Nova Scotian legislators again in 1848, voted to grant a strip of 10 miles of crown land on either side of the newly surveyed line. It also voted 20,000 pounds as interest on loans.

This time the British Government was indifferent. New Brunswick had also taken an active interest in the project but commercial interests were strong enough to prevent this colony from taking any active part in the construction. Immediate considerations favoured a direct link with the New England sea ports rather than relying on unpredictable political and commercial benefits that might accrue from a link with the United Provinces of Canada.

The year 1851 should constitute one of the landmarks in the history of public ownership in Canada. That year Joseph Howe, one of the most important railway pioneers of Canada started a campaign for the construction of a state railway to connect different parts of British North America. With crusading zeal he propagated the idea of nationally owned railways. Had his ideas been accepted, Canadian federation would long ago have been accomplished. Howe's argument in favour of state owned railways was that such an important channel of communication could not be safely entrusted to private hands whose only concern was accumulation of profit. Also he maintained that since railways were built out of the people's resources and industry, they must own them. Gradually Howe's idea succeeded in convincing some people of the desirability of public ownership and participation in railway development. Sir John Harvey, the governor of Nova Scotia, reported to Downing Street, his full approval of the policy of making the railways a governmental task and as the "highest and most legitimate function of a vigorous executive".¹

1. See Biggar, E.B.: The Canadian Railway Problem (1917) P118

Joseph Howe's crusade for public ownership seemed close to realisation when the British Parliament was successfully persuaded to grant loans at a low interest rate for rail construction. All through this campaign private business interests were busy sabotaging the whole scheme. Contractors and engineers joined hands to show that the state was incapable of undertaking such a huge task and success came to them. The Imperial Parliament eventually succumbed to these private pressures and as later events proved, it became almost a tool in the hands of the private railways.

While the idea of public ownership of the railways throughout British North America received a setback it was not totally abandoned. Instead of being employed in those regions of the country where prospects of commercial success were brighter, it was employed in the most uneconomic and in one sense unproductive regions of the country. The history of the Intercolonial is an illustration of this point. True it constituted one of the terms of confederation but why the Dominion Government was obligated to link the Maritimes and the United Provinces (British North America Act - 1867 - section 145) when the country as a whole had not accepted the idea of public ownership of railways, could only be that it was not attractive enough for private railroaders, and as such the Dominion Government agreed to undertake the task. Under the terms of this agreement the government was put at a disadvantage not only in the construction of the railways but even in the actual operation of the Intercolonial which was obliged to run its services on an uneconomical basis.

In such circumstances any estimate of the Intercolonial in commercial terms is not possible.¹ It was never intended to be a commercial project but its success as an instrument to reinforce the confederation was obvious. It cannot be fairly cited as an example of the failure of government ownership. Biggar claims that throughout the history of railway development in Canada, the Intercolonial alone can be said to be free from scandals and dishonest records so rampant in the private companies.² If the Intercolonial can be interpreted as a failure, it is, he claims, not a failure of public ownership but of responsible self-government in Canada.³

Turning to the history of private railway developments in Canada, the Royal Commission on Transportation (1917) divided the history into three periods.⁴ The first period goes back to pre-confederation days when the Grand Trunk System entered the field in 1853 entirely dependent

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1. During the discussion in the Sessional Committee on Railways (1961) Mr. Gordon explained why the CNR cannot be compared in its financial results with the CPR. He said: "... that you can never find a point in time in which you can compare the Canadian National Railways with the Canadian Pacific Railway. When you pick up a derelict group of railways which were by definition bankrupt before they ever came into being, by definition they were never intended to make money; they could not make money. They were to be run by public ownership". Page 70.

In other words public ownership does not necessarily imply profitable business. This fact applied as much to Intercolonial as to the C.N.R.

2. Biggar Op. Cit. P118
3. Ibid. P136
4. Royal Commission on Transportation 1917 - P XX

upon private venture and capital. The second period coincides with the birth and expansion of the Canadian Pacific Railway in the 1880's - another example of private enterprise but this time enjoying generous governmental support at its inception in the form of land grants, cash and subsidies. The third period covers the growth of the Canadian Northern and Grand Trunk Pacific. It seems proper to deal briefly with the three phases of Canada's railway development to show how public ownership came about.

The Grand Trunk System which was mainly a British concern was the first major railway to appear on the Canadian scene. Soon it extended its networks over the U.S. and in the ten most populated areas in Canada. The system suffered a setback from the Crimean war and from mismanagement. The promoters of the system appointed E.W. Watkin as the new president to put the business of the Company in order. One of the plans submitted by Watkin, as a remedy, was to construct a transcontinental line in Canada. Watkin's suggestion coincided with the general policy of the Dominion that the different regions of the federation be linked by rail.¹ However, Watkin's plan differed from that of the Dominion in one important respect. The new president had charted part of this link through the U.S. and then back into Canadian territory. This route was obviously based on commercial considerations. The Dominion Government however wanted the entire Transcontinental link to run through Canada only. The Grand Trunk refused this condition. It is interesting to note that within two decades the Grand Trunk System agreed to run an additional

1. Collins, Frank L. - The Impact of Railway Brotherhood on Canadian National Railways, unpub. M.A. Thesis, McGill (1953) P7.

transcontinental system across Canada, after the CPR had extended its line to the east. This strange move was motivated mainly out of the fear that the Canadian Pacific Railway might invade its area of operation.

The emergence of the CPR is partly due to the Grand Trunk System's refusal in the first instance to build an all-Canadian transcontinental link. The Dominion Government granted a charter to the CPR in 1880 with a mandate to develop the Western part of the Dominion and connect it with the rest of Canada. The Canadian Pacific Railway had providential help from the great flow of immigrants to the West, the development of the prairies and the growing importance of grain as a source of national wealth. Bolstered by their lucrative gains the CPR . started extending towards the East in regions served by the Grand Trunk System. It was quite a natural urge on the part of the CPR. to have its own national link across the country. The Grand Trunk as we have seen, reacted by planning to have its own outlet in the West. This period marks the beginning of competition in railway construction which ultimately exceeded all limits of the economy and landed the country in trouble. It was for the Dominion Government to exercise a sort of restraint on this

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thoughtless competition. Instead the Dominion Government came out with

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1. Writing the minority Report, Mr. A. H. Smith criticised the policy of the Dominion Government vis-a-vis construction of railways. He said: " ... Competing lines have been built where effective regulation could have saved a large part of the investment, while completely satisfying every reasonable and proper need for service. Instead of co-ordination and conservation under government supervision, railways were permitted to duplicate plant in fields not yet productive enough to support the one; the Government, on the other hand, was, in one way or another, aiding both projects ... " Report of the Royal Commission on Transportation (1917) Page xciii

an offer of help to the Grand Trunk System in its new transcontinental project. It is true that the Dominion Government was honest in its intentions but it relied too heavily on the hope of mass immigration and development of the country in general and Western Canada in particular.

The plan envisaged by the Laurier government in 1903 for this new transcontinental railway, provided for the construction of the eastern half of the link between Winnipeg and Moncton by the Dominion Government; this line would be leased out to the newly incorporated Grand Trunk Pacific,¹ a subsidiary of the Grand Trunk Railway, at a rental of 3% of the cost of the construction of this part of the transcontinental line. The western sector was to be built by the Grand Trunk Pacific, while the Dominion Government agreed to guarantee 75% of the bonded interest charges² on the construction cost. Construction of the western section was finished by 1915, but during these years the parent company's credit had been under serious strain because of this venture. The rising cost of materials and labour disturbed the entire estimates. Construction of the eastern section, in spite of objections by Grand Trunk interests that it was too expensive, had continued. By 1913 the estimated costs for the eastern half had reached huge proportions and the Grand Trunk Pacific repudiated its commitments to run the government-built lines between Winnipeg and Moncton. The government turned over the management of this section (later to be called National-transcontinental) to the Canadian Government Railways which was already running the Intercolonial and the Prince Edward Island Railway.

1. Vide Statutes of Canada 3, Edw. VII, Chapter 71, 1903.

2. The agreement also provided for the inspection of the Eastern half of the link by G.T. System's engineers since rental was to be calculated on the basis of cost of construction. The rentals were to be effective after a period of three years.

The Canadian Northern appeared as the third major private railroad. Started in 1895, mainly through the efforts of Mackenzie and Mann - the two famous railroad contractors, the company extended its area of operation with the encouragement of the Dominion and Manitoba governments. The encouragement given to the development of the Canadian Northern railway indicated the intense desire of the grain growers of the prairies to break the monopoly of CPR. which by this time was firmly entrenched. Generous assistance in the form of subsidies and tax exemptions were given to this new railroad, so much so that by 1903 the company had an impressive network spreading as far as parts of Eastern Canada. Then in 1908 this company also plunged into the race to have its own transcontinental link with the Western Coast. Long before the outbreak of war Canada had developed three separate and parallel transcontinental systems which was too much for the country to support; before the war started these private companies with the exception of the CPR. began to show signs of financial debility. Two of the new railroads, the Grand Trunk Pacific and Canadian Northern which were constructed largely through governmental assistance, appeared to be unable to stand on their own feet without governmental assistance. They went again and again to the government for financial aid and the government adopted a sympathetic attitude in the hope that soon the railways would be financially stable.¹ While these companies were struggling so hard the 1st World War

1. House of Commons (Canada), Debates (1916) P3564.

broke out. This came as a staggering blow and the government alarmed, lest the country's defenses be endangered, decided to appoint a Royal Commission to study and recommend a solution for the existing railway problems in Canada.

The Commissioners after careful study of the whole problem in the short time given, reported that it would be necessary for the Dominion Government to prevent the financially afflicted railways from collapsing into the ditch of bankruptcy. They were of the view that the governments, both Dominion and Provincial, had almost involved the credit of the Dominion of Canada by according guarantees and subsidies to these private companies. Such being the case, it was necessary for the Dominion government to again come to the rescue of these faltering railways. The Commissioners, however, disapproved of the idea of continuing the practice of giving aid to these railways under private management. They recommended that they should be taken over by Canada and entrusted to a National Company.

The Commissioners were asked to evaluate the respective value of the railroads. They reported to the government that as far as common stocks of the Canadian Northern were concerned they had no cash value.¹ Later on however, an arbitration fixed the value of the shares at \$60 millions. With regard to the Grand Trunk Company's shares the Commissioners observed that the company had five different classes of shares, that the company has been a paying concern for the last 60 years and as such should² not be treated like the Canadian Northern.

1. Royal Commission (1917) P xliv

2. Ibid. P lxiii

The government's first step in the actual acquisition of these railways commenced with an order-in-council dated November 15, 1917, which authorized the government to implement its agreement of 15th October 1917 for the acquisition of capital stock of the Canadian Northern. Disregarding the recommendations of the Royal Commission (1917) the Government asked the old management to continue in office. Then in November 1918 by another order-in-council, the management of the government railways was also entrusted to the former Directorate of the Canadian Northern. On December 12th, 1918 the name Canadian National Railways Company was adopted to designate this combined entity. Negotiations for the acquisition of the Grand Trunk System dragged on without result. The Royal Commission had repudiated the charge made by the President of the Grand Trunk Railway that the Company was in trouble because of its involvement in the Grand Trunk Pacific enterprise, an enterprise which it had undertaken on the government's inducement. Whatever the Company did, the Commissioners concluded, was a deliberate business chance and as such there was no legal or moral justification for the country making good the mistaken investment of the Grand Trunk.¹

Soon the Grand Trunk System announced that it was no longer possible for it to keep the Grand Trunk Pacific in operation. By this time the coffers of the parent company were almost exhausted by this incomplete and uneconomical line. The government proceeded to appoint the Minister² of Railways as receiver under the war Measures Act. In June of the same

1. Ibid. P xxxii

2. By order-in-council dt. March 7, 1919.

year Parliament passed an act to incorporate the Canadian National Railway Company which later became the basis of the Canadian National Railway.¹ At this time, the Grand Trunk Railway, as well as the Canadian Pacific Railway, remained the only private railroads. The government was keen to complete their acquisition as recommended in the Drayton-Acworth Report. In early 1919 the government introduced a Bill to make arrangements with the management of the Grand Trunk Railway for the acquisition of the property and terms of compensation. Negotiations between the government and the management had been interrupted on more than one occasion during the years following the Drayton-Acworth Report. Pending the final decision, the management of the Grand Trunk Railway was entrusted to a temporary "Committee of Directors" which included representatives of Grand Trunk shareholders and government nominees. This arrangement continued until 1923, when a unified management for the Canadian National Railways was formed under the authority of 1919 Railway Act, chapter 13, As regards the Grand Trunk Pacific it remained under receivership until 1927 when it was terminated by an order-in-council.

This brief resume of railway history illustrates how the government got into the railway business. At no stage since the time of Joseph Howe was there a planned move or a campaign for public ownership. And when the country was faced with the choice between the devil and the deep sea, it preferred the devil of public ownership hoping that it would prevent the country's foreign credit from sinking in the deep sea of suspicion and ill-will. Whether the object aimed at was achieved or not, is outside the scope of the present study. But one thing was clear, namely that the

1. Statutes of Canada, Geo. V 1919, 2nd Session Chap. 13, 9-10.

country was forced into taking over economically debilitated railroads, which in spite of heavy governmental subsidy over many years had failed to show any signs of recovery. The remedy of public ownership was one adopted in extraordinary circumstances and the country was probably over-optimistic in its hopes.¹ The people expected that this amalgamation of essentially competitive, duplicative and over-expanded railways under public operation, would cure the malady of deficits and duplication overnight. Faced by the emergencies of the 1st World War, the country accepted the cure suggested by the Royal Commission rather half-heartedly. When the war clouds began to clear away, the National Railways were confronted with a hostile press and much public criticism.² The country was told that public money had been spent not to protect the credit of the Dominion but to save the big business magnates, most of whom resided in England. As the later history of the Canadian National Railways shows, the high hopes expressed in the year 1919 were never realised and the country was almost permanently committed to bear the cost of a railway which had inherited multifarious problems of organization, operation, finance and debts.

The administration of the Canadian National was conscious of its thankless and impossible job. The country while on the one hand criticising public ownership as the solution for the railways of Canada, on the other demanded from this conglomeration of ill-organized and bankrupt railroads a rich harvest of profit as enjoyed by the Canadian

1. House of Commons, Debates 1919 P1603

2. Glazebrook: History of Transportation in Canada P371

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Pacific Railway which was in an entirely different situation. Instead of public owned railways becoming a model or criteria for evaluating private railways it became the object of everyone's ire and criticism. The Canadian Pacific Railway, through its efficient and unified system, emerged as a model before the eyes of Canadians. The government on its part was determined to make public ownership a success in the railways operation. In 1922 the old management of Mr. Hanna was replaced by an energetic railway expert Sir Henry Thornton. Under the headship of Sir Henry the Canadian National showed signs of revival and vigour. Circumstances also favoured his management, as the country had a short period of boom before the great depression. Sir Henry was determined to bring the Canadian National Railways up to par with the Canadian Pacific Railway and he sincerely strove to attain that goal. But this effort led once again to problems of over-expansion and duplication; though not on as large a scale as in pre-Nationalisation days, the situation was quite serious. The competition this time was not between

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1. Speaking to the 1961 Sessional Committee on Railways, etc. Mr. Gordon explained the error people make in comparing the CNR with CPR. He said: "... I have heard of late many references to the Canadian Pacific. As I have stated before, the Canadian National, an amalgam of existing railroads, began with a polyglot inheritance of government lines built or acquired without hope of profit, while, on the other hand, the Canadian Pacific grew according to plan as a cohesive and integrated unit. The Canadian National system as it is today owes its existence to the consequences - whether deliberate or accidental - of a national policy that can be consistently traced through the economic history of Canada over the past century or more. This policy had as its end objective the bringing into being of transportation facilities that were vitally needed to exploit the natural resources of the nation. A great deal of money has been expended since 1923 with the objective of making the CNR an integrated railway. While much progress has been achieved, the difficulties ascribable to the circumstances in which the lines were built originally can never be overcome completely, and, according to the best operating advice I can obtain, will always mean a handicap for the Canadian National when it is compared with the Canadian Pacific".

Minutes of Proceedings & Evidence of Sessional
Committee on Railways, etc. 1961 P63-64.

a group of private railway companies, but between two giant systems, one of which, as Glazebrook suggested, enjoyed the support of an unlimited public purse.¹ The Canadian Pacific Railway was a flourishing concern, yet it could not stand too much competition. Its President on more than one occasion pointed to the danger of the eventual collapse of the system unless some check was put on such competition. This view was endorsed by the Duff Commission.

This revived competition between the publicly owned Canadian National Railways and the privately owned Canadian Pacific Railways, alarmed both the supporters and the opponents of public ownership. The Canadian Pacific Railway management launched a campaign for the amalgamation of these two railway systems; but most sections of the community were opposed to the idea of monopoly, either in operation or ownership. As a matter of fact this opposition was one of the reasons why the country agreed to pay so heavily to keep the collapsing railway companies (and united as the Canadian National Railways) in business and so secure a rival to the Canadian Pacific Railway.² However, the railway problem was not solved by adopting public ownership, and public opinion became more pronounced in its demand for a thorough inquiry into the whole situation.

In 1931 the government appointed another Royal Commission to investigate the general transportation conditions in Canada and to recommend appropriate remedies. The Commission under Mr. L.P. Duff confined itself largely to an examination of the railway situation in

1. Glazebrook - Op. Cit. P378

2. Debates 1919, P 1290

Canada and reported their disapproval of the idea of unification. They however accepted the need for closer cooperation between the two systems to avoid unnecessary duplication in services and facilities. The Commissioners criticised the Canadian National Railways management for its extravagance in its developmental and operational sectors. They also criticised the too generous attitude adopted by Parliament in granting¹ financial assistance to the public owned railways.

The recommendations of the Duff Commission were incorporated in the Canadian National - Canadian Pacific Railways Act in 1933. The Act provided for cooperation and coordination in the operation and services of the two railroads. In case of differences as to methods to effect cooperation and coordination, the Act provided for compulsory arbitration. The aim was to achieve or at least endeavour to achieve a much needed cooperation. How far this act succeeded is well known. The move was criticised in some circles, as an encroachment on the rights of the privately owned Canadian Pacific Railway, who called the provision² for cooperation, coercion. The Act, at the most, provided a temporary solution to a rather complicated problem. It was a solution which was³ unique and has nowhere else been tried. Fear was expressed that the provision for compulsory arbitration would lead to government interference in the affairs of the Canadian Pacific Railway, which might in turn be

1. Royal Commission on Transportation 1931-32 P 13

2. House of Common Debate 1932-33 P 2785

3. Glazebrook Op. Cit. P 406

compelled to take actions not warranted by business principles.¹

The Duff Commission in recommending the need to enforce cooperation, in fact endorsed the idea of a unified management suggested by

Sir Edward Beatty, as the only adequate solution to the railway

problem.² The main reason why the Duff Commission rejected the idea of unification was that this would establish a railway monopoly, not in the interests of the country. It would be inappropriate to allow a private monopoly to operate the life-line of the nation, where a public monopoly, subject to public control, would not be so harmful to the public interest;³ but the mood of the country in the 1930's was not in favour of any kind of monopoly. The country chose to finance a losing railway to maintain competition rather than to allow an amalgamation which might have solved the problem. This almost dogmatic approach of "competition always, amalgamation never" seems to disprove the idea that pragmatism has always been the basis of all governmental action in relation to public ownership.

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1. H.C. Debates 1932-33 P 2782
 2. Glazebrook Op. Cit. P 406
 3. Debates 1932-33 P 2782

II

Our study of the history of railways in Canada, showed that public ownership was adopted as the best possible solution for the then existing railway problems. In this section it is intended to deal briefly with the history of broadcasting in Canada in order to be able to see how public ownership came in this field. Musolf, in his book on Canadian Public Corporations¹ writes that broadcasting and transportation still continue to be active fields of governmental endeavour. The present writer has chosen the two public corporations - the CBC and the CNR - in order to show how, in rather dissimilar circumstances, public ownership was chosen as a common solution. We have seen that the policy of the Canadian government with regard to railway development, was to keep away from any active participation in the actual operation or construction² of railways. But the government was too liberal in its estimates of railway potentialities and this led to over-expansion and wasteful duplication. Public ownership in the case of the railways was adopted, one might say, as a self-imposed punishment by the government, which due to its miscalculations, created a situation where something drastic had³ to be done.

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1. Musolf, Lloyd D.: Public Ownership and Accountability -- The Canadian Experience. H.U.P. (1959) P6
 2. The National Transcontinental seems to be an exception. But even in this case the original arrangement was for private management (by G.T. Pacific) to say nothing about the Intercolonial.
 3. Debates, House of Commons (Canada) 1919 P1069, also see The Financial Post of 13th Nov. 1954, P25.

As far as broadcasting is concerned the circumstances leading to the adoption of public ownership were quite different from the railways both from a national and an economic point of view. The faltering Grand Trunk and Canadian Northern railways were given a new lease of life through blood transfusion administered from the public exchequer, if that is a proper analogy. As the Royal Commission on Transportation of 1917 pointed out, the patients had to be saved, in order to protect the good name of the country and of the government which had fostered these ailing children in an already crowded family of railway operators.

Broadcasting was a relatively new field and still in a formative stage, with a shy and exhausted private enterprise. It is interesting to observe the change in the behaviour of private capital during this period from that characterising the earlier railway development. This may be due either to the uncertain future that broadcasting offered for capital expansion or a lesson well learnt from the over-expanded railways. Whatever the reason, Canadian broadcasting had a rather slow and unspectacular start. However this new medium had won startling success in the United States and stirred some sections in Canada to the necessity of exploring the new field.

The start once again came from private enterprise which somehow was convinced of the commercial potentialities of broadcasting. But the interests of Canada as a country and as a distinct cultural entity were not only in a system of broadcasting given over to the earning of profits, but to using this new and important instrument for national integration

and cultural development.¹ In this sense broadcasting has a common history with the railways which were also constructed or subsidized by the government to weld together the different units of the Dominion. From links of steel to links of waves, there was the same desire for a distinct and independent existence in the face of the rising tide of Americanism. The country in the beginning hoped that private enterprise would supply this need. Private enterprise, in its turn, was faced with the twofold problems of scarcity of capital and uncertainty of profits. Nonetheless, a series of private broadcasting stations were started between the years 1919 and 1929-30, but most of them were concentrated in metropolitan areas.²

Private broadcasting soon became a tool of commercialism and this eventually meant more American programmes on whatever meagre transmitting stations that existed in Canada. The enlightened section in the country was alarmed at this new threat to Canada's cultural existence. The demand became more and more pronounced for developing the facilities of broadcasting to serve the cultural needs of the nation. The 1928 Royal Commission under Sir John Aird was the result of this demand; it was charged with the task to "examine into the broadcasting situation in the Dominion of

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1. Speaking before the Special Committee on Broadcasting, Mr. A. Ouimet, president of the CBC outlined the nature of public broadcasting thus: "It has been decided by all Royal Commissions, Parliamentary Committees over the years, and by the Act itself, that the corporation is a publicly owned organisation which has to render a national service, and that it receives money from parliament for that purpose. Then it has been agreed that the drain on public funds could be reduced by the corporation entering into commercial operations - and we do. We are not a commercial undertaking".

Minutes of Proceedings and Evidence
Special Committee on Broadcasting 1961 P565-66.

2. A survey conducted by the Department of Marine revealed that the broadcasting facilities reached only 2/5th of the country's listening public.

Canada and to make recommendations to the Government as to the future administration, management, control, and financing thereof."

The Aird Commission handed in its report in 1929. It concluded its examination with the remark that it had found in Canada an intense desire to have a Canadian broadcasting system devoted to meeting Canadian needs and aspirations.¹ The Commissioners acknowledged the service rendered by private broadcasting in providing entertainment for the public, but lack of funds was forcing stations to sell more and more of their time and this was also responsible for the concentration of more stations in large urban areas. They found that the national interest of Canada could only be served by "some form of public ownership, operation and control behind which is the national power and prestige of the whole public of the Dominion of Canada".² This report, beside being a landmark in the history of Canadian broadcasting, is important literature on the concept of public enterprise. It stressed the fact that in a pioneering country like Canada, with a relatively short supply of private capital, the state has to take a more active part in the cultural and economic development of the nation. The Aird Commission recommended nationalisation of all the existing transmitting stations and vesting their operation in a national company. This company, owned and operated by the people of Canada, was the right agent to serve the national interests. The Commission further proposed the construction by this national company, of a chain of high-powered broadcasting stations across the Dominion to serve as a national network. Expenses for these projects and other

1. Royal Commission on Radio Broadcasting 1929 (Report) P6

2. Ibid. P6

services could be met from three sources: licence fees on the receiving sets, rentals on time devoted to a limited amount of indirect advertising and an annual subsidy of one million dollars to be granted for a period of five years and after review, for a further five years.¹

Among the other recommendations of the Commission was the vesting of the broadcasting service in a board comprised of twelve members, with one member from each of the nine provinces and three from the Dominion government. The Commission also suggested the adoption of a corporate form of management for the agency, to be called the Canadian Radio Broadcasting Company.

No action was taken on the report until 1932, when the first of the many subsequent parliamentary committees on broadcasting was appointed to recommend a new scheme of broadcasting for Canada. The delay was caused by a combination of unusual circumstances. The Federal election of 1930, following the "Wall Street Crash" and the depression brought a change of government at Ottawa. This slowed down the necessary action on the Aird Report. Another important incident was the jurisdictional controversy raised by the provinces of New Brunswick and Quebec. These two provinces claimed that broadcasting was a provincial subject. The matter went before the Judicial committee of the Privy Council in 1932 which gave the ruling that broadcasting was exclusively a federal subject.

The future of broadcasting during this period (1929-32) remained

1. Ibid., P8-10.

rather uncertain. Nonetheless, there were a few applications from private stations to increase their power. Permission was granted on the understanding that any future action taken by the government vis-a-vis the ownership of these stations will not lead to any special consideration at that time. This period saw a decline in the number of existing stations from 80 to 70. Meanwhile the Radio League of Canada continued to campaign for public ownership of broadcasting in the country. By 1932 public opinion had crystallized to the extent that the Bennett government appointed a Parliamentary Committee on broadcasting, to examine the recommendations of the Aird Commission and to suggest the most satisfactory arrangement for carrying out broadcasting in Canada. The Committee, broadly speaking, agreed with the Aird Report as to the need for state participation. However, it made one important modification to the line of action suggested by the Aird Commission. The Committee recommended that the ownership of private broadcasting stations should be retained, but that there should be only one national broadcasting system in which both public and privately owned stations would constitute complementary parts.¹ The differences of view between the Parliamentary Committee of 1932 and the Aird Report arose from the differing circumstances surrounding these two bodies.

The depression of the 1930's had increased

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1. The 1957 Royal Commission on Broadcasting endorsed the arrangement on ownership and operation of broadcasting facilities in these words: "We have a good broadcasting system. The joining together in one system of public and private ownership suits Canada and serves Canadians well. It has had its confusions in the past and its rather silly quarrels. But, in essence, the concept is a good one - and we would be wise to keep it very much as it is but improved, strengthened and tidied up where possible". Fowler Report 1957, P287.

the national debt so that nationalisation of the private stations (with compensation as recommended by the Aird Commission) was not desirable. Secondly, there was a feeling that private broadcasting stations could be used in the national interest without necessarily taking them over. A third reason was possibly the traditional dislike of Canadians for any form of monopoly. When we first set up radio in Canada, said one M.P. reflecting the temper of the times,

an effort was made to make it a government monopoly. But times and conditions have changed. In Canada we have both free enterprise under government control and we have public ownership under government control, both surrounded by safeguards to prevent abuse of their powers.¹

In addition a monopoly, especially in broadcasting was considered a threat to individual freedom. The recommendations as such presented another exercise in pragmatism.

The major recommendations of the 1932 Committee were:

- (a) The establishment of a chain of high-power national stations operating on clear channels and a number of low auxiliary power stations, suitably located to provide coverage to the largest possible number of listeners.
- (b) That the cost of radio in Canada be self-sustaining and that only the money available from transmitting and receiving licence fees, and advertisement income be expended; and the question of the amount of licence fee be left entirely in the hands of the governor-in-council.
- (c) That a commission of three be appointed and vested with the necessary powers to carry on broadcasting in Canada; such powers were to include:
 - (i) regulation and control of all broadcasting including programmes and advertisements
 - (ii) construction, operation and acquisition of broadcasting stations
 - (iii) the control of the licencing and allocation of channels to broadcasting stations.²

1. Debates, (1944-45), P171.

2. Cf. CBC's Submission to the Royal Commission of Inquiry on Broadcasting 1956 (Exhibit No. 3), P10.

These recommendations were incorporated in the Canadian Radio Broadcasting Act 1932.

The Canadian Radio Broadcasting Commission Act provided for, as the 1932 Committee had recommended, a dual system of ownership with unified control. The Commission was given extensive power of control and regulation over the private stations which were to form part of the national network. The Canadian Radio Broadcasting Commission established a number of high-powered broadcasting stations at Vancouver, Toronto, Ottawa, Montreal and Chicoutimi. However this new arrangement was plagued from its inception by lack of capital; the problem was further accentuated by the obstacles presented by the vastness of the country and the sparse population spread across the Dominion. The management of this Commission was entrusted to a three man body that had been in existence since January 1933. In 1934 another Parliamentary Committee recommended the creation of the post of General Manager to be responsible for the operation and carrying out (not formulation) of general broadcasting services in Canada. This was endorsed by a subsequent Committee in 1936.

Two more important problems continued to exercise the imagination of those interested in broadcasting. All the Parliamentary Committees had been unanimous in their finding that broadcasting in Canada suffered from lack of funds. Each year this deficit had to be met from parliamentary grants which were included in the departmental estimates. This led to political interference in the operation and development of broadcasting. Secondly the staff of the CRBC formed part of the Canadian Civil Service which in practice made the Commission an extension of the department. This anomaly was partially rectified in 1933 by legislation releasing the

top employees from Civil Service rules. The clerks however continued to be under Civil Service regulations.

While some attempt was made to free the broadcasting system from operational control, nothing was done to secure financial independence. This had an unfavourable effect on the developmental schemes of the CRBC.¹ Another Parliamentary Committee was appointed in 1936 with very wide terms of reference which included among other things a consideration of the entire structure of the existing broadcasting system, along with better methods of operation and control. The 1936 Committee approved the dual system of ownership but recommended a complete recasting of the CRBC; its main recommendations were:

- (i) that a public corporation modelled more closely on the lines of a private corporation, but with adequate powers of control for the purpose of coordinating the two types of broadcasting, be established to replace the CRBC,
- (ii) that this corporation be known as the Canadian Broadcasting Corporation and be operated by a general manager,
- (iii) that the general supervision of operations especially the execution of national policies be entrusted to a non-partisan board of nine members, as directors or governors chosen to represent all parts of Canada, and
- (iv) that the corporation consider immediately ways and means of further extending the broadcasting facilities in Canada.²

These recommendations formed the basis of the Canadian Broadcasting Act of 1936 establishing an independent corporation responsible to Parliament. Since 1936 the activities of the Corporation have been carefully scrutinized by the several special committees on broadcasting. So far Canada did not have any short-wave transmitting stations, and their need was stressed by the fourth special committee on Radio

1. The undesirable effect can be seen in the coverage in 1932 and in 1936, the periods during which CRBC was in operation. The total wattage in 1932 was 45,000 watts, covering 40% of the population. By 1936 it had increased to 80,000 watts with a coverage of 49% of the population.

2. Cf. Exhibit 3, P14-15.

Broadcasting in 1938. This committee approved of the general activities of the corporation and the existing relations between the corporation and Parliament. The 1942 committee in its final report to Parliament, restated the principles expounded by preceding committees which briefly were

- (a) the paramount importance of a single national authority to control all broadcasting in the public interest,
- (b) the public ownership of all high-power stations, with individually owned low-power stations operating in coordination as one single system,
- (c) the vesting of all powers of control and regulation in the nationally owned system of:
 - (i) the character of all programmes, political or otherwise, broadcast by all stations and of advertising content thereof,
 - (ii) all wire line networks used for carrying broadcasting programmes,
- (d) the creation of an independent and flexible system of broadcasting which would carry out its duties without fear or favour. Under this arrangement policy matters regarding broadcasting were to be the responsibility of the Board of Governors, while the execution of those policies was the job of the General Manager responsible to the Board. The Board was to be constituted of men with a broad outlook and possessed of knowledge as to the tastes and views of the listening public and capable of making a contribution to the policies of the Board,
- (e) the independence of the Corporation was to be assured by its constitution. It was to be a trustee for the people of Canada and accountable to Parliament,
- (f) equal spreading of political broadcasting time among the parties during an election.

While these Committees recommended the reorganisation of the agency responsible for broadcasting, the principle of self-sustaining finance was still retained. The Corporation was to get its revenue from licence fees on receiving sets and the sale of advertising time on national programmes.

The arrangement under the Canadian Broadcasting Corporation Act of 1936 was such that no government subsidy to broadcasting was available, though the Corporation could receive loans from the government for its capital expenditure. Right up until the end of the Second World War the C.B.C.'s revenue from the two sources mentioned earlier was sufficient to meet its expenses and the Corporation mostly showed an operating surplus each year. Between 1945 and 1947 the C.B.C. showed deficits for the first time, and in 1947 the Canadian Broadcasting Corporation Act was amended to allow the CBC to have the full revenue without collection charges deducted from the gross receipts. This change plus the normal increase in the number of licensed sets, yielded an extra revenue of one million dollars. This helped the Corporation to show a surplus in 1948; but it was a temporary one as in the following two years the CBC ended with deficits. The Massey Commission recommended an annual statutory grant of \$4.75 millions beginning in the fiscal year 1951. Parliament voted an additional grant of \$1.5 million and these together were extended for a period of four years. In 1953 the licence fee was abolished and in its place a 15% Excise tax on Radio and Television receiving sets and parts was instituted.

The Massey Commission 1949-51: The Royal Commission on National

Development in the Arts, Letters and Sciences had among its other duties, to investigate and report upon "the principles upon which the policy of Canada should be based, in the field of radio and television broadcasting"¹. The Commission in its report stated that although no mention was made of the Aird Report at the time the present system was worked out, many of

1. See Fowler Report, Appendix II, P310.

the things had now been done that that report had recommended. The Commission also stated that in all its deliberations it got three underlying views from different sources. Firstly, it found general approval throughout the country for national programmes, particularly in the smaller communities without any other source of entertainment. Secondly, the realisation that only through a nationally controlled broadcasting system could Canadian character and content be fostered and presented in programmes. Finally, this system of nationally controlled and organised programmes and extensive coverage in the two major languages had gone a long way to create a sense of Canadian identity and national unity. The Commission appreciated the role of the private broadcasters in supplementing the national programmes. It approved the existing arrangements in the broadcasting field, and as to the size of the Board, it suggested its enlargement to make it more representative.

With regard to the financing of the CBC the Commissioners favoured the continuation of the licence fee but urged an improved method of collection. The Commission further recommended that the CBC's annual income should be statutorily specified for its broadcasting services (excepting the International Service) for a period of five years. This specified income was to be found partly from the licence fees and partly from commercial and miscellaneous revenues, with the difference to be made up by a grant from public funds.¹

Another significant event in the history of broadcasting in Canada was the appointment of a Royal Commission on Broadcasting in 1955. The Massey Commission had suggested "that the whole subject of television

1. For a summary of the recommendations of Massey Commission see Royal Commission on Broadcasting (1957), Appendix II, P310-11.

broadcasting in Canada be reconsidered by an independent investigating body not later than three years after the commencement of regular Canadian television broadcasting"; Canadian television services began on some scale around 1952.

This Royal Commission headed by R.M. Fowler was impressed at the time of its assignment "that the broadcasting and distribution of Canadian programmes by a public agency shall continue to be the central feature of Canadian broadcasting policy"¹. This meant that the job of the Commissioners was not to consider or to justify public ownership and control in broadcasting, but to suggest better ways of implementing the typical Canadian arrangement worked out in earlier years. The Commission did a good job in spite of its terms of reference and the mass of evidence and briefs rendered before to earlier Commissions vis-a-vis broadcasting. Prof. Hodgetts is of the view that the Fowler Commission brilliantly settled many of the stormy questions facing Canadian Broadcasting but at the same time, he expressed his doubts, that the commission by making some new suggestions had raised many new dust storm centres.² He also commends the Commission's realism in endorsing the typical Canadian compromise of ownership with a unified control. The Commission stressed the need to clear the Canadian horizon, as far as private broadcasters were concerned, of the "bogey of nationalisation". It stated that despite the fact that a public agency was going to stay in broadcasting, this should not mean that the agency is entitled to an unlimited claim on public funds, and was freed from the responsibility of administering its affairs in a businesslike manner. Also the CBC

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1. Vide Order-in-Council dt. 2nd December 1955 P.C.1796.
 2. Hodgetts, J.E.: 'The Fowler Commission Report on Broadcasting in Canada' in the Proceedings of the Inst. of Public Administration of Canada, 1957 P302.

as the public broadcasting agency should have its limits and functions defined and once that has been done the necessary funds should be assured to¹ it.

One interesting thing about the Fowler Commission is its attitude towards commercialism. The Commissioners were definite in their opinion that advertising was a proper and essential source of income and as such, suggested that the CBC should come out of its shell of caution and² explore this avenue to earn part of its operating expenses. On the other hand they passed strictures on the private broadcasters for what they termed as "being too much given to earn advertisers' dollars". This is where Dr. Hodgetts finds a contradiction in their (Commissioners')³ approach. But Prof. Irving feels that this inconsistency is not so real as it appears to be. What the Commissioners had in mind was the hesitant CBC which was almost allergic to advertisers' dollars and the private broadcasters who were too much involved in the affair.⁴ In other words the Commissioners did not approve of extremes on either side of the issue.

The Broadcasting Act 1958, which incorporated many of the recommendations of the Fowler Commission, repealed the earlier Broadcasting Act. At the same time it declared that the repeal and passage of the new Act did in no way affect any right, privilege, obligation or liability acquired, accrued, or accruing or incurred under

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1. Royal Commission on Broadcasting 1957 - Report P160 & 256.
 2. Ibid. P176-77.
 3. Hodgetts: in Proceedings 1957 P304.
 4. Irving, John A.: in Proceedings 1957 of the IPA (Canada) P313.

section 13 of that Act prior to the coming into force of the new Act.¹

The Act, in pursuance of the Fowler recommendations, separated the regulatory and operative functions of national broadcasting, retaining at the same time, the dual system of ownership. The CBC during all these long years has kept the tide of Americanism well away from the national broadcasting and represents one of many examples "to make Canada a nation despite the forces of geography and the powerful attraction and influence of the United States."² Its contributions to educational and cultural fields³ have been widely acknowledged in the country.

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1. Canada - Statutes 1958 Vol I Sec. 41 (1) & (2) Chapt. 22
 2. Royal Commission on Broadcasting 1957 Report P9
 3. Debates 1950 P1457-63.

CHAPTER II

THE MANAGEMENT OF PUBLIC ENTERPRISE

The problem of management is perhaps as old as when man learnt to call things 'mine' and 'thine'. In the last chapter attention was paid to the growth of public ownership in Canadian railways and broadcasting. While the adoption of public ownership or private enterprise could be largely considered a matter of doctrine or ideology, and in some cases (as in Canada) of expediency or necessity, the problem of management has to be dealt with on a rather different plane. In suggesting a difference between these two aspects of the present subject, it is not implied that the difference is very rigid and fundamental. It is quite likely that a particular pattern of management is adopted merely on ideological grounds. But the present writer tends to believe that management is more a science than a dogma. The acceptance or rejection of public ownership is different from the adoption of a particular pattern of management.

With this fact in mind it is intended to discuss in this chapter the reason why a particular form of management was adopted to run the public enterprise, the history of that form of management and other related problems. Since much of its history has a British locale it seems convenient as well logical to discuss its evolution both in Canada and Great Britain.

At the outset the distinction is to be appreciated between the normal civil and administrative functions of the state and its business activities. It is true that the original function of the state was

mainly regulatory and negative, but with the march of time new problems cropped up needing state participation. Since some of these new problems were entrepreneurial in character, they needed a new method of administration.

Meanwhile private enterprise had, during the course of the last half century or so, evolved from an individualistic type of management to a more collectivised and impersonal administration. More recently it has added to itself the element of expertise, and established the fact that business management is no longer amateurish but scientific and specialised. This transformation from the personal to the specialised and impersonal has produced phenomenal economic results. Thus by the time the state entered the economic field the superiority of the joint-stock system had been well proved. In all the attempts to draw up an outline for the management role of the state in an enterprise the model of private control was never lost sight of. Even in those cases where private management had failed miserably and the state was pushed into assuming it, the desire was there to make it look as nearly as possible like a private institution which has little to do with the government.¹

This drift towards specialised management caused a separation between the ownership and control of a business. The management composed of the experts and specialists tended to assert an increasing independence from the control of the stockholders, who in turn contented themselves with the role of helpless but not hapless watchers, while their interests

1. Seidman, "The Theory of Autonomous Government Corporation: A critical Appraisal", Public Administration Review, XII (1952) P89-96. See also Debates, 1919, P1207 and P1286.

were being taken care of by experts.

The Public Corporation, the institution which comes closest to the private business enterprise, has gained world-wide acceptance as the most suitable form for the administration of a state enterprise. It is a device "for freeing an agency from controls without attacking the rationale of these controls in general." According to Professor Robson:

The underlying reason for the creation of the modern type of public corporation, is the need for a high degree of freedom, boldness and enterprise in the management of undertakings of an industrial or commercial character, and the desire to escape from the caution and circumspection which is considered typical of government departments.³

Doubts have been expressed about the validity of the argument for the increased freedom and flexibility in a public business management as against regular departments of the government. The charge against the government administrative mechanism for being slow, unenterprising and trapped in a web of "red tapism" and overcircumspection, if true, has serious implications. It means that the entire administrative machine is defective and needs to be scrapped. In other words it would be worth while to transfer all administrative duties to the public corporation.⁴ But it is a fact that civil administration and business management are by nature different, thus if one pattern of management has been successful in running one type of service it is not necessary that it could be applied with the same degree of success to the other.

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1. Edward S. Mason, ed. The Corporation in Modern Society (Harvard Univ. Press, 1960) P50.
 2. Simon et al., Public Administration (New York: A.P. Knoff, 1950) P559.
 3. W.A. Robson, ed. Problems of Nationalised Industries (London 1952) P16.
 4. J.H. Perry, "Government Enterprise in Canada", Canadian Tax Journal (1956) P394. Also D.N. Chester, "Management and Accountability in Nationalised Industries", Public Administration, XXX (Spring 1952) P43.

When we hear that the public corporation is most suited to manage a public commercial concern it does not mean that the civil administration in itself is defective and cramped.

Managing a commercial concern needs additional flexibility and independence in order to enable it to adjust to the quickly changing laws of the market, and this the public corporation is supposed to

¹ provide. Again this insistence on conformity to market conditions of the public enterprise depends on the degree of emphasis laid on ² public objectives as compared to commercial principles. In short:

No good reason presents itself for granting greater independence to commercial activities other than the desire that they be operated in conformity to market conditions; moreover, even this consideration does not justify freedom from financial supervision where government funds are at stake. ³

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1. L.S. Keyes: "Some Controversial Aspects of Public Corporation," Political Science Quarterly, LXX (1955) P36-37.
 2. In a statement before the Sessional Committee on Railways in 1961, Mr. Gordon elaborated the relationship between commercial principles and public objectives. He said: "I should like to conclude by saying that I am convinced of the wisdom of the concept of the Canadian National as a commercial undertaking. However, I recognize that the C.N.R. cannot escape the obligations of the past, some of which are a blend of the developmental and confederative functions. To say that the C.N.R. cannot be judged by the usual standards of profitability and financial returns to shareholders, does not by any means imply that the profit motive is irrelevant to the conduct of its business. This means in ordinary circumstances, that the justification for any particular service must be tested by whether the public is willing to pay for at least the direct costs involved in producing it, that capital expenditure must be rationed in such a way as to favour those projects which show the highest rate of return, etc. Thus the C.N.R. management has a clear duty to employ the dollar as the measuring stick in much the same fashion as private corporations and must forever strive for profit even though the goal may at times seem unattainable".
Sessional Committee on Railways, etc. (1961) P66.
 3. Keyes, Op. Cit., P38.

The public corporation created as an independent authority, works as a buffer between business and politics. This has been the most common reason given for vesting the administration of publicly owned business in this type of agency. Sometimes the creation of an independent corporation or commission reflects what Brady calls the "cumulative response to a ceaseless pressure for services that only some form of public agency can provide".¹ Or it might on occasions be adopted by an overworked or harassed minister, unwilling to accept further obligation or anxious to lighten the ceaseless pressure and responsibilities that new services would involve.² Financial independence and the ability to attract efficient business men into the management with relative ease is given as another reason why the public corporation has gained such wide currency.³

We can see, therefore, that the public corporation of the modern type is a constitutional innovation. It reveals a tendency to enlarge the unit of administration to a national or regional scale, to divorce the administration of industrial or public utility functions or the conduct of certain social services of an economic character from the ordinary activities of the government; to separate finances of the boards from the national budget; to eliminate the profit-making incentive and to substitute the public service motive.⁴

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1. A. Brady, "Boards, Commissions and Democracy", Canadian Forum XXXVIII (1958/59) P241.
 2. Ibid.
 3. J.E. Hodgetts, "Public Corporation in Canada," Public Administration (1950) P284-85.
 4. Robson, ed., Op. Cit. P36.

The use of public corporations to run the public business may be quite recent, but the idea of corporate management and corporate autonomy goes as far back as the fourteenth century. It was employed in managing the ecclesiastical bodies, boroughs and the guilds. In the centuries following, its relation to law was hammered out and it attained the status of a person able to sue and be sued, yet living¹ beyond the life of any one of its members. In the earlier phases the conferring of corporate status was the exclusive prerogative of the monarch being granted through royal charter. Later on with the increase of Parliament's power the prerogative changed hands and was enacted by it. During the sixteenth and seventeenth centuries the legal status of these corporations was combined with legal provisions for the joint-stock trading companies giving birth to the business corporation. In this way the corporation as an entity, long before it attracted the attention of the supporters of public enterprise, had attained certain inherent privileges which could be used at its² own will and discretion.

Running throughout the history of the growth of the public corporation is a distrust of the regular governmental machinery. Its evolution also reflects the hesitant and half-hearted acceptance of a collectivist or, to use a more mild term a 'welfare' state, by the twentieth century Conservatives. Once they realised that public ownership in some cases was inevitable, they tried to make its management

1. Mason, ed., Op. Cit. P33.

2. Ibid., P34.

look as much like a private business as possible.¹ It is an interesting coincidence, that both in Great Britain and Canada the development of the public corporation owes much to the Conservative Parties of the two countries. In England the Labourites, the chief exponents of public ownership in the basic industries, favoured extreme departmental management for the nationalised industries. It took Mr. Morrison time and patience to convince his party colleagues as to the advantages of this new form of administering state business.

In Canada the task was not so difficult, probably because of her unhappy experience in direct departmental management in the government owned railways. There was a general aversion in the country against the government operating the railroads. The Royal Commission of 1917 was quite definite in its opinion that government take-over and operation under the control of a Parliamentary Minister was not in the best interests of the country.² They were emphatic in their recommendations that the management of the nationalised railways be entrusted to an independent and self-perpetuating board operating outside the normal governmental orbit.

The country was sick of the talk of politics in railways and railways in politics. In an earlier chapter it was indicated how the private railway companies had conspired to manipulate the representative government to subserve their commercial interests. The time was ripe for a thorough reorientation of the railway administration, for once these companies lay broken and financially starved, democratic elements in

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1. G.N. Ostergaard, "Labour and Development of Public Corporation," Manchester School of Economic and Social Review, XXII (May 1954), P193.
 2. Canada, Royal Commission on Transportation (1917) P1i.

in Canada urged the adoption of a system of management which would eliminate politics from the railways. The experience of the Intercolonial had illustrated how a well-built and useful rail link could be forced to operate at sub-marginal level. It was also realised that commercial ventures needed a more flexible administration to make public ownership in this field a success.¹ It was argued that a politically insulated railway management was better able to attract the ablest men, and ones who would do their best to make the operation as successful and efficient as a private business.² On the other hand apprehensive elements in the country and in Parliament did not like the idea of the railways being completely independent of politics. Politics, they held, is the medium for the voice of the people, and should the railways become independent of it, then they also become independent of popular control.³ They did not support the idea of vesting the

1. Canada, Parliamentary Debates (Commons) 1919, P1070-71.

2. Ibid., P1327.

3. Ibid., P1072. A similar warning was sounded during the 1960-61 Session of Parliament by Mr. Grafftey (P.C.) against confusing public control with political interference in the management of Crown Corporations in Canada. He said: "I would warn all members that when people confuse the idea of political interference with the voice of the people; when people confuse the idea of political interference with the true and rightful duties of a member of parliament; when irresponsible pronouncements are made regarding these two things, political interference on the one hand and the rightful duties of a member of parliament on the other hand, nothing is being done to serve the true principles of democracy as I am sure all broadminded members of the House of Commons understand them."

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"But when we bring these matters to the attention of the officials we are only expressing the voice of the people. When a member of parliament makes known the views of his constituents regarding various programmes, at no times is he doing anything that constitutes political interference". Debates, 1960-61, P1483-84.

management of the railways in an independent, and in what they called an "irresponsible agency" contrary to the principles of responsible government.

The 1917 Royal Commission in its recommendations pointed to the fact that direct government operation of the railways had nowhere been successful. The adoption of direct departmental control for the nationalised railways, in their view, would be unfair to the privately managed Canadian Pacific Railway. The Commissioners had complimented the CPR on its remarkable achievements during the short period of three decades in which it had grown to be one of the most prosperous railroads in the world. Putting a government operated railway with its unlimited finances against the privately owned CPR, they feared would subject the latter to uneconomical competition. A separate management, possessed of all the characteristics of a business service, would give the two systems a semblance of equality and competitiveness.

Another reason why the Commissioners favoured an independent and distinct management for the railways was legal involving questions of sovereignty and international law. The defunct Canadian Northern and Grand Trunk Railways had considerable track mileage in the United States which was under United States law. Once the ownership and operation of these Companies passed into the hands of the Canadian government it too would be subject to United States law for that same mileage, an anomaly in a legal sense. On the other hand a separate managing agency, divorced from the normal links of the administrative world, would be a more normal situation.

As far as public broadcasting was concerned, it came much later,

and the pattern of management for the CNR, served as a concrete example for the radio broadcasting stations. The Aird Commission recommended the creation of a national broadcasting company which was probably intended to be modelled after the CNR. The argument for insulating management from politics applied with added force in this case. The 1936 Parliamentary Committee on Broadcasting reiterated the need for an independent management and suggested that a public corporation be created to run the national broadcasting. This corporation was to be like a private business but at the same time possessed of general powers of control, both public and private. A reading of the Aird Report and the subsequent Parliamentary Committees' recommendations suggest that by this time the public corporation had gained a firm foothold on Canadian soil despite the fact that lately the CNR had been involved in financial troubles.

As to the question of how far the adoption of the public corporation for the nationalised railways eliminated direct political control, the observations of the Duff Commission are revealing. The Commissioners during their examination of the witnesses were informed that there was no instance of direct political interference in the management of the CNR.¹ They discovered however that the railways were not operating completely apart from politics. In minor matters of administration there was, of course no interference. But in all major policies, upon which the success of the public ownership depended, political considerations exerted their pressure to the extent that

1. Canada, Royal Commission on Transportation (1931) P51.

the economic and commercial considerations were often lost sight of.¹
 The Meighen Government while implementing the recommendations of the
 1917 Royal Commission ignored the stress it laid on the permanency
 and independence of the management by adopting a different method of
 appointment to the Board of the CNR. The Canadian National Railways
 Act provided that the Board of the new Company was to be appointed by
 the Governor-in-Council from one annual meeting to the next.²

Succeeding governments tried to keep politics out of the railways.
 But the change made in the method of appointment of the Board had an
 unfavourable effect on the whole concept of corporate independence.
 Some doubted the sincerity of the government in wanting an independent
 management. It was for instance suspected that the government had
 adopted the corporate form merely to relieve itself of the responsibility

1. Ibid. During his annual appearance before the Sessional Committee on Railways, Airlines and Shipping, the CNR president Donald Gordon stated: "As a publicly owned enterprise, the Canadian National is subject to pressures from the public to a much greater extent than the Canadian Pacific and this form of pressure does distinguish the Canadian National from the ordinary private corporation. When, for example, the requirements of changing technology or the need to meet new and developing types of competition make action necessary to keep our operations modern and efficient, a stream of comment is directed towards the C.N.R. by members of Parliament and newspaper editorials, by labour or other special interests, by community representation and so on; to approve and to object; to co-operate and to resist. Needless to say, this adds to the problems of management and I am convinced that both our cost of operations and capacity for accomplishment are influenced by such considerations."
Sessional Committee on Railways, etc. (1961) P66.
2. Statutes of Canada 9-10 George V (1919) chap. 13, secs. 1 and 2.

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for the consequences of public ownership. At times the members of the Board were criticised both in Parliament and public not because they had failed in their duties, but because they were appointed by political opponents. All this tends to prove that those who favoured the public corporation as a device to keep politics out of management and thus ensure the success of public ownership, were not honest in their intentions, or at least were not correct in their understanding of the whole question. For while on the one hand, they agreed to the principle of separation between business and politics, on the other they wanted to interfere as freely as they were used to do in the case of departmental management. The general belief in the country was that the mere adoption of corporate structure was a sufficient guarantee of success in public ownership, even if its essential principles were not always followed.

Reading the history of the public corporation in Britain one observes how uncertain and gloomy its future looked even after the World War I. The Haldane Committee on "Machinery of Government" opposed the idea of creating an independent corporation to run state owned business. They were of the view that any dilution of the concept of ministerial responsibility would lead to the blurring of responsible democratic government.² Surprisingly enough another commission appointed to recommend a better method of managing forests, suggested an independent Forest Commission. The reason for this step one would imagine was the difference in terms of reference of the two committees. The Haldane Committee,

1. Musolf, Op. Cit. P35-36.

2. Robson: Nationalised Industry and Public Ownership (Allen and Unwin) 1960 ,P.47.

was entrusted with a much wider task, namely to recommend an overall administrative reorientation or adjustment, accordingly it had to be more careful about the principle of parliamentary government and control; the forestry committee had only a very specific problem before it.

But this part of the Haldane Report had little influence on the government which during the succeeding years launched a series of independent corporations and commissions. In the year 1926 the Central Electricity Board was established along with the British Broadcasting Corporation the year after. To both these creations the Conservative Party was the chief contributor. The Labour Party, until 1933, was sceptical of the new innovation, fearing it as a clever device to check the tide of socialised ownership. The first Labour Government of 1945-51 nationalised a number of basic industries and entrusted their management to the public corporations. But these post-war public corporations were subjected to closer governmental control than their earlier counterparts. It is interesting to notice that this difference between the two generations of public corporations is based essentially on party ideology. Almost all the pre-1946 public corporations were the creatures of the Conservative Party which had historically not been very enthusiastic about public ownership. The post-war creations being the tools of the social and economic reforms of the socialist party, were to be under closer surveillance and were not merely a compromise but an act of conviction.

Any discussion of the public corporation would be incomplete without referring to the various types of management which are given the name, public corporation, a term which has been rather loosely employed to all types of agencies, some of which do not have one single characteristic typical of corporate management. On the other hand the

differences are not always very apparent or perceptible. But the differences remain. This distinction between various types of corporate management is mainly one of the degree of autonomy and the extent of public control.

In Canada the corporate form of management has been in use since the First World War. Before that this form existed in only a very few instances. Due to the pioneer nature of the country and the vast natural resources, the government of Canada has been rather more positivist than in the laissez-faire countries of Europe and the United States. Looking at the list of public enterprises in Canada one wonders at the variety and utility of these units. This profusion is primarily due to the traditional Canadian stress on needs rather than theories. There are for instance two giant railroad systems, one of which is publicly owned and operated; there is also the Wheat Board. The form of management adopted in these and many other examples has all or some of the typical characteristics of the public corporation. In most cases the basis of incorporation has been special parliamentary enactments. In times of national emergency or for the sake of convenience, the authorisation has not always come from Parliament in each case but through executive ordinances, although the final authority rests with Parliament. Thus during the last war a number of crown companies were created under the War Measures Act and the amended Department of Munitions and Supply Act of 1940. Many of these companies still survive and operate under the Dominion Companies Act. Their basis for existence at present is the Department of Reconstruction and Supply Act and the amended Research Council Act. Since these crown companies were largely established by executive ordinances, they did not have any financial, accounting or

operational uniformity, for in the case of incorporation by a parliamentary statute all such aspects are generally spelled out in the founding Act. As far as the crown companies were concerned, their structure and power was determined by the articles of agreement between the minister and the companies with the approval of the governor-in-council.

The first attempt to introduce some uniformity was made in 1946 with the passage of the Government Companies Operation Act. This Act laid down general principles concerning bank accounts, provision of capital, contractual rights and liabilities to suit, personnel administration and annual reports. It had however no automatic application to the crown companies. A proclamation of the Governor-in-Council was needed to make this Act operative.

A more comprehensive and general statute, the Financial Administration Act, was passed in 1951 superseding the 1946 Act. This Act which is still on the statute book, has two important features. In the first place it excludes from its purview all those crown corporations which it lists as 'Unclassified'. Secondly, it declares that in cases where any of its provisions conflict with the special acts of incorporation, the latter shall prevail. This indicates that the new Act did not intend to introduce an absolute uniformity to the crown corporations. This was well explained by the then Finance Minister who stated that:

The purpose of this act is to lay the groundwork for uniform financial control and to legislate with respect to matters which the present acts do not cover. At some future date the financial provisions of the special act may be reviewed but for the present it is proposed that they should continue to operate.¹

1. Quoted in Hanson, Public Enterprise (Brussels 1954) P81.

The Act however, does provide that notwithstanding the provisions of any special act, nothing shall prevent the Auditor-General from being appointed as auditor or joint-auditor of a crown corporation.

The Act divides the existing crown corporations into three types:
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 Departmental, Agency and Proprietary. Each one of these possesses varying degrees of financial independence and managerial autonomy. A Departmental corporation is more or less another arm of the civil administration and has been adopted not on business grounds but for administrative convenience. The Act defines the departmental corporation as "responsible for administrative, supervisory or regulatory services of a governmental nature". Agency and Proprietary Corporations possess varying degree of independence. The agency corporations, which are of a quasi-commercial nature, are charged with the disposal of trading services and procurement on behalf of the Crown. Their operating funds are provided by parliamentary grants. The proprietary corporations on the other hand, possess greater financial autonomy and are expected
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 to earn their own revenues from the sale of goods or services. Although the degree of financial independence largely determines the category under which a corporation falls, there is "apparently no single factor
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 determining into which category a corporation will be placed". The Financial Administration Act empowers the Governor-in-Council to transfer a corporation from one class to another by an order-in-council.

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1. The Act lists thirty three corporations coming under its application, and excludes another half a dozen from its purview.
 2. This is not always true. In Canada, for example, most of these corporations depend heavily on parliamentary grants to make up their losses in revenues. Some critics point out that this is against the principle of corporate independence.
 3. F.C. Milligan and H.R. Balls, "Public Enterprise in Canada," Public Enterprise, ed. A.H. Hanson (1954), P82.

Management as stated earlier forms an important part in ownership. The success or failure of ownership whether private or public is directly related to the type of management. But the efficiency of management depends on several factors. Among the most important are the character and composition of the board, and the degree of financial, and in the case of public corporations, political independence of these boards. What follows is an examination of each of these factors in order to establish the degree of efficiency and independence of the management of public corporations in Canada.

The character and composition of the board of a public corporation is largely determined by the degree of security of tenure and the basis for constituting the board. As a matter of fact managerial independence in one sense is the direct corollary of security of tenure. A board living through the generosity of an individual or group of individuals can hardly assert its independence. That there has been an awareness of this in Canada, is evidenced by the various recent acts of incorporation which devote considerable space to specifying the tenure and terms of office of the various boards. The independence and even the efficiency of a board may be impaired in those cases where it is allowed to operate, beyond its term of expiry on the implicit assumption of another term of office. This often generates a feeling of false hope and some fear among board members having an eye on reappointment; under these circumstances the board cannot possibly act as independently of government as it would with a defined term of office. This point was raised on several occasions during the last session of the Canadian House of Commons. Speaking during the debate on the second reading of the C.N.R. Guarantee and Financing Bill, the opposition spokesman, Mr. Chevrier criticised the government for

allowing the president and three directors of the CNR (whose term had expired nine months previously) to work on a day to day basis. "How could the head of a corporation living in a state of suspense and uncertainty, possibly be expected to discharge his duties efficiently and with confidence?"¹he asked.

Closely linked to the problems of the tenure of the board is its composition. The Canadian boards of public corporations show an interesting characteristic; because of Canada's huge size and clearly defined regions, the composition of these boards has tended to become representative of the regions. Although in some cases the incorporating acts are silent about having a representative board, the practice has been to appoint one member from each region. The board of directors of the CNR provides an example of this. The Aird Commission on Broadcasting, however, recommended a representative board to manage the publicly owned broadcasting network, and subsequent parliamentary committees have ratified this. The board of governors of the CBC until 1958 was statutorily required to be representative of the various regions.

Parliament and the country have shown a special interest in having a representative board of directors for public corporations in Canada. Broadly speaking the idea of a representative board is a healthy one and in an undertaking as large and far-flung as the CNR or the CBC it is fruitful to have all regions represented. This point was well explained by a member of Parliament during a discussion on a bill to

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1. Canada, Parliamentary Debates (1960-61) P7733-34. Taking part in the earlier Supply debate, Mr. Chevrier said: "Not only do I think it is unfair, but I think it is immoral on the part of the government to continue the present situation as it has been since September of last year (i.e. 1960). Here is the president of a great national railways who, together with three of his co-directors, does not know what is his position. Not only is it ungrateful; it is disgraceful on the part of the government to hold up a matter of this importance in the manner in which it has been held up" Ibid., P6026.

increase the number of CNR directors from seven to twelve. He said:

Two of the recommendations which they (the 1961 Royal Commission on Transportation) make deal with the elimination of passenger traffic in certain areas and on certain lines where it has proven to be uneconomic. The same situation prevails also with regard to freight traffic in what they call low density traffic areas. The suggestion there is that an annual subsidy of thirteen million dollars should be payable over a period of fifteen years. There has been a recommendation, also, that subsidies totalling some sixty two million dollars subsequently scaled down in five years to 20 per cent of the amount, should be payable in respect of the elimination of the passenger traffic. Now surely, Mr. Chairman, that requires representation on the board of directors on a more varied, more regional basis so that those directors when they come to the board meetings should be able to reflect the thinking and the situation in their particular areas. ¹

At the same time, Canada's huge size seems to work against the idea ² of regional representativeness. A board consisting of members drawn from regions separated by thousands of miles, cannot meet with ease and frequency to attend to important matters that arise in a large business concern such as the Canadian National. But this difficulty has been partially solved by the practice of having smaller committees of the ³ boards to attend to urgent matters. This does not, however in any way reduce the authority of the regular board of directors, as is clearly

1. Ibid., P4854.

2. Musolf, Op. Cit., P79.

3. The 1958 Broadcasting Act for example says: "The Corporation may from among its directors appoint an executive committee and delegate to it all or any of its power under this Part, and the executive committee shall submit at each meeting of the corporation minutes of its proceedings since the last preceeding meeting of the corporation". Canada, Statutes (1958) C.22, sec. 28. The President of the CBC explained that "the executive committee has the authority to deal between the meetings of the board with any matters which are required for the proper conduct of the corporation's business. The committee meets quite frequently".
Special Committee on Broadcasting (1961) P245.

apparent in the following exchange that took place in the 1961

Special Committee on Broadcasting:

Mr. Pugh: I take it that all matters of policy are set under the act and that you, more or less, carry that on. Are there any major decisions made by your executive committee?

Mr. Ouimet: Only decisions which cannot await a full meeting of the board. I think this is the important point that I should have stressed. The purpose of the executive committee is to deal with such matters that may come up between board meetings, where it is not possible, convenient or advisable to bring the whole board together.

Mr. Pugh: Has any change been made in the decision of the executive committee when the full board of directors have met?

Mr. Ouimet: No. Of course, we have to submit to the board of directors all the decisions that we have made.

Mr. Pugh: Yes, I understand that.

Mr. Ouimet: And, to my recollection, there have been no cases where there was a reversal of the decision of the executive committee.¹

An important factor in the composition of the board is the type of personnel that should be selected to the directorate. In a very real sense the independence and efficiency of the management depends on the character of the individuals appointed to these boards. Also the experience and background of an individual will, to some extent, mould his actions and conduct on the board of the public corporation. There has been some awareness in Parliament of the advantages of having a businessman on the board of a public corporation. During the discussion of a bill to increase the size of the CNR directorate, one member

1. Minutes of Proceedings and Evidence, Special Committee on Broadcasting (1961), P246.
For the discussion on the power and status of executive committee of the CNR board of directors, see Minutes of Proceedings, etc. of Sessional Rly. Committee (1961) P137-42.

justified the proposed addition to the existing membership and the advantages of having businessmen on the board thus:

If you are wise in your appointments you will get people who, by their prestige, and so on, will raise the reputation of the railway in the eyes of the business community and who through their business connections bring business to the railway. ¹

Another member suggested the appointment of former railway employees to the CNR board in these words:

I realize that we should have businessmen on the board, however, if working conditions are to improve; and if we are to establish better relations between the public and this crown corporation we must have individuals on the board of directors who know what is wrong. A businessman may have some idea in this regard, as he may be or may become a shipper, but this board of directors must also include retired railway workers who have given a lifetime of service to this crown company and, who may be able to contribute useful ideas, out of their intimate knowledge of railway problems, in the formulation of policies. ²

One other important and interesting practice followed in some appointments to the boards of Canadian public corporations deserves mention here. In some cases a civil servant has been allowed to simultaneously hold his job and be on the board of a public corporation. One of the directors of the Bank of Canada which is a public corporation is usually the Deputy Minister of Finance - a civil servant. This system has both advantages and disadvantages. On the credit side the presence of a departmental representative at board meetings would enable the

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1. Debates (1960-61) P4851. Again in 1955 a similar argument was advanced in support of having businessmen on the board. The member concerned argued that a widely representative board (both of business and regional interests) would go a long way in helping the CNR get more business and also enable it to put forward a more realistic policy on railway operation. Debates (1955) P2440 and P3193.
 2. Debates (1960-61) P4956. Italics mine.

management to reasonably expect endorsement of its decisions and actions by the appropriate minister and through him of the government. But this arrangement has a serious drawback where the departmental official finds himself in disagreement with the majority of the board. Would it not be an embarrassing position for the departmental official to support the decision of the majority before the minister and the public which he opposed himself? However, the boards of a public corporation do not seem to divide on these lines and there is a sincere desire to reach an agreed decision. Moreover, these deliberations are conducted in an atmosphere of compromise and mutual understanding.¹ Another objection to this practice is that it will appreciably undermine the independence of the board from governmental influence and may very well reduce it to the status of a departmental committee.²

As stated earlier, the regular boards of a public corporation has tended more and more to occupy itself with general policy questions and the formal endorsement of actions taken by its various committees. Consequently the boards of public corporations are gradually shifting their emphasis from special to general matters and at the same time the use of part-time members for the board is becoming more common. This it is believed provides a fresh and varied background to the board's

1. Musolf, Op. Cit., P98.

2. See D.N. Chester: "Public Corporation and Classification of Administrative Bodies", Political Studies (1953).

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deliberations and decisions.

A really independent and efficient board of a public corporation does not merely require security of tenure for its members and men of character, experience and prestige, but also insulation from all kinds of political pressure and irresponsible public criticism. As a matter of fact the management of a public corporation does not enjoy to the same degree the business latitude and managerial discretion which are the characteristic features of the private enterprise. This fact was brought to the attention of the 1956 Sessional Committee on Railways by Mr. Gordon, the president of The Canadian National. Mr. Gordon told the committee that the CNR management had to be scrupulously careful in all its policies and actions in view of the penetrating examination to which it was subject not only in Parliament but also in committee and the country at large.² A similar and more revealing statement was made by the Chairman of the 1960 Sessional Committee on Railways also dealing with the question of public scrutiny. He said:

An awful lot of this discussion is irrelevant to the management of the railways as such. The Canadian National Railways' management should not be asked to do more in personnel relations than any other company

I do believe, however, we as a committee should review this business proposition as businessmen. It is not a case of what will win us the most votes in the next election or what will be the nicest for the community.³ 4

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1. Robson, Op. Cit., P228. A further argument in favour of part-time membership is that it reinforces corporate independence. A part-time member who generally does not live entirely on emoluments paid by the public corporation is in a stronger position to resist unhealthy political inroads into the management. If he either resigns or is removed by the government, it does not create any immediate problem of finding an alternative source of employment. This enables him to criticise all interference in management.
 2. Sessional Committee on Railways (1956) P295-96.
 3. Sessional Committee on Railways (1960) P187.

Moreover, reckless public criticism and undue political interference will eventually have an adverse effect on the management of a public corporation. Appearing before the 1961 Sessional Committee, Mr. Gordon told the committee that of late his management had been a victim of 'reckless', 'uninformed' and 'irresponsible' attacks and criticisms made from the floor of the House of Commons and now spread far and wide across the country. Such a practice, he warned, would, if continued for long enough, seriously undermine the morale of the CNR employees and prejudice its users. No organisation, he said, can efficiently operate in such a hostile environment.¹ Speaking about the morale of the CNR management one member of Parliament (Mr. Carter) criticised the attitude of some members of the House and reminded them of their responsibility in contributing to the morale of management.

He said:

It is no less our duty in this House to contribute to that morale. We do not contribute and in fact we undermine morale in the Canadian National Railways when we make attacks based on faulty or incomplete evidence and when we speak in an intemperate manner. We are not contributing to the morale of the Canadian National Railways by the way in which we are now treating the present president and the board of directors.²

No discussion of corporate independence would be complete without a discussion of their degree and extent of financial control. Indeed the classical theory of the public corporation implies independence from the usual mechanisms of public control. However, in actual practice, as far as Canada is concerned very few public corporations actually

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1. Sessional Committee on Railways (1961) P291-94.
 2. Debates, 1960-61, P7755.

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 enjoy this in full measure. Obviously, a corporation which is able to meet its expenses from its revenues, enjoys a greater degree of managerial independence than the one which is either in the financial doldrums or which is under statutory obligation to seek legislative approval for all or some of its budgetary requirements.

The Canadian National Railways which was intended to be run as a commercial enterprise, has been under statutory obligation to seek parliamentary approval for all its capital and expansion programmes.² In addition to that, this corporation has hardly ever shown a surplus, with the result that year after year it has gone hat in hand to ask for a subsidy to meet its deficits. However the corporation is entitled to sell bonds at its own credit, with the consent and approval of the governor-in-council and Parliament. As such the CNR is under considerable financial control both from the government and Parliament. One might conceive that if the CNR had no deficit, it would still continue to be under the control of Parliament and the government in those areas mentioned above. In this respect the actions of the Canadian National

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1. The Bank of Canada is probably the outstanding example of a public corporation not required to give an account of its financial operation either to the government or Parliament. Its annual reports are not intended to give an inside view of its finances. The Bank of Canada Act gives this corporation a very special status. Also this is perhaps the only public corporation which meets its expenses from its own revenues, without relying on parliamentary subsidy or authority for its expenditures. c.f. H.S. Gordon, "The Bank of Canada in a System of Responsible Government", Canadian Journal of Economics and Political Science 1961 Feb.
 2. The Canadian National Railways depends on parliamentary authorisation for all branch line construction exceeding six miles in length; where the line to be built is less than six miles it cannot even then proceed with a construction programme without the express authorisation of the governor-in-council. All its capital budget requirements are subject to scrutiny and endorsement by the Treasury Board, the governor-in-council and the Ministers of Transport and Finance.

are in significant contrast to the established practice in the
¹
 United Kingdom.

The Canadian Broadcasting Corporation since 1958 has a new system of finances. According to the Broadcasting Act of that year, the CBC is required to submit annually an operating and a capital budget approved by the governor-in-council on the recommendations of the Ministers of Finance and National Revenue for the next ensuing year.² Although the Fowler Commission on Broadcasting had recommended a statutorily defined annual grant, the new Act enables the government in the first instance and then Parliament to adjust the figures each year.³ In other words each year when the CBC goes to Parliament for funds, it does not know how much of its proposed estimates will be accepted.⁴ Asked in the special committee on Broadcasting how the CBC regarded the present annual parliamentary appropriations as against an operating budget projected over a five to six year period, the president of the corporation said:

I think the position of the corporation on this question is well known. It has been expressed publicly several times during the last twenty five years. The last time it was

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1. In the United Kingdom any commercial corporation is at liberty to float its own bond at its own credit. However, if a corporation wants a treasury guarantee then it has to obtain the approval of the government.
 2. Statutes of Canada (1958) Chap. 22 sec. 35 (1).
 3. Doubts had been expressed at the time when the 1958 Broadcasting Act came into effect. It was feared by many observers that the new system of annual financing through parliamentary grants would subject the corporation to a stricter control of the Treasury, government and Parliament. e.g. Wilcox "A New Broadcasting Act for Canada", Canadian Labour, IV No. 1, (January, 1959).
 4. Special Committee on Broadcasting, (1961) P261-63. Also P269-71.

done was before the Fowler Commission, and we indicated a very strong preference for a financial basis which would provide for statutory financing over a number of years rather than by means of yearly budgets. I am speaking of the position taken by the corporation in the past. Since the act was changed and since we have set our minds to work under this (1958 Broadcasting Act) arrangement, we on the board have not discussed this question in any depth. We have taken the matter as being decided and have gone to work on that basis.¹

It is a fact that as the CBC said in its submission to the 1961 Broadcasting committee, the system of annual parliamentary appropriations for revenues, raised doubts about the reality of the claim of independence. One cannot help but feel that the 1958 Act has considerably encroached on if not completely undermined the financial independence of the CBC.

To conclude this chapter it must be admitted that the corporate form of management has not been able to command universally a uniform adherence to its basic principles. By and large the pattern seems to

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1. Special Committee on Broadcasting 1961. P266. Later the CBC when asked to elaborate its thinking on the existing system of annual financing observed: "The annual grants system has in no way interfered with the general aims of the corporation but it has added another degree of complexity to the service without improving parliamentary control. It is a very real efficiency factor in that it does not permit the most efficient administration of the corporation. This is due to the processes which must be followed in working under this system of short-term financing.

 Under this system of short-term financing it is difficult for the corporation to either conduct its day-to-day operations or its long-range planning with either maximum efficiency or certainty. In addition, the system can result in expressions of doubt being expressed re the corporation's independence. It has been accepted over the years that independence, as well as the appearance of independence, is a cardinal requirement of the national broadcasting service".

Special Committee on Broadcasting (1961) P800-1

have undergone significant transformation either because of special conditions prevailing in a country or because of the peculiar nature of a service entrusted to this form of management. Nevertheless, the form continues to draw the attention of all countries. The reason why a corporate form of management was adopted to run the Canadian National and other Canadian public corporations was perhaps best explained by Mr. Donald Gordon, the CNR president in an address to the Toronto Club. Speaking to the Toronto Club he said:

Efficiency is not basically a question of ownership but of operating philosophy and employee morale. We North Americans live in a sociological climate steeped in the traditions of business. In this climate of enterprise, employees at all levels of business can understand a demand for productivity and see the needs for business control to measure and encourage it. But exhortations from an executive officer are a poor substitute for the discipline of a profit and loss account, without which administrative problems are robbed of both urgency and clarity.¹

Others have suspected the use of this form of management as a tactic to avoid public scrutiny:

... What we really achieve then by distinguishing between the department and independent agency is that we prevent the government from doing quietly and covertly what it would be loath to do openly.²

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1. Donald Gordon's address to Toronto Club The Financial Post, November 13, 1954, P26.
 2. H.S. Gordon, "The Bank of Canada in a System of Responsible Government", Canadian Journal of Economics and Political Science (Feb. 1961) P21.

CHAPTER III

THE BASIS AND CHANNELS OF ACCOUNTABILITY

The separation of ownership and management has been an inescapable phenomenon in an expanding world of business. The eighteenth century capitalist who was both master and manager of his business gradually disappeared into the mists of history. In his place, as we have seen earlier, a specialized class of managers appeared who assumed all the burdens of management and thereby freed the owners of all those worries and strains which had multiplied a hundred fold during the early stages of industrialization. As a result the owner's role in the actual conduct of his business became secondary and dependent on the skilled professionals.

Realisation of the fact that it was no longer possible for ownership to remain actively associated with the management of a particular business raised a question; that of ensuring the owner's interests. This implied that a successful management must have the confidence of the owners. It is here at this point that "accountability" gains clearer meaning. Literally it means "giving account of something to someone". In the business world accountability is to be rendered to the owners. The most convenient method of rendering it is through the annual report, which attempts to narrate in simple form the results and achievements of management. It enables the owners or the shareholders to decide whether their confidence in the management is justified or not. In other words such a report has two aspects. In the first place it describes events and things which have already become a matter of

the past. Secondly, on the basis of these past events it enables the shareholders to pass judgement on the capacity of the management and to decide whether they should continue to enjoy their confidence.¹

Besides ensuring or reassuring confidence in the management, accountability prevents the abuse of power by those who exercise it. This power could be either political or economic. Accountability again, according to Prof. Finer, implies:

A superior-subordinate relationship in which some exterior authority must hold the subordinate responsible for certain prescribed actions. In order to be responsible, an agency must be responsible to someone for something.²

Others tend to think that the purpose of accountability should be to cultivate "a healthy esprit de corps and a meticulous code of professional conduct amongst the staff". This view is identified with Friedrich's theory which states that we should leave the question of accountability to the consciences of those who exercise power as a trust. This however sounds more theological than theoretical. History as a whole shows that accountability has only been secured when it has had external sanction and origin.

As said earlier annual reports provide an occasion for the shareholders to enforce the accountability of the management. The main interest of the shareholders in a private business is to see that their investments earn maximum dividends and that the management does not wastefully employ their capital. This task is much simplified by the presence of a common denominator (money) which tells them everything in black and white.

1. Sir George Vickers, "The Accountability of Nationalised Industry" Public Administration, XXX (Spring 1952) P71.

2. Quoted by J.E. Hodgetts, "Responsibility of the Government Corporation to Governing Body", Proceedings of the Institute of Public Administration of Canada (1953) P391.

When the public enterprise was first entrusted to a management very much similar to that of the private business, the question of accountability also arose. To whom and by what means was accountability of the public business to be rendered? Some people were carried away by business terms such as "shareholders", "annual meetings" and "proxy voting". For example one M.P. during the 1919 Railways debates compared Parliament to an annual meeting of shareholders or at least as holding proxies from the people as shareholders.¹ But as Sir Geoffrey Vickers points out these simplified relationships undergo a change when any business is nationalised. The simple shareholder-director relationship is replaced by a chain of command extending from the boards to ministers, Parliament and ultimately to the people.² The sum total of what has to be given account of is increased in the case of a publicly owned business. The earning of profit no longer remains the only aim of management. A publicly owned business becomes increasingly an agency of public service rather than of profit. All this makes accountability a complex concept

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1. Debates, 1919. P1414. Appearing before the Special Committee on Broadcasting (1961) Mr. Ouimet used a similar analogy for the CBC. He said:

The board of directors of the corporation is very similar, in nearly every respect, to the board of directors of other large organisations; but there is one fundamental difference and that is that, while the board of directors of an industrial organization is responsible to its shareholders, in our particular case, since we have 18 million shareholders, our board of directors is responsible to their elected representatives, to Parliament itself".

Minutes of Proceedings and Evidence, Special Committee on Broadcasting (1961) P395.

2. Sir G. Vickers, Op. Cit., P72.

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to define or determine, and difficult to enforce. The particular importance of the public enterprise in the social and economic organism necessitates the tightening of alternative methods of control and finding a new basis of accountability.

What then should be the function and basis of accountability in the public enterprise? It should be in the words of Professor Robson:

To throw light on the activities and policies of the nationalised industries by providing whatever information is necessary to show whether these objectives are being pursued with a reasonable degree of success.²

The basis of accountability in the public enterprise should not rest on the "shareholder concept" as in the case of private enterprise

1. For example during the debates in the Committee of Supply on C.B.C. estimates one member emphasized the special nature of the C.B.C. and its services. He doubted that the normal commercial or managerial standards could usefully be applied as a basis of accountability to this agency and he said:
 "However, I do find it abnormal, and contrary to the principles of responsible government, that the C.B.C. should not be obliged to give the government a more detailed account of its administration.
 "Nor do I accept, by reason of the same principles, that the C.B.C. should be a private preserve where unfortunately too often, favouritism - and since the word is currently in vogue - political patronage, reign supreme. As I have stated in the past, the C.B.C. is not a crown corporation like others, precisely because it operates in the field of minds and consciences. Each of the services it provides cannot be appraised solely by administrative and financial standards.
 "On the other hand, the responsibility with which the C.B.C. has mistakenly been invested in the field of education compels us to scrutinize its programmes with the greatest care, so that we can determine whether it respects the patterns and objectives assigned to our society by the philosophical, theological and moral principles which constitute the structure of our social life and the traditional basis of our teaching."
Debates, (1960), P5966.

2. Nationalised Industry and Public Ownership, P210.

but on the inherent principles of responsible and democratic government. It is true that the people as shareholders can demand the same accountability from the management of a public business as the shareholders of a private corporation. But it is a fact that "people" is a vague term as compared to the shareholders of a private company. The latter have a more direct and immediate stake in the business they own than the former. Also the mystical idea of the "people" is vague in the extreme. Who are they? Do they include only those who are benefitted by the business i.e. the consumers? Or is it the ones who bear the cost without using it i.e. the taxpayers? Or is it the ones who neither pay the costs nor are benefitted by it but have a say (indirectly) in the management - the voters? This in itself shows that we cannot have hundred per cent accountability in the business sense for the public corporations.

Though the degree of type of accountability differ in these two forms of ownership, its importance however, is in no way minimised in the case of public ownership. Rather it assumes a new sense and direction arising out of a parliamentary system of government. The function of accountability as defined earlier, is to discover whether certain defined objectives are carried out with "a reasonable degree of success". The question now arises as to the nature of that reasonable degree of success and who should decide it. What follows in this and the succeeding chapters is a discussion of the various instruments which determine and the channels which communicate this reasonable degree of success to those in charge of management.

In the last chapter it was stated that the business administration stands on a different plane from the regular civil service administration.

The public corporation has been an important innovation of this century which has tried to combine the necessary business freedom with that degree of public control inhering in a responsible government. This compromise has been attained by making the distinction between management matters dealing with day-to-day problems and the larger policy questions. But this has not been the easy and simple compromise that appears on the surface. There are many occasions when the difference between the general and the particular, the routine and the extraordinary¹ and similar other differentiations cut across one another. In such a situation Mr. Keyes doubts whether the distinction could serve as a useful basis for enforcing public accountability.² For neither in Canada or Great Britain has this line of demarcation been finally determined and it is still in the evolutionary stage. Whatever may be the ultimate result, since the last war there has been a tendency to subject the public corporations to closer public control and in part this may be traced back to the creation of the "welfare state".

Parliament constitutes the focal point in the total spectrum of the accountability of the public enterprise. Being the source of all laws and authority, it is at the apex of the administrative structure. The present study intends to concentrate on the various techniques and opportunities of Parliament to enforce its authority as the ultimate guardian of the public interest. Since it is the central and most important tool of public control one separate chapter will be devoted to its study.

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1. L.S. Keyes, "Some Controversial Aspects of Public Corporation" Political Science Quarterly, **LXX** (1955) P33.
 2. Ibid.

The twentieth century Parliament is in reality merely a debating body and by its very nature is incapable of exercising rigorous control over the expanding and complicated field called public administration. The era of parliamentary sovereignty has given way to the age of governmental (cabinet) dominance. In the next chapter we shall see how this new authority fits into the channel of accountability. In addition to these two internal channels of accountability - government and Parliament - we shall examine the not insignificant agencies which go a long way in making public accountability real and effective. Technically they are only adjuncts to the two major instruments of public control but in actual practice they enjoy a considerable degree of independence and have an identity of their own. In the rest of this chapter attention will be focussed on these two specialized instruments: the Independent Regulatory Boards and the Royal Commissions.

Theoretically Parliament still retains ultimate control over all agencies of administration, but as stated earlier, twentieth century administration is more technical and involves so many decisions at every step that only an expert body can efficiently handle them. Also modern administration demands constant attention to daily matters which no legislative body can hope to provide. Every day new problems crop up which require immediate solution and disposal. In such a situation it has become common practice for Parliament to establish "a Board or Commission which can bring expert judgement to bear on the difficulties and give single-minded attention to the problem as a whole."¹

1. John Willis, (ed.), Canadian Boards at Work, Macmillan of Canada (1941) Introduction By J.A. Gorry, PXXXii.

Originally the regulatory commission was created to regulate free enterprise in the public interest. Its main object was to ensure an adequate supply of essential services to the people at a reasonable cost and in circumstances where free competition was either unreliable or undesirable.¹ The advent of public ownership, some hoped, would render these regulatory commissions redundant, since the people as owners of business would be able to exercise direct control. But this was not a correct understanding of the consequences of public ownership. It is true that public ownership brings public control of business nearer home but only theoretically. Public control either exercised through a specialised agency or through Parliament is not an end in itself. The aim or object of public control, like that of shareholders in a private business, is to ensure that the business is conducted for the best interests and advantages of the owners. In other words the main objective is the efficiency and serviceability of the business.

The adoption of public ownership does not in itself ensure either the efficiency or satisfaction of all those whom a particular industry serves. Furthermore, by the time public ownership came to be regarded

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1. H.M. Trebing, "What is wrong with Commission Regulation?" Public Utilities Fortnightly, LXV No. 10 (May, 1960) P661.

The Fowler Report on Broadcasting also underlined the necessity of a regulatory agency for Canadian broadcasting in these words:

"These commercial demands may even be individually unexceptional but cumulatively they may be excessive. They cannot be left to be resisted either by the force of public opinion or by the exercise of self-restraint by private station operators. If broadcasting is to serve the public interest as it should, we believe there must be some externally enforced standards of public interest to strengthen the instincts of public service that many private broadcasters feel." Report of the Royal Commission on Broadcasting (1957) P86.

as a desirable means to a desired end (the public welfare) the role of the independent regulatory commission as a helpful agency in securing desired ends and enforcing set standards of conduct was well established. Consequently, Parliament, conscious of its shortcomings in enforcing codes and standards on public business adopted these commissions as useful monitors. A second reason which has been very often put forward in Canada, is that in an economy comprising dual ownership in the same service or industry the need to control thoughtless competition is more than ever necessary. And this check could be very well provided by some such commission which would work as a sort of umpire, judge and moderator between the two contestants. Another and more capitalistic argument was put before the Royal Commission Investigation on Broadcasting in Canada. It was suggested that the creation of a separate and impartial regulatory commission would create confidence among private broadcasters who were operating in competition with the CBC for the same service, as it would subject both sectors of national broadcasting to an equal¹ and impartial control.

In the chapter dealing with the growth of public ownership in Canadian broadcasting it was stated that Canadians had worked out a unique system of broadcasting suitable to their own conditions. The system had envisaged dual ownership but unified control. Both the 1932 and 1936 Broadcasting Acts vested the control of broadcasting in an agency which was at the same time responsible for providing services on a national scale and devoted particularly to Canadian content. This

1. Exhibit 135, P14 and Exhibit 177, P5, submitted to the Fowler Commission Investigation on Broadcasting (1956). See also the Evidence before the same. P3377-78.

union of the **control** and operation of radio broadcasting in one body was not liked by the private broadcasters who complained of prejudicial treatment. However the Board of Directors of the CBC was more than cautious in the exercise of its regulatory functions and there were even complaints that public control, especially in private broadcasting was not at all effective. Some alleged that in actual practice broadcasting was not controlled by the board of the CBC but by the government.¹ which as a matter of declared principle kept its hands off the national broadcasting. Others maintained that in all cases concerning regulations that came before the CBC board, the board of Governors was not impartial since it had at heart the interests of the CBC as an operating agency. In other words there was a constant conflict between CBC's regulatory functions and its operational interests.² A more reasonable argument was put forward by Mr. Diefenbaker who maintained that since the CBC was competing for commercial revenues with the private stations it was not fair to give regulatory power to one of the competitors.³ The creation of a separate regulatory board as such would go a long way in making public control in both sectors of broadcasting more effective and meaningful.⁴ The whole tenor of the arguments in favour of having a

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1. Debates, 1944-45, P172.
 2. Evidence before the Fowler Commission on Broadcasting 1956, P694-95.
 3. Debates, 1949, P872.
 4. Exhibit 68, P9, Evidence P1617-18 before the Fowler Commission.

separate regulating body for broadcasting was that an operating agency cannot at the same time be fairly entrusted with regulatory functions. In general cases this could be admitted as a fair objection. But considering the peculiar conditions prevailing in Canadian broadcasting the opponents of the pre-1958 arrangement over-did themselves. What they overlooked was that public regulation and operation of broadcasting in Canada was a direct result of the inherent conflict between the motives of public and private broadcasters. An independent and separate Board of Broadcast Governors could assure the private broadcasters of impartial treatment only to the extent that national or public broadcasting was not hampered by their excesses.¹ Also Canadian broadcasting unlike the Canadian railways was not intended to be competitive but complementary. Following the 1932 Parliamentary Committee Report on the future organization of Canadian broadcasting (which had made a significant departure from the Aird Commission recommendations) the country had successfully launched a unique system of broadcasting in which the private stations played a useful and complementary role to the publicly owned CRBC in providing national broadcasting. Perhaps one of the reasons why until 1958 the CBC acted both as the regulator and operator of broadcasting services was the fact that in a partnership of incomplete equality the greater equal has more say in any joint venture. The CBC which was entrusted with the responsibility of providing a national broadcasting service to the whole country with the help of the private

1. See Dr. Hodgetts view in this regard in Proceedings of the Institute of Public Administration of Canada 1957, P307. He contended that there could be no impartiality in so far as the maintaining of Canadian character in Broadcasting is concerned.

stations, was naturally the right agency to exercise overall control. Testifying before the Special Committee on Broadcasting 1961 (House of Commons) the CBC President, Mr. Alphone Ouimet declared:

But so far as the corporation is concerned we took it that in the matters of licensing and in the matter of abiding by the regulations and any other decisions within the power of the BBG we were on the same basis as the private stations except for one thing, and that is that the BBG must keep in mind that we have certain obligations and have a mandate given to us by parliament, to carry out broadcasting service in the national interest of Canada.¹

Among other reasons forwarded against the pre-1958 arrangement was the waste of the CBC's funds and time on policing the activities of the private broadcasters. Throughout this campaign for the separation of regulatory and operative functions of broadcasting, the private business interests were the driving force for making the broadcasting regulations less rigorous and less effective. The movement had more commercial overtones than judicial instinct. On more than one occasion supporters of this new arrangement cited the example of the Board of Transport Commissioners, which regulated the railway operations in Canada. As a matter of fact there was no full comparison made between the railways and broadcasting in Canada for the former had, with the consolidation of a host of private railway companies under the banner of the CNR, created two distinct and self-sufficient systems which were competing in the same field. An independent regulatory agency was necessary to avoid waste and duplication in their operations. Also due to the monopolistic nature of the railways at that time, it was essential to devise a means to protect the public interest. Broadcasting by its very nature is monopolistic particularly when it exists to serve

1. Minutes P190. Italics mine.

national ends. Further as the Minister of National Revenue stated before the House Special Committee on Broadcasting in 1944 there were in Canada not two sectors of broadcasting but many; public broadcasting symbolised by the CBC and private broadcasting consisting of a few dozen of private stations.¹ This in itself made any comparison between the railways and broadcasting rather superfluous.

Another common argument in favour of an independent regulatory commission is that it can devote more time and attention to problems of policy relating to one particular aspect of administration. But the practice of vesting policy formulation or policy determination outside the Parliamentary arena is contrary to the principle of responsible government. Secondly, a regulatory body, no matter how technically equipped, cannot visualise or appreciate the difficulties resulting from actual operation especially in broadcasting, unless it is in some way closely associated with management. Conversely the argument that an operating agency should not also be a regulating body has equal appeal.² Such a board by virtue of its limited scope and sphere of operation, cannot successfully deal with vast and varied problems of general policies and difficulties that have more than mere technical implications.³

The Fowler Commission however, in its recommendations endorsed the idea of separating the regulatory functions from the operative on the assumption that it would contribute to a more effective public control. The 1958 Broadcasting Act created the Board of Broadcast

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1. Minutes of Proceedings and Evidence 1944, P2-3. See also evidence before the Fowler Commission, P7532.
 2. J.E. Hodgetts, "Fowler Commission Report", in Proceedings I.P.A. Canada 1957 P307.
 3. Hanson, "Parliament and the Nationalised Industries" in Yorkshire Bulletin, (1954) P154.

Governors; they were to enjoy a fixed tenure of office, and they were to ensure the continued existence of a national broadcasting system by the provision of a service of high standard, Canadian in content and character, and by regulating the private and public stations.¹

A brief discussion of the powers and functions of the Board of Transport Commissioners seems necessary at this stage, for it was invoked several times during the Fowler Commission investigation. It is important also, because it exists as an extra-parliamentary instrument of control over the two railroad systems; a further importance results from its longevity of well over half a century during which it has built up considerable prestige and set many precedents. Created to handle matters of a technical nature with thrift and speed, the Board has often showed a tendency towards specialized representation, (though regional and economic representation has never been totally absent).

Its powers and functions are mainly administrative and judicial in nature. Questions of public policy are still decided by Parliament,² but the Board's decisions and rulings influence these deliberations. The Board sits as a court of record on all matters relating to freight rates, charges of discrimination and so forth. In appearance it resembles a court,³ for it allows both parties a hearing. Its decisions

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1. See Statutes of Canada, 1958, Vol. I, Chap. 22, Section 10.
 2. See A.W. Currie, "The Board of Transport Commissioners as Administrative Body" in Canadian Journal of Economics and Political Science, Vol. XI, 1954.
 3. The great majority of applications and complaints are disposed of without a public hearing. However, public hearings have been held in various parts of Canada at the convenience of the board and on requests of the parties involved. In such hearings interested parties have either appeared personally or have been represented by counsel or other representatives. Robert Kerr, The Board of Transport Commissioners of Canada A Review of its Constitution, Jurisdiction and Practice, (Queen's Printer Ottawa) 1957 P8.

however, are not based so much on equity as on technical and economic considerations. For example, if one of the railways feels that a particular train service is not economically possible they have to prove this before the Board and also that its abandonment will not seriously affect the people and business of that area. With its headquarters situated at Ottawa the Board has allowed separate sittings on the same day of its members as single man Boards. This is done both to facilitate the quick disposal of cases and to enable interested parties to be heard at places far away from Ottawa. The decisions are appealable in the Supreme Court of Canada, not on matters of fact but on questions of jurisdiction or fairness of the verdict.

The decisions of the Board can also be referred to the governor-in-council for consideration. However, in appeals to the governor-in-council from the Board of Railway Commissioners (now called Board of Transport Commissioners) a practice has grown up of not interfering with an Order of the Board unless it seems manifest that the Board has proceeded upon some wrong principle, or that it has been otherwise subject to error. Where the matters at issue are questions of fact depending for their solution upon a mass of conflicting expert testimony, or are otherwise such as the Board is peculiarly fitted to determine, it has been customary, except as aforesaid, not to interfere with the findings of the Board.¹

The Board on its part, however, has shown considerable care in handling cases and confines itself to technical and administrative aspects of a dispute or complaint. As far as the C.N.R. is concerned its construction and expansion programmes are not the concern of the Board, but Parliament is at liberty to seek its advice on any such project. The Canadian National is subject to parliamentary authorisation

1. Order-in-Council P.C. 1170, dated 17th June 1927 as quoted in Kerr: Op. Cit. P8.

for all its branch line constructions. This departure from one of the accepted principles of corporate independence is due to the fact that in almost all such cases a temporary loan has to be advanced out of public funds to put the project through. Moreover the corporation is under statutory obligation to seek Parliament's authority to issue its own securities guaranteed by the governor-in-council to meet the expenditures of the project. Secondly, by reserving the right to decide on any further extension in CNR services, Parliament perhaps intended to ensure that no wasteful duplication should take place. Finally, the CNR on numerous occasions has been entrusted by Parliament with the construction of branch lines, not so much to make profit as to provide a needed service. In other words Parliament and the government as shareholders of the CNR have their say in such projects. Nevertheless, the Board still has a role in this field. It is true that Parliament has to approve all construction and development programmes (exceeding certain specified limits) but the Board's permission is also needed, especially in regard to compliance with safety regulations, technical standards and qualities of the service.

Because of its strict adherence to only technical and specialized matters relating to the railways, the Board has come to enjoy the confidence of both the railways and Parliament. As a result Parliament has steadily extended its authority and discretion in railway matters.¹ There has been criticism in some circles that the Board failed to stop the duplication in railway services and political interference in the operation of the CNR. But this criticism should be rather directed towards Parliament which retained control on such matters and handled them inadequately.² The Board has always relied on Parliament for

1. A.W. Currie, Op. Cit., P352.

2. Ibid. P355.

guidance in policy matters and has tried to enforce and elaborate them with honesty and caution. As a result it has become more like a department of government than an originator of policies. Professor Currie thinks that with the passage of time and the growth of competitive¹ transportation in Canada, the Board will become an anachronism. What is needed to enable the Board to survive as a useful organ contributing to public control, is to keep its powers and functions up-to-date and realistic, but above all to shield it from the political storm² centres as much as possible.

An examination of the functions and jurisdiction of the two Boards of Broadcast Governors and Transport Commissioners reveal that they are more like agencies of advice than public control. As a general rule their main responsibility is to see that the policies laid down by Parliament are faithfully executed. At times their total effect as instruments of public control is quite subtle and far reaching. Gradually, Boards of this type have become agencies of advice and assistance in the formulation of policies. The main motive for creating

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1. Ibid P356. Trebing has a similar theory that an independent regulatory body (which is different both from the judicial and executive branches of administration) tends in time to develop procedural uniformity which makes it look like a court. And though this appearance gives it the prestige of a court, "it tends to ossify regulatory techniques and patterns of behaviour, so that the whole machinery of regulation takes on an air of obsolescence as it fails to keep pace with the dynamic changes taking place throughout the economy".

H.M. Trebing, "What is wrong with Commission Regulation" in Public Utilities Fortnightly, Vol. LXV No. 10 (May 12, 1960) P662.

2. Currie Op. Cit., P358.

the separate Board of Broadcast Governors was probably to obtain objective and impartial advice. Legally the licensing power still rests with the Minister of National Revenue but to all intents and purposes the Board exercises real control.¹

Another important extra-parliamentary device to enforce public control over the public corporations is the Royal Commission of Inquiry. In Canada this device has been very extensively used both by the Dominion and the Provincial governments. A Royal Commission of Inquiry in itself represents two important elements, expertise and impartiality. Technically an executive instrument of creation; once established, it functions, supposedly, outside the gravitational pull either of government or the Parliament. A passage from Clokie and Robinson is illuminating.

A Royal Commission is no subordinate part of a larger body; it is in no sense a fraction or segment of Parliament, Courts, Privy Council or Executive Departments. If a committee may be defined as a secondary organ of one

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1. The Chairman of the Board of Broadcast Governors explained to the Broadcasting Committee the position of the Board with regard to the granting of licenses. He said:

"I think the central point which must be understood is that we are not a licensing body. Applications on matters referred to in section 12, go to the Minister of Transport and no decision can be made on such applications until there has been a recommendation from the Board following a public hearing. Therefore applications go to the Department of Transport and are processed by them in terms of technical acceptability. If they are found technically satisfactory, they are forwarded to the Board, where they are put on the agenda for the first possible public hearing. Then, after the public hearing is held, the board makes its recommendation to the Minister, at that point, the matter is out of our hands."

Dr. Stewart before the Special Committee on Broadcasting - Minutes 1961, P279. See also P909.

of the institutions of the state, a Royal Commission must be defined not as such a secondary organ but as a primary institution, though of a temporary kind. In other words the Royal Commission is not created as a subordinate part of any other institution but takes its formal origin from the legal centre of authority, the Crown. When properly constituted, a Commission is upon a formal equality with the other institutions of the state, such as the Courts, Houses of Parliament, Privy Council, etc.¹

Professor Lower views the Royal Commission as a useful adjunct in a democratic government, which provides a medium of education and information for the people, perhaps, better than Parliament.² If used not for the political purposes of "witch-hunting" or "white-washing", it can contribute to good government in three ways. Firstly it fosters what Hodgetts calls "responsive, responsible and pure administration".³ Secondly its independent probe provides very wide information on a particular problem and thereby helps in the formulation of better policies. And lastly a Royal Commission of Inquiry brings the public and government closer together.⁴

Thus like many other administrative instruments, much of the usefulness of a royal commission depends on the motive behind its creation. If the party in power is only interested in avoiding a public demand it may use a royal commission as a safety valve to drain off the pressure of public opinion. In this way many royal

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1. Clokie & Robinson, Royal Commission of Inquiry (1937) P150-151.
 2. A.R.M. Lower, "The Fowler Commission Report on Broadcasting in Canada" in the Proceedings I.P.A., 1957, P321.
 3. Hodgetts, "Royal Commissions of Inquiry in Canada" - Public Administration Review, Vol. IX, 1949, P22.
 4. Ibid.

commission reports have been quietly filed after public excitement was over. It is in this sense that Ottawa has been called "a graveyard for royal commission reports". But a government cannot easily play this game of turning the hose of public criticism or attention away from itself merely by instituting a royal commission of inquiry. The fact that a royal commission is conceded by the government of the day does not release it from the responsibility for implementing the recommendations, except at great political risk.

The influence of royal commissions on different aspects of Canadian administration has been significant. It is interesting to note that royal commissions were extensively employed in Canada during the period when she did not have a well-trained and organized civil service. Another reason why the royal commission of inquiry is still popular in Canada is the availability of qualified and interested people who are willing to contribute to better government through membership on one of these commissions. Over the years the royal commission has won both prestige and influence as an effective instrument not only for policy formulation but for creating or reviving public interest in particular problems. Even in Great Britain where the civil service was perfected very early, the royal commission has not fallen into total disuse. Quite the contrary, for in some circles there has been an increased demand that the affairs of a public corporation can only be effectively and beneficially investigated by an independent commission of enquiry. For example, Lord Reith in his evidence before the Select Committee on Nationalised Industries (appointed to report and recommend the ways Parliament is

and should be informed about nationalised industries), expressed his preference for a royal commission of inquiry over a parliamentary committee. A royal commission is believed to be able to reach "a more satisfactory solution and provide constructive proposals on the basis of much more careful study and far-reaching objective inquiry than the complex and important issues involved would usually receive".¹

The important question from the standpoint of the present study is how a royal commission fits into the channel of public accountability. The main point to be borne in mind about the nature of accountability is that it is the ascertaining of the fact that a business or a service is managed in the best interests of those who own it. This job is remarkably well done by the royal commission which throws a

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1. "The Management of Public Corporation" - editorial article in Nature, Vol. clxxxiii (1954) P478. See also Yorkshire Bulletin, 1954, Hanson's article on Parliament and Nationalised Industries.

Speaking during the Debates on the C.B.C. estimates, Mr. Caron, stated why the C.B.C. had a preference for a royal commission of inquiry rather than an investigation of a committee of the House:

"They know that before one or three judges, they would be legally protected against questions which should not be asked. C.B.C. authorities know very well that the members of the commission would have to abide by the rules of evidence, and such is not the case of a committee of the House, where everyone bickers."

"A royal commission would make a legal study, well designed and well-organized, and I am convinced that C.B.C. authorities, especially the leaders, having done their best and having therefore nothing to fear, would unhesitatingly approve the establishment of a royal commission that would analyse, not so much the accusations, but the innuendos made by certain members on the government side". Debates, (1960), P6007.

searchlight on the true facts and presents an objective analysis of the whole operation. In the fields of the railways and broadcasting a royal commission of inquiry has generally provided the basis for all major changes in their structures and control, and Parliament has been very careful in implementing or amending the recommended courses. A royal commission when entrusted with the task of investigating any particular industry does not usually confine itself to merely the internal administrative aspects; these form part of its terms of reference but generally it is also asked to comment on more subtle minister-board relationships, and this can be quite revealing. The management on its part is kept within proper bounds by the apprehension of being exposed before a sharp-eyed royal commission which as a matter of normal course carries no political overtones or malice in its approach. Increasingly the royal commission of inquiry has come to be regarded more as an extraordinary device in public accountability than of old. This has been the direct result of the increasing use of Committee investigations which are now more analytical in their approach. But a royal commission continues to create fear and caution among both boards of the corporations and political pressure groups which otherwise would tend to undermine the basic business freedom inherent in a public corporation system of management.

However, despite the foregoing one must not forget that there is a limit upto which the board of a public corporation can take the searchlight of inquiry and inquisitive rays either of a royal commission or of a parliamentary committee. This fact was amply demonstrated by the following statement of the president of the CBC before the

Special Committee on Broadcasting 1961, when he said:

In our opinion, to add in the near future another major inquiry on top of those we have had in recent times would decrease our efficiency rather than add to it. Inquiries and reorganisations are very much like surgical operations. There is a limit to how many any given patient can stand in any given time. We have had the 1959 parliamentary committee, and a major reorganisation was initiated in October, 1959, as suggested by the parliamentary committee of 1959. This organisation has not had time to jell completely, yet. We have had this parliamentary committee, and we are just starting with the Glassco commission...Mind you, inquiries and consultants cost a great deal of money, and what is for us more serious, while the whole top executive level of the corporation is tied up for weeks or for months during a major examination of its efficiency, the same executives are obviously not able to give their best attention to their primary job, which is that of providing the best possible national service.¹

Later during the same committee investigation Mr. Ouimet made his position clear in that his corporation was not to be understood as being averse to such inquiries, but rather that the CBC would favour a "comprehensive" and analytical study of the results of the reorganisation, which were then in the process of being launched; after a period of time had elapsed the effects on the general field of
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broadcasting should then be examined.

In conclusion it may be stated that these two extra-parliamentary instruments of public accountability, the Regulatory Boards and the Royal Commissions of Inquiry, do help in certain ways, to determine whether certain objectives laid down by Parliament are met with a reasonable degree of success. It is true that occasional objections and doubts have been raised about their effectiveness, but no one has as yet found a suitable alternative.

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1. Minutes of Special Committee on Broadcasting 1961, P792.
 2. Ibid. P793.

CHAPTER IV

GOVERNMENT AND THE PUBLIC CORPORATIONS

The government through its ministers constitutes the most active instrument of public control and accountability of the public enterprise. Despite the corporate form of management which has been adopted both in Canada and Great Britain to permit the public enterprise to function as efficiently and as independently as the private business, the essential element of ministerial responsibility has not been sacrificed. As Professor A.H. Hanson comments:

The new public corporation's undoubted advantages over the old government departments - its freedom from traditional Civil Service organisation, procedure, records and outlook - are not entirely, or perhaps even mainly, a function of the comparative immunity from ministerial interference that it possesses. Those characteristics of the Civil Service which it attempts to avoid are not exclusively the product of ministerial responsibility; to some extent they are a legacy from a more leisurely age, when the functions of government were less complex and extensive. They reflect the tendency of any well-established organisation, immune from the competitive struggle for existence, to perpetuate routines that have proved not unsatisfactory in the past. It was partly to avoid this legacy that a novel type of organisation, the public corporation, was introduced. But one may at least express legitimate doubt whether the limitation of ministerial responsibility was, or is, a necessary and desirable feature of this new order.¹

The above quotation indicates that the immunity from ministerial control or responsibility of the public corporation is not an indispensable necessity for an efficient business management. As such the government's role as an active agent of public control is in no way minimised in importance. As a matter of fact both in Canada and the United Kingdom the public corporations do feel ministerial influence not in the sense

1. "Parliamentary Questions on the Nationalised Industries" Public Administration, XXIX 1951, P64.

of political pressure but as an inevitable consequence of the administrative set-up in a parliamentary government. The Cabinet which consists of ministers has been referred to as "the steering wheel of the ship of the state" and the "keystone of the political arch". The public corporation is one of the sailors on that ship or comprises one of the stones of the political arch and as such cannot remain totally unaffected by a change in the government's policies or personnel. So long as the sailor is on the ship he goes where the ship goes; of course he can claim and does enjoy freedom to move about on board but only in so far as he does not endanger the ship as a whole.

Both British and Canadian statutes mention the ministers as an indispensable link in the chain of command and accountability. In fact the Financial Administration Act 1951 (Canada) defines a crown corporation as a body which is ultimately responsible to Parliament through the minister for the conduct of its affairs. The existence of the minister as an important channel of accountability vis-a-vis the public corporation reduces its resemblance to a private business considerably. In a private business there are only two parties - shareholders and managers - in the public entity the managers have a single personality but the owners a split personality. Instead of one owner, two controlling figures emerge - government and Parliament. It is true that in the last analysis both the government and Parliament converge at one point with one purpose as the instrument of public control; yet in the day-to-day operation the working relationship between the board of a public corporation and the government stands on a different basis than that between the board and Parliament. This chapter will attempt to describe that relationship between the board of a corporation and the government as symbolised by the cabinet and the ministers.

Before discussing any further this set of relationships it seems necessary to recall the threefold classification set forth in an earlier chapter dealing with the form of management. In that chapter we noted that all the Canadian public corporations do not have the same status. The most administratively independent corporations are what the Financial Administration Act calls "proprietary corporations" or commercial corporations which are expected to meet their expenses from their own revenues. Others which are largely created for administrative convenience and circumstantial expediency do not possess the same degree of business freedom as inheres in the public corporation. Since the present study is mainly concerned with the proprietary type of corporation the details of the other types will be dispensed with. But in spite of this fact that the public corporation enjoys greater administrative and managerial freedom than the regular government departments, the principle of ministerial responsibility and control on all matters of general import is never lost sight of. True, ministerial responsibility vis-a-vis a public corporation is considerably reduced, but it is never totally abandoned. The principle of ministerial responsibility implies that a minister has to accept responsibility for whatever is done in his department either with or without his knowledge and approval. This theory rests on the understanding that in all matters a minister has full power to intervene or direct. However the adoption of the corporate form of management in the public enterprise reduces the field of ministerial interference and direction and hence theoretically the minister should not be held responsible for matters over which he has limited control. This is a matter of declared principle. But it is this division of the field of responsibility and authority which

has caused so much controversy. The members of the Parliament and of the public while on the one hand agreeing with the principle of corporate autonomy, on the other seem to expect the same pattern of ministerial responsibility to be enforced vis-a-vis a public corporation as in the case of the regular governmental departments. Mr. Balls has compared the pattern of relationship between the minister and his department to that of "master" and "servant", while his relationship with the board of a corporation is more like that of "principal" and "agent".¹

In view of the confusion that exists in the minds of many people as to the exact relationship between the government and the management of a public corporation it seems necessary to discuss the powers of the minister with regard to the public corporation. On several occasions the minister-board relationship has been compared with the shareholder-manager in a private corporation. But this is not an entirely correct understanding of the working relationship between the minister and the board. Ministerial control over a public corporation does not so much originate from the shareholder-manager concept as from the cardinal principle of responsible government. It is true that in many instances, especially in Canada, where the public enterprise is run on the lines of a private corporation the law provides that the functions of the shareholder are to be discharged by the governor-in-council.²

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1. H.R. Balls, "Financial Control and Accountability of Canadian Crown Corporations", Public Administration, XXXI 1953, P131.
 2. The Canadian National Railways Act 1955, Section 12 for example declares: "Wherever under the provisions of the Railways Act, or any other statute or law, the approval, sanction, or confirmation by shareholders is required with respect to any company comprised in Canadian National Railways such approval, etc. may be given by the Governor-in-Council". Statutes of Canada, 1955, Vol. 3-4, Eliz. 2, Chap. 29.

Nevertheless this declaration in the statutes does not in anyway imply that this is the only basis of ministerial control over the public corporations. This arrangement has been worked out more as a business convenience and a technical expediency than on other grounds. In reality a minister's stake in a public business is very different from that of a private shareholder. First of all he does not have any personal financial interest and secondly his main interest is not in the operation bringing economic returns but political dividends. This clearly illustrates that the minister-board relationship stands on a different plane from that of the shareholder-director or the minister-civil servant. The minister is responsible for those matters left by law to his domain not because he owns the business but because he forms one of the channels of public accountability and is an instrument of public control.

To return to the question of the nature and extent of ministerial powers vis-a-vis the public corporation one might broadly classify them as specific and general powers. The incorporating acts of those corporations like the CBC and CNR deal with ministerial powers in matters such as the appointment and removal of the board of a corporation, endorsing or communicating the budget or development programmes of a corporation and so on. We will discuss them all here one by one.

Probably the most important power is the ministerial control over the appointment and removal of board members. In Canada generally the appointing authority rests with the governor-in-council. The Board of Directors of both the CBC and the CNR is appointed by an order-in-council which is a political act. The Drayton-Acworth report had, in order to ensure non-partisan appointments, recommended that the trustees of the CNR be independent and self-perpetuating in their office. However, as

was mentioned in an earlier chapter of this work, the government did not accept the recommendations of the Drayton-Acworth Report on the method of appointment to the CNR board. Since then suspicion has been almost continuous that these appointments to the directorate of the CNR are used by the party in power to share the spoils of victory. Also it has been suspected that the authority for appointing i.e. the Minister concerned, has used this power to carry out his own plans, for instance in the case of the Canadian National. In an editorial an important Canadian Magazine accused the Railway Minister of reducing the board of the CNR to the status of henchmen who had, it was claimed, submitted to the minister's¹ whim of destroying the efficiency of the CNR.

Despite the fact that successive governments have vehemently refuted charges of political influence in these appointments, the suspicion has continued. During the last session of the House, the opposition was heard accusing the Diefenbaker Government of planning to crowd the CNR directorate with defeated members of the Progressive Conservative Party. Mr. Pickersgill went so far as to say that the reason why the government at this stage wanted to increase the size of the CNR directorate from seven to twelve was to provide a few more defeated² Progressive Conservatives with satisfactory jobs. Against this the

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1. The Canadian Forum, XII, 1931-32, P113. The article substantiates its accusation by citing the example of the abandonment of a C.N.R. transcontinental service (supposedly carried out under ministerial pressure), and which has given a competitive advantage to the C.P.R. which continued to use its transcontinental service.
 2. Debates, (1960-61), P1951. In the same debate a government supporter hit back at the opposition that during its term of office the Liberal Party had filled the various boards of public corporations with what he called "Liberal dead-heels".

Transport Minister not surprisingly claimed that:

This government has appointed some very excellent public servants to that board of directors, and will continue to do so. As I have said earlier, the government intends that directors on the board of the Canadian National Railways shall be first Canadians, second, good businessmen; and finally, individuals who have at heart the good of this country as well as the welfare of the Canadian National Railways, to which board they have been appointed.¹

However, this ministerial rejection of the charges, though well intentioned, has not entirely removed the doubts lurking in the minds of the public and the parliamentarians. Perhaps, Mr. More was nearer to the truth when he frankly admitted that the political attitude of a candidate should constitute one of the factors to be taken into consideration in his appointment to the board of directors of a corporation. He said:

I cannot conceive of a government which is responsible for appointment and finds a competent man who is friendly to that government, and can be depended upon, that would not appoint that man. Certainly, I believe such an appointment would be (sic) fitting recognition. I have no hesitation in admitting (sic) this should be a consideration in every appointment when a government has to depend on these people to carry out their duties in a manner that will redound to the credit of the government.²

There is no doubt of the fact that the government can and does influence the management of a corporation through its power of appointment and removal. The incorporating acts generally give the minister concerned extensive power of appointments to the boards of a

1. Ibid., P5163.

2. Ibid., P5176.

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public corporation. At times some acts specify special qualities and training the minister should consider in making an appointment. This is quite common in Britain. In Canada however no such legal restriction or condition exists except perhaps in the case of the Bank of Canada and the CBC, where the relevant acts state that members appointed to the respective boards of these corporations should not have any financial or proprietary interests in banking or broadcasting directly or indirectly. Aside from this the governor-in-council in the case of Canada can name anyone as a director of the CNR or CBC. This practice of vesting appointive power in the governor-in-council instead of in an individual minister is due to the fact that Canada has defined geographical regions, and in such a case the cabinet with its carefully balanced regional representation exercises the veto power over the decisions of a single minister.

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In actual practice, however, it still remains the job of the Minister of Transport or Minister of National Revenue to select men for the boards of the CBC and CNR. The same is true of other corporations.

Canada offers another contrast to British practice in the tenure of the boards of public corporations. In Britain the statutes, apart from laying down certain general directives a minister should follow (special qualifications, training or experience), leave the terms of office and tenure of service in the ministerial domain. The minister

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1. The ministerial control of the appointment and removal of the board of a public corporation puts the government in a strong position in its relationship with the board. Some students in this field have expressed a doubt whether such extensive control leaves the management in an independent position where they can frankly express their own understanding of the problems facing the corporation.

See A.H. Hanson: "Report on Reports" Public Administration, XXX 1952, P122.

2. J.E. Hodgetts, "The Public Corporation in Canada", Public Administration XXVIII (Winter 1950), P286.

in each case has to settle or lay down the terms of contract for the board of a corporation. But once the terms have been agreed upon he is not at liberty to ignore or go against them. In Canada generally the incorporating statutes lay down the tenure of office of the members of the boards and also explain the procedure for their removal from office.

The management of a public corporation in Canada is subject to considerable financial control from the government - a factor missing from private enterprise. Some of these governmental controls are the automatic result of a responsible parliamentary system. Parliament has failed to keep pace with the expanding area of state activities and increasing public expenditures with the result that it has come to rely more and more on governmental leadership to enforce its control
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on all aspects of administration.

The adoption of the corporate form of management has reduced the ministerial control of the board, but in no way has it meant the breaking of links between board and government. In fact the boards themselves have needed this ministerial link more badly than the government in order to bridge the gulf between Parliament and the corporation. And there could be no better representative in the House for a board requesting a public subsidy than the appropriate minister.

Aside from the inevitable need for the boards of some corporations to appeal to Parliament for grants, various statutes testify to the indispensibility of the ministerial link. For example both the CBC and

1. Norman Ward: The Public Purse: A Study in Canadian Democracy
University of Toronto Press (1962) P247-48.

the CNR are required to present their annual reports before Parliament through the respective Ministers. Also the Canadian National is obliged to present an annual general (capital) budget to Parliament through the Minister of Transport, who together with the Minister of Finance must present it before the governor-in-council for formal endorsement before it is tabled in Parliament. It is unrealistic to say that this process of formal endorsement and approval by the two Ministers as well as the Cabinet would be merely a rubber stamp. Though in a technical sense the government or the Ministers have no power to change the estimates submitted by the CNR board, however, they can put their fingers on the capital budget and say it is too much. Such objections generally relate to the overall budget not to one particular item in it. In all such instances of governmental objections to a capital budget, the president of the CNR would take the said budget to his board of directors, and in all likelihood the board will agree to a few trimmings. However, as Mr. Gordon told the Sessional Committee on Railways (1961), the board is not obliged to agree with the government's objections.¹

For the CBC the relevant statute provides that the corporation should present through the Minister (National Revenue) both a capital budget and an operating budget annually to Parliament. Thus one might say that CBC officials feel governmental control somewhat oppressively. Normally the two budgets, before being formally presented for governmental endorsement, are discussed by the officials of the Treasury Board and the CBC. Again such objections as the Treasury Board may make are not binding on the CBC.² However, the board of directors of the CBC will try

1. Minutes of Proceedings and Evidence P389-90.

2. Cf. Proceedings and Evidence Special Committee on Broadcasting 1961, P261.

to adjust its demands in the light of the objections from officials of the Treasury Board. In fact the Treasury Board is an instrument of careful analysis of the various estimates and has more of an advisory role in the government than that of the final stamp of approval for all kinds of estimates. This applies to the regular departmental estimates as well, and the minister whose department's estimates have been cut by the Treasury has the right to take the matter before a full cabinet for reconsideration. It is, however, very unlikely that a minister would appeal to his colleagues unless it is a really drastic cut and might unduly hamper the functioning of the department. In any event in the case of a cut in the CBC budget the corporation will have to convince the minister in charge that the original estimates are the absolute minimum and that any change in them will seriously effect the corporation. In other words, the CBC in order to get its unaltered budget approved by the governor-in-council, has to rely heavily on the Minister of National Revenue as its spokesman both in the cabinet meetings and in Parliament. This arrangement obviously impinges on the independence of the CBC. Speaking in Committee of Supply during a consideration of the CBC estimates, Mr. Pickersgill pointed out the dangers and defects of this arrangement. He said:

The idea was that there should be a fixed income, an income not under the control of the government of the day though ultimately, of course, under the control of parliament by statute, to be settled here in the open by parliament and not behind the closed doors of the treasury board; settled in the open in parliament so the corporation would know what its income was, that it would not get any more if it pleased the government and it would not get any less if it displeased the government. That is the only safe way to have public broadcasting, because this could be a very dangerous instrument of tyranny indeed in the hands of certain people.¹

1. Debates, (1960) P5976. See also P6202-03.

It is not only in the endorsement and presentation of the budgets of the CBC and the CNR that the respective managements are under governmental control. They are also subject to other forms of control; for example section 30 of the Broadcasting Act 1958 obliges the CBC to obtain approval from the governor-in-council for the acquisition or rental of real estate property where the value exceeds one hundred thousand dollars. However, the corporation is not required to obtain an order-in-council for any rentals of services.¹ The management of the CNR has also felt the necessity of obtaining the formal approval of the government for the disposal of a considerable part of its real estate property. This practice was explained by Mr. Gordon when asked if the CNR would seek government's approval if it wanted to sell a particular hotel or such other valuable property. He said that

it would depend on the size of it. (property). If we follow the general rule, as it is followed in a private company, if the assets in question represent perhaps the majority of the property of the company, the general rule is that it requires the shareholder's approval. Now, this shareholder's approval as it affects the Canadian National Railways means an order-in-council.²

The Canadian National has also to seek governmental authorisation for all the corporation's plans to sell securities on the market at a rate of interest to be determined by the governor-in-council.³ And in all branch line construction the corporation in addition to being subject to parliamentary authorisation, has to obtain the Minister of Transport's

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1. Special Committee on Broadcasting 1961. P250.
 2. Sessional Committee on Railways, etc. 1959, P198.
 3. Cf. Statutes of Canada, 1955 Chap. 29 Sec. 31. Also CNR Financing and Guarantee Act of 1961 Sec. 4 (1).

instructions as to where the construction should take place.¹ In a word governmental control over the finances and the developmental programmes of the CBC and CNR approaches the limits where one could say that there two bodies cease to be public corporations.

Probably the most extensive financial provisions for Canadian public corporations are set out in the Financial Administration Act, 1951. Although the Act declares that in cases of disagreement between its provisions and those of earlier incorporation acts the latter shall have precedence, nonetheless its sections open up new frontiers in financial control and public accountability. It gives the Minister of Finance and the Minister in charge of the corporation power to direct a corporation as to the way its surplus should be dealt with, the name of the banks in which a corporation could keep its accounts, the form and content of audit and the preparation of books.

Another significant specific power enjoyed by the minister is his authority to demand clarification and information from the board of a public corporation. A minister is in his right to seek any information on matters which appear to him to be coming within his domain. As a matter of agreed principle he will not seek information on such matters as deal with the administrative and managerial details of a corporation. Hansard is full of such questions, answers to which have been refused by the minister on the grounds that they touched upon matters in this area. But there is nothing to prevent a curious minister from obtaining information informally from a corporation on matters which are clearly not

1. The Canadian National Railways Act (1955) also stipulates that where a proposed extension of track is less than six miles in length, the company is required to seek authority from the governor-in-council.

his concern; and with the increasing public criticism of the operation of public ownership both in Canada and Great Britain, the boards of the public corporations have tended more and more to discuss and¹ divulge administrative problems with the ministers concerned. But ministers in general do not like to be pushed into a situation where they could be exposed as being too meddlesome in the corporate management; moreover, any ministerial initiative even in the form of advice to the board involves direct responsibility. The minister as a matter of instinct seems to be averse to accepting any responsibility for such consultations with the board of a public corporation.

Some ambiguity arises in the case of a corporation which is to report not to the minister but through him to Parliament. In other words the role of the minister becomes similar to that of a messenger boy. This is quite common in Canada where a few of the governing Acts say that the corporations shall report to Parliament through the minister concerned. It was under this impression of being an agent that the Minister of National Revenue once disclaimed his responsibility for the CBC operations. He accepted his status as nothing more than² that of an agent to communicate the report of the CBC to Parliament.

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1. It was alleged, for example, in 1944 that the Minister of National War Services (responsible for CBC) had indulged in political interference in the programming of the CBC. This interference was not committed on the minister's initiative for the Assistant General Manager of the corporation had gone to the minister to seek his advice on a series of political broadcasts. What was objected to was that the minister should have given his views to the Assistant Manager, instead of directing him to consult the board of the Governors of the CBC. Debates (1944) P874.
 2. Debates (1955) P1803.

A similar theory was propounded by another member of Parliament five years later that

the CBC is not an institution of government. The CBC is an institution of parliament and is responsible to this parliament rather than to the government of the day. It is only as a convenience and only for the sake of reporting that a minister of the government is the spokesman for the CBC, when it is obliged annually to appear before this House of Commons.¹

But it sounds very unrealistic to see how the Minister of National Revenue having so much control on the financial and other aspects of the CBC can content himself with the role of a messenger boy. As to the form and content of the actual reports of a corporation, Canada has often chosen to spell them out through parliamentary enactment. For example the Canadian National - Canadian Pacific Act lays down the nature of the Canadian National Railways annual report which is to be laid before the House.² This however does not preclude the Transport Minister from seeking further information from the CNR; in fact the relevant statute empowers him "to appoint or direct any person to enquire into and report upon any matters or things, relating to or affecting National Railways or their works and undertakings . . ."³

In short the ministerial right to seek further information is in no way effected either by the fact that the manifest content of a governing Act reduces it to a formal link between the corporation and Parliament or reduces it by determining the form and content of the information to be presented to Parliament.

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1. Debates (1960) P6209.
 2. Revised Statutes of Canada 1952 Chap. 39 Sec. 14 (1) and Sec. 15. A similar reference as to the nature of report can be found in Canadian National Railway Act 1955 Sec. 39 (2) (a) to (f).
 3. Canada, Statutes 1955, Chap. 29 Sec. 45.

As regards the general powers of ministers over the public corporation there has not been much development in this respect in Canada. The general powers category includes the right of the appropriate minister to issue any type of directions which are not covered by the specific power clause. This general direction clause has largely been discussed, debated, and applied in Britain. It seems necessary to digress for a moment from the Canadian scene and dilate on the British public corporations.

Those who favoured public ownership with a management run on private lines were aware of the fact that public business, though insulated from undue and harmful political pressures, could not be indifferent to national policies and interests. Once it was admitted that a public corporation was not an end in itself, it was natural to make it instrumental in serving the desired end of the general welfare. The history of the growth of public ownership and public corporations in Britain shows that in the early stages they were not a welcome choice. Those who sympathized with the idea were impatient to see it realized,¹ but those who were against it did not want to change their attitude. Like all other men with new theories the supporters of public ownership were prepared to wait for some time. In the chapter dealing with the management of public enterprise it was pointed out that the public corporation form of management was a compromise between two opposing forces in Britain. Gradually one of these forces gained strength and

1. The supporters of public ownership demanded greater public control. They were suspicious that unless public ownership was under greater public control much of the benefits of it would be nullified. Those who gave into the idea of public ownership in those areas which were almost impossible to keep under private enterprise, were anxious to retain some characteristics of private enterprise in public ownership. Public corporations as we have seen in an earlier chapter offered a compromise between these two views.

by the end of the last war it became evident at least in Britain, that the future course lay with the public enterprise. Naturally the demand to convert this compromise arrangement into a positive instrument of social and economic reconstruction and development became more and more pronounced. In addition this rupture with the past was effected not solely because of the needs of the hour but had considerable partisan force and ideological overtones behind it. The British Labour Party which was for the first time voted into office (with a majority government) was committed to gradually transforming Great Britain into a socialized economy. What caused this sudden change or switch in British opinion is outside the scope of the present study. Consequently all the subsequent nationalization was effected not so much by force of circumstances or expediency but on the basis of ideology. The public corporation instead of being an uneasy compromise between two forces as in Canada, became an active instrument of a socialist minded Party. This obviously meant more political control (not political interference) of the corporate management. This shift from an independent public corporation to "strong minister type" was criticised by the Conservative Party which was opposed to the idea of public ownership on principle. It criticised the new move as creating or leading once again to all those bureaucratic controls which the adoption of the public corporation had been intended to avoid.¹

This emphasis on service rather than efficiency (in the business sense) implied that a public corporation had to take note of the public

1. F.A. Milligan, Canadian Journal of Economics and Political Science, 1951, P. 168.

interest rather than that of economic interest. Quite naturally this gave the government greater hold over the operation of a state-owned enterprise. The distinction between "matters of policy" and "matters of administration" did not remain so clear and defineable and this new development greatly increased the scope of ministerial discretion and responsibility, mainly because of the two variables - generality of directions and involvement of the national interest.¹ A ministerial direction could be issued to any public corporation on any matter at any time if the minister felt it necessary and in the general public interest. This sounds very autocratic but actually it put too much responsibility on the minister who could be criticised both for exercise or non-exercise of his power. Parliament for its part was careful, while conferring this extensive power on the minister, to ensure that no abuse of power occurred; consequently all the British nationalisation Acts passed during this period provide that any direction given to the board of any public corporation should be published along with the full annual reports of the corporation. But Parliament seemed to be naive in expecting open dealings between ministers and boards, for the ministers almost instinctively demonstrated an extreme hesitancy about informing Parliament of every detail of the administration. Gradually they have come to exercise their influence behind the scenes and through what Mr. Davis calls "influencing the board members at lunch tables rather than through the mail box".²

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1. Eldon J. Johnson, "The Accountability of British Nationalized Industries", American Political Science Review, Vol. XVIII 1954, P369.
 2. Cf. his essay in "Problem of Nationalized Industries" (ed) W.A. Robson (London) 1952.

While this aberration seems to violate the cardinal principle of responsible government, in actual fact it achieved the desired end of the national welfare without strictly violating the statutory conditions. Those who criticise this extra-legal growth in the minister-board relationship seem to forget that the British system of parliamentary government does not operate exclusively on written and rigid laws of the realm, but also and mainly through that nebulous set of practices called convention. Therefore this new trend in the pattern of relationship between the government and the boards of the public corporation reflects the same British attitude of stressing persuasion and discussion rather than clear cut direction and dictation. It also rather surprisingly secures for the management of the corporation the privacy and political isolation so essential for an efficient business management.

The boards on their part have tended to take any express ministerial directive as a reflection on their efficiency and integrity. As a consequence they have very frequently acquiesced to this allegedly behind the scenes ministerial intervention. This attitude does not represent a general mood but the consciousness on their part that after all a minister holds a mandate from the people and as such is to be accorded a respectful hearing. If the board changes its earlier decision because of persuasion by a minister it means that he had a sufficiently convincing argument which quite likely had escaped its notice. In a case where ministerial intervention or a request appears to the management as economically unsafe, it is entitled to press for an express directive. In that case the responsibility for the results is shifted to the minister. There have been cases where the board of a public corporation has shown docility by acquiescing to unreasonable ministerial pressures on matters

outside his jurisdiction. The responsibility for those actions¹ obviously rests with the board itself.

Sometimes it is argued that if a public corporation is asked to provide a service at an uneconomical rate the difference should be made up by a public subsidy. It is hard to expect, they argue, from a commercial concern commercial success by asking it to follow non-commercial requests or policies. Mr. Morrison has a strong point against this argument when he says that even private enterprise must now concede² to the national interest without asking for a subsidy. But the real difficulty is that whereas there has been a pressing demand on private enterprise to take the national interest into account, it oddly demands commercial instincts from a public enterprise which should, as a matter of principle, be devoted to the national interest. In actual operation, be it in public enterprise or private enterprise, national considerations have an increasing say in the determination of general management policies.

By nature the term "national interest" is a vague expression and cannot be as definitive as economic principles. In spite of the nebulosity of this expression it does have greater weight than economic considerations. In such a situation the minister has considerably more hold over the management of a public corporation than the rigid theory of the public corporation would allow. Also it is quite likely that

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1. See Miles Beever, "The Public Accountability of the Commission", British Transport Review, I, (Dec. 1950), P150.
 2. H. Morrison, "Public Control of Socialised Industries", Public Administration, XXVII (1950), P4-5.

the ministerial concept of national interest may have political colouring or prejudice. But as Professor Robson theorises:

There is nevertheless, a hard core of truth in the assertion that that most elusive, nebulous, and frequently absurd concept "the national interest" may sometimes point in a different direction from that indicated by the needs of a public corporation considered in isolation. Hence in the last resort the minister must be able to override the board.¹

At another place he writes:

In managing prices in a basic industry consideration should be given not only to the solvency of the undertaking but also to the repercussions of prices on the economy as a whole and to wider issues of public policy. The national interest may play a considerable part in the decision, and the ministers are better judges of the national interest as a whole than the board of a public corporation.²

Another question which comes up is how this general power of ministers is to be exercised. The fact that the corporate form of management visualizes a twofold division of activities into policy and administration leaves the minister out of touch with much of the actual operation of a state-owned business. How then can a minister successfully intervene in the national interest and what should lead him to do so? It must be admitted that this is a difficult question to answer. In this case the minister cannot very usefully utilise the specialised services of his department, for the corporation has very little or no contact with the department. This perhaps may account for the growing consultation between the minister and the board on an informal basis. Such consultations give the minister a chance to be briefed about what is going on within a public corporation. The corporation on its

1. Nationalised Industry and Public Ownership, Pl58.

2. Ibid., Pl57. See also Keyes essay, loc. cit., Pl40.

part is told of the views and reactions of the people towards its policies and to the management through these informal ministerial chats. Thus a minister will think of actual intervention only when he is sufficiently satisfied that such an action is justified and politically safe. In other words a healthy ministerial intervention either through informal consultation and persuasion or formal direction demands prior consultation with the boards not only at the time of the actual ministerial directive but constantly.¹

Coming back to the Canadian scene there has not been much discussion on the general powers clause but the problem of consultation and intervention is present here as well. The ministers concerned do not have the power to issue general directions to the CNR and the CBC on matters appearing to them to be of national interest. And yet the minister's role in the actual formulation of the policies of these bodies is far from insignificant. The difference is caused much more because of the existence of two specialised bodies, the Board of Broadcast Governors and the Board of Transport Commissioners which are the main instruments of policy articulation if not formulation as far as broadcasting and the railways are concerned. An ambitious and energetic minister can, if he likes, use his authority to influence the management of a corporation. Much depends, however, on the personality of the minister and of the head of the corporation. There is, however, a limit to which such ministerial pressures can be pushed - the point of diminishing returns where such intervention begins to lower the response from the board.² A clever minister will be cautious enough not to reach that

1. Milligan Op. Cit., P179.

2. Milligan Op. Cit., P183.

point unless it is absolutely essential.

This discussion of the nature and scope of ministerial powers raises one very interesting question and that is about the role of the minister in the context of public control and corporate management. There are two views on this question. One holds that since the adoption of the corporate form of management has loosened many of the strings of public control present in the civil service, the minister should be more on the side of Parliament to ensure that management does not run away from the overriding authority of that body. The second and contrary view is that since Parliament has willingly relinquished much of its more rigorous control over this new organisation, the minister should more and more try to help the board of the corporation by explaining its policies and programmes both before the legislature and the public, with whom the board has no direct contact. Parliament on its part seems to be puzzled as how to assign this dual role of defense counsel and prosecutor of these boards to the minister.

In actual practice both in Canada and Great Britain the ministers have tended to speak more for the boards than for Parliament. This is perhaps because of the close and constant contact between the minister and the boards of the corporation. In Britain especially, due to the overgrowth of the minister-board relationship, ministers seem to have felt under a moral obligation to speak for management whom they have increasingly influenced behind the scenes on policy and management matters without assuming any technical responsibility. The boards in their turn have gradually come to rely heavily on the political acumen of the minister to defend them against political attacks. Somehow it has come to be believed that a wordy duel won on the floor of the House makes a greater impact and impression among the general public than could

probably be communicated through the publicity media of a corporation.

The truth however, lies between these two opposing points. The ideal role for a minister is not to appear either as a prosecutor or defense counsel for the board, but as a mediator between management and Parliament. He should spare no efforts to remove distrust or misunderstanding which seem to arise so quickly between a curious and overworked Parliament and the instinctively seclusive board of a public corporation. To Parliament he should explain that by approving the corporate form of management it has itself relinquished many of the conventional tactics of public control and inquiry over the public corporation. To the boards of the corporation he should try to impress on them that their existence as a separate agency does not necessarily immunize them from the curiosity and even at times the hostility of the political machines of the country. They are after all a public enterprise and like everything belonging to people they must be willing to face both the praise and the blame which usually accompany any publicised or publicly owned agencies. If he succeeds in creating this understanding between these two he has been a successful minister.

CHAPTER V

PARLIAMENT AND THE PUBLIC CORPORATIONS

In the last chapter we discussed the relationship between the government and the management of the public corporations. Our study revealed that both the CBC and the CNR are under considerable governmental control especially the former because of its almost total reliance on public money. This chapter will attempt to examine the attitudes of the ordinary back benchers towards the public corporations. It will be noted that Parliament in this context will imply the members of the opposition and government back bench supporters.

Any study of the attitude of our present day Parliament must begin with the sweeping statement that twentieth century administration is highly complex and specialised, and as such, it cannot be very effectively supervised or controlled by the group of politicians and amateur experts assembled in the lower House. "Parliament cannot", in the words of Professor Robson, "administer or even decide policy, but it can criticise and influence the decisions of those to whom it¹ has entrusted the power of deciding policy and administration". This fact has been generally accepted by most students of our time and even the various Parliaments have been sufficiently realistic to accept this role for themselves. However, many parliamentarians still insist on the right of Parliament to be advised and informed on every matter concerning the state. Parliament is very jealous of its traditional status as guardian of the people's interests and aspirations.

1. Robson, Nationalised Industry and Public Ownership, P202.

Parliament's attitude towards the public corporations, at times, shows signs of frustration. Pressed between an unceasing demand from their constituents to secure redress of real or imaginary wrongs committed by the administration on the one hand, and a partisan zeal to support the administration headed by their party leaders on the other, the M.P.'s behind the treasury benches are in an unenviable position. As for the opposition there is a limit to which it can go in exposing the government. This practical limit applies equally in the exposure of a public corporation. Rather in the latter case there exist some statutory limits on the rights of an M.P. to raise particular matters affecting the public corporation. Not infrequently, to their dismay and annoyance, M.P.'s find the familiar instruments of parliamentary control obsolete, ineffective, and even unsuited, in their application to public corporations. Many, many times during the question period M.Ps. have to be reminded that they should not raise matters affecting the management of a public corporation. Some take this advice quietly, others unleash a tirade of political invective and public accusation.

Those who resent this advice seem to lack a proper understanding of the intricacies of the business world and the operating limitations on parliamentary activities towards the public corporations. They usually draw upon the traditional parliamentary right to be informed about all public expenditures regardless of the special or voluntary¹ limitations imposed on Parliament by itself. An article printed in

1. Debates (1921) P1186-87.

the Toronto Globe and Mail reflected the same misconception:

The general principle that the House should control the expenditure of public money applies as much to railways as to any other branch of the public business. Public ownership does not mean, or should not mean, the denial of one of the first principles of responsible government.¹

Secondly, they argue that no state activity, be it social, economic or competitive, should be conducted under the veil of secrecy which is only an excuse for corruption and mismanagement.² This point has been repeatedly raised since 1921. As late as 1960 Mr. Johnson (P.C.) expressed a similar thought when he declared in the Committee of Supply, during a discussion on the CBC estimates:

We have the right as representatives of the people to restate those accusations (earlier he had enumerated them such as the charge that the C.B.C. has been following a very biased employment policy giving jobs to friends and relatives of those holding positions in the corporation etc.) and to say: Gentlemen of the C.B.C., shed light on the matter, hire a public relations officer who will try to defend you against those accusations, and account for your actions before parliament, but in the name of truth, in the very interest of the C.B.C., we urge you to answer those questions.³

Earlier he agreed that the CBC has not infrequently been the target of unfounded criticism. But it is a real problem how an M.P. or anyone else can obtain the truth unless CBC officials provide answers to the questions raised.⁴ Again, members of Parliament have been very much concerned to know about the corporations which live on huge governmental subventions.⁵ Thus the Canadian Broadcasting Corporation as well as

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1. Toronto Globe and Mail dated 24th March 1921.
 2. Debates (1921) P1179.
 3. Debates (1960) P5998-99.
 4. Ibid., P5997.
 5. Debates (1921) P1615.

the Canadian National Railways have drawn considerable attention to themselves and generated much concern in Parliament. Again during the consideration of the CBC estimates in 1960 Mr. Johnson (P.C.) expressed his dissatisfaction with the quality and quantity of information provided to Parliament by the CBC when the latter needed money from Parliament. Mr. Johnson was perhaps not alone in Parliament in expressing the following sentiment:

It is not by reading an enumeration of items on a page that we will understand what the C.B.C. proposes to do with the money it is asking us to vote. Nor is it by consulting its statements of assets and liabilities in the second book of public accounts that we will find what use is being made of the people's money.

A statement of assets and liabilities means nothing without details. More particularly when there is an unexplained deficit.

We are objecting to such proceedings, we want to know how the money paid to the C.B.C. has been used and what causes that deficit.

We ask the government to take a positive attitude in the matter, and to decide once and for all whether crown corporations will remain independent of the people who must ultimately pay the piper and the deficits.

If those deficits are legitimate, if they can be explained - why does not the C.B.C. explain them? We should be satisfied. But why does the C.B.C. give no details in the public accounts as all other departments do with regard to their expenses?

Time and again the members of the House have asserted Parliament's undisputed right to be informed about the two crown corporations under present study. In the case of the Canadian National Railways for example, members were very tenacious in enquiring about the personnel of the board of directors during the 1960-61 Session. During the consideration of a bill to grant the CNR required funds, Mr. Habel

1. Debates (1960) P5997.

(Liberal) said:

Parliament has a right to insist on being told the name of the president who will have to see that the 178 million dollars we are being asked to vote are properly spent. Parliament is also entitled to know whether this time, as happened before, the Prime Minister will not interfere and prevent in some way or other, according to what **the hon.** member for Burnaby-Richmond said this afternoon, the appointment of the person recommended by the railway committee.

It seems to me that we are entitled to expect answers to these questions.

There can be, in the strict constitutional sense, no objection to the claim of Parliament for all kinds of information. But as Mr. Arthur Meighen reminded the House in 1921, the corporate form of management and the accompanying limits on Parliament's right to information was adopted by Parliament itself. Under this circumstance it is difficult to retract from this position without undermining the whole structure. It is this fact that most members seem to overlook when they claim the right to a similar licence to enquire about the public corporations as they enjoy in other fields of administration.

Before we actually take up the study of the opportunities and techniques for parliamentary control it seems desirable to develop a little further the rationale for the right to information claimed by Parliament. Parliament's insistence on its right to information springs not only from political or purist motives but is based on the assumption that those who own a business should know about it. This aspect has been very much emphasized even in the private business world since the development of professional management. All private

1. Debates (1960-61) P7895-96.

businesses are obliged to provide the requisite information to the shareholders who can, on the basis of that information, decide whether their interests have been looked after by those to whom they had entrusted them or not.¹ In the case of a publicly owned business the importance of this argument is by no means reduced. As early as 1921 one M.P. asserted this principle when he declared:

But it does assert the undoubted right of parliament to the fullest information in respect to any property that is owned by the people of Canada, the management of which is in the hands of a government appointed board and for which people, as taxpayers, become liable, especially when, as in the present instance, (referring to the railways), there are gigantic deficits to meet.²

The principal architect of the Canadian National Railways, Arthur Meighen admitted that Parliament has the right to be informed on public owned business in these words:

I know there must be such information at some time as will enable parliament properly to judge as to the general management of the system (the Canadian National Railway system) and to say whether or not the board of directors that we have put in charge have, in the main, properly discharged the responsibility placed upon them.³

In short this demand by Parliament for information about the public corporations rests on two premises. Firstly, like all owners, Parliament as the representative of the owners (the people of Canada) should be informed about its business. Secondly, this information is necessary to enable Parliament to decide whether its trust in the management has been justified.

As said earlier, there can be theoretically, no doubt as to

1. See Chapter III of this work.
2. Debates (1921) P1180. Italics mine.
3. Debates (1921) P1183.

the right of the Parliament to be informed on all aspects of administration. But one other fact cannot be overlooked, namely that the adoption of the corporate form of management with Parliament's consent and approval, places these corporations in quite a different position. It is this fact that an ordinary backbench M.P. often seems to forget. At times, even the front rows of the opposition benches have misunderstood the implications of the public corporation form of management. This lack of proper understanding on the part of opposition leaders was clearly illustrated when in 1921 Mr. Mackenzie King, the leader of the opposition, moved an amendment motion following the original motion of the then Trade and Commerce Minister for the House to go into Committee of Supply. Mr. Mackenzie King's motion read as:

Subject to the reservation that in exceptional cases there may be documents of a confidential character which, in the public interest may properly be withheld from publication, the house declares that it is the undoubted right of parliament to demand and receive copies of all reports, accounts, correspondence and papers in relation to the management of every department of the public service including the affairs of the Canadian National Railways, whether operating directly under the control of the department, or under corporate form.¹

With this general statement on the rights of Parliament and the implications of the public corporation form of management, we turn now to examine the techniques and opportunities for parliamentary control. Broadly these techniques and opportunities run into each other. We shall discuss them under three broad headings: (1) Questions, (2) Debates, and (3) Committee Deliberations.

1. Debates (1921) P1178.

(1) QUESTIONS:

We have seen that because of its shortcomings Parliament can hardly exercise effective control over the vast field of administration. What it can do, as the representative body of the people, is to obtain information and clarification of the policies which are formulated by the experts, symbolised by the government, the Civil Service and the corporations. Thus it can be fairly stated that Parliament acts as a clearing house for the different information which flows from the specialized agencies of the state to those affected by these policies, and acts as a forum for the airing of the reactions of those affected. In other words Parliament has become a channel of communication between the government and the governed.

The role of "question time" in this two-way traffic of information and reaction is very significant indeed, for it is probably true that this question period is a trial of the government when any of its policies may be brought into the limelight for a convincing explanation.

Professor Dawson has referred to the question period as "one of the most formidable devices which the opposition has at its disposal".¹

Besides being an instrument to communicate public grievances and obtain information, the questions asked and answered in the House, exercise a continuous check on bureaucratic tendencies. Nothing is more of a nightmare for a civil servant or his policial boss than to face an embarrassing query from an M.P.. As far as the public corporations are concerned, much the same effect is achieved through questioning. But as

1. R.M. Dawson, Government of Canada (Rev. Ed.) 1954, P436.

said earlier the minister finds his plight less pitiable. At all times he can, while facing a barrage of questions in this area, take shelter behind the phrase "the matter concerns the day-to-day business of the corporation". It is a ministerial addiction to refusing answers to questions on the corporations in this way that has caused all the annoyance and frustration. An M.P. enthused by the complaints of one of his constituents regarding a particular corporation throws a question on the floor addressed to the minister and expects an answer to it. But the minister's reply that this is a matter for the internal administration quite dampens this fire of public service kindled in the youthful M.P.'s heart. He cannot help feeling frustrated for it removes a chance for him to prove his usefulness to his constituents. In other similar cases the question may be asked to secure information or to remind the government of its commitments, and the answer is again the same.

The minister on his part is justified in refusing to answer questions on matters which are not within his sphere of control or authority. "Responsibility and authority", said Mr. Gaitskell, "march hand in hand". If a minister is pressed to provide answers to questions outside his jurisdiction, it will eventually lead to the same bureaucratic paralysis which the adoption of the corporate management is intended to avoid. The minister would not be able to stop at giving information, he would have to anticipate supplementaries and "from this¹ he would be led inevitably to intervene and control".

1. Hanson: "Parliamentary Questions on Nationalised Industries", Public Administration, Vol. XXIX (1951) P57.

At times individual M.P.'s seem to resent ministerial discretion in deciding which questions concern matters of policy and which affect day-to-day management. They seem to suspect that a minister unwilling to divulge information on topics which legitimately concern general policy, takes refuge in the vague phrase "the question relates to day-to-day matters", and actually avoids his responsibility. There may be instances where such suspicion could be proved to be true but generally it reflects the instinctive distrust nursed by back bench M.P.'s towards government members. It is true in a real sense that the entire administrative mechanism of the 20th century state rests chiefly on governmental discretion and supervision; and there should be no reason to resent or suspect the bona-fide of a minister when he exercises his discretion in selecting questions for answers on the public corporations. In an earlier chapter we have seen that the line between policy and management in so far as the public corporation is concerned is not infrequently thin and this in itself is sufficient justification for ministerial discretion. A minister in active touch with the board of a corporation and conversant with the complexities of divided responsibilities, is definitely a better judge of the difference between policy and management matters vis-a-vis the public corporation than the individual and uninformed M.P.

It is sometimes argued that questions raised in Parliament reflect the general public interest in a particular matter. This is often true. But to say that every question put in the House is of public interest is absurd. In many instances questions are of very local interest, superficial and insignificant, and for which there is no justification whatsoever for them to be dealt with as major questions or to waste the

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valuable time of Parliament. A glance at the questions asked about public corporations in any one session of Parliament would show that an extraordinarily large number of them raise matters of daily management.² Again it has been discovered that a corporation running at a loss has a greater number of questions raised than the one with a favourable budget.³ Also a public corporation can be elevated into the limelight the moment any undue governmental pressure or a disagreement between the board and the government is either evidenced or suspected. In Canada, if one runs through Hansard, one will find these tendencies clearly apparent. For example one would be struck by the frequency and intensity of questions raised about the CBC or CNR. To a certain extent this interest in these two corporations is understandable and even justifiable because of the huge public subsidies they receive each year. Nevertheless, as Lloyd Musolf says, this concentrated interest on a few crown corporations "points to the fact that parliamentary supervision of corporations through questions is hardly systematic".⁴ A successful corporation should not be allowed to operate in a neglected and isolated environment. The purpose of questions is not only to obtain an explanation for deficits but to create a sense of responsibility and alertness in all branches of the administration. If the pattern of

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1. Debates (1921), P1206.
 2. A survey conducted by the Acton Society Trust in Britain indicates the same tendency to raise questions about local problems of management rather than the overall efficiency of the corporation.
 3. Robson, Nationalised Industry and Public Ownership, P170.
 4. Musolf Op. Cit., P105.

questions becomes so predictable that the management or the ministers responsible can protect themselves in relation to one corporation without a similar feeling about another, then the full potentiality of questions¹ as an instrument of public control is not being fully utilized.

One can also discover in Hansard, how a corporation having remained in comparative aloofness suddenly hits the headlines of the newspapers and floods the order paper with queries. This perhaps represents a healthy aspect of parliamentary control for it may well act as a check on the adventurousness of a corporation which normally lives in the shades of insignificance. It is hard to interpret the motives of ministers in refusing to answer questions concerning the public corporations. Apparently they uphold the principle of corporate independence by not interfering in the details of management, and this might in all probability follow if they entertained questions concerning the administrative details of a corporation. But at other times a ministerial refusal to answer a question might deprive the board of a public corporation of the sole² opportunity to explain its case before Parliament. It is somewhat natural that answers denied to questions further accentuate suspicion and even raise misgivings in the minds of M.P.'s and the public, especially when they concern public corporations.

It is not only the principle of corporate independence that rules out large numbers of questions relating to a public corporation, the procedural obstructions to getting a question on the order paper are sometimes quite insuperable. The role of the chair in this regard is

1. Ibid.

2. Hanson loc. cit.

significant. One is at times struck by the tenacity with which questions have been sifted by the Table; rule 26 of May's Parliamentary Procedure reads that a question, answer to which has either been refused or not given, will not be admitted a second time. In the United Kingdom this rule has caused great resentment. In June 1948, in the British House of Commons, after a very stormy debate on the operation of this procedure, the Speaker gave his ruling which was accepted by both sides of the floor that he might allow a question to be included on the order paper, even when the answer to it had been previously refused, if in his opinion the question raised concerned a matter of sufficient public importance. At the same time he made it clear that his ruling in no way changed the ministerial discretion to refuse answers to questions. In Canada a peculiar limitation exists with regard to asking questions about a public corporation which has private competitors. Since Meighen's time the argument has been put again and again that not everything could be disclosed about the CNR because it had to compete with the privately owned CPR. But what angers most M.P.s is that this practice has been¹ extended to corporations which do not have any competitors. Sometimes answers have been refused to questions on the grounds of impracticability and because they would involve quite unrealistic amounts of time and² money.

Again Canadian practice offers an interesting contrast to that of Britain. In Canada members have been encouraged to raise questions

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1. For example the Minister of Resources and Development refused to furnish information about salaries paid to top officials of the CMHC, a non-competing corporation, citing the CNR debates in support of his argument. See Musolf, Op. Cit.
 2. Debates (1953-54) P1065-66.

on the managerial details of a corporation in the relevant sessional or special committees, usually when answers to such questions have previously been refused by the ministers concerned. This perhaps is done to educate and explain the complexities of Parliament and their relationship to the public corporation. By tradition, the board cannot appear on the floor of the House to explain its policies and programmes. The minister as a matter of principle cannot discuss or interfere with the matters of administration of a corporation. A special committee created to examine the report and operation of a public corporation is in the position of having personal and direct contact with the board and as such can demand explanations from the latter on whatever matters it chooses. There are several instances where an M.P. has been asked to address his questions to the management of a corporation when it appears before a particular committee.¹ But even in committee some degree of discretion is left to the management to withhold information on any matter which it thinks will be prejudicial to the commercial interests of the corporation.² For example the CNR chief refused to disclose revenue per ton mile (in areas

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1. The Transport Minister, for example, advised the member who raised the question of the transfer of a CNR hotel manager at Winnipeg, to discuss the matter in the Sessional Committee on Railways when it will hear from the management. He said: "Now, then, if he does not accept the answer let me make a suggestion to him, and it is this. There is a committee appointed by this house to deal with the affairs of the Canadian National Railways. He is a member of that committee or at least he was a member during the last session of parliament. He may appear before the committee and inquire himself from the officers of the Canadian National Railways what the facts are surrounding this case, and that is really the place where he should get his information, not in this house. It is the policy of this house, established by this house and followed by governments of the faith to which my hon. friend belongs, for many, many years, namely that in matters concerning the internal management of the Canadian National Railways, there should be no interference. If there is any question that comes up, it can be asked or dealt with in the committee on railways and shipping".

Mr. Chevrier - Minister of Transport, Debates, (1952), P657.

2. Sessional Committee on Railways, Airlines, etc., Minutes & Proceedings 1959, P200.

where agreed charges were in force) as it will "play right into the¹ hands of our trucking competition".

The question whether an answer can be secured to a query also² depends on the way in which the question is drafted. Ministers seem to show an instinctive dislike or disinclination to answer questions which smack of a specific management matter; but there are frequent instances of cleverly phrased questions which entice an answer on such matters. The CNR president went to the point of offering the help of his management to frame M.P.s' question. "We could tell you", Mr. Gordon told the Railway Committee, "how to frame a question in order to bring out the point you desire. If you tell us what you want to find out, we will tell you how to get it".³ It appears that the admissibility of a question and the fact that it will be answered depends on many uncertain factors:

Uncertainty as to what is a matter of day-to-day administration, uncertainty as to the speaker's standard of public importance in accepting question (in the case of the United Kingdom); uncertainty as to what the minister can or cannot do, as well as whether he is doing it directly or through influence on others; and finally uncertainty as to whether the minister will answer the question put to him, even if eligible on all other counts.⁴

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1. Ibid. P69.
 2. Robson, Op. Cit., P170.
 3. Minutes & Proceedings of Sessional Committee on Railways, etc. (1959), P.210.
 4. E. J. Johnson, "The Accountability of British Nationalised Industries", American Political Science Review, Vol. 48 (1959), P374.

(2) DEBATES:

It has been said that the British House of Commons is one of the greatest debating chambers in the world. It has also been generally accepted that a body like Parliament does act as a barometer of public opinion and reaction to the policies and functioning of the government. The role of debates in the ventilation of grievances and the communication of reactions can hardly be overemphasized. Further these debates provide an invaluable opportunity to educate and enlighten the electorate about the governance of its country. The limelight usually belongs to the opposition for its presence gives sense and purpose to the parliamentary debates. Having failed to convince a sufficient segment of the voters about the worthwhileness of their programmes and policies, the opposition members must dedicate themselves to the task of proving or endeavoring to prove that the party voted into office has not justified the confidence of the people. This constant attempt to expose or even embarrass the government is carried on by the leaders and members on the left of the speaker in good humour and with crusading tenacity.

These debates supplement the purpose served by questions. In one way debates reflect the intensity or frequency of popular reaction to a particular policy or action of the government. If the answer to a question raised on the floor of the House, does not satisfy the questioner or those interested in the matter, it will eventually find its way through a more effective ventilator in the form of a speech or series of speeches on various appropriate occasions. The members on the Treasury Benches will use the debates to inform and explain to the House, and through the House to the country at large, the programmes and policies of the

government. However, these debates, by and large, tend to be more an exercise in party politics than an attempt to inform the country about administrative problems. The traditional theory that debates are aimed at convincing an audience about the merits of a certain policy or theory, seems to lose its meaning in the context of the partisan composition of the immediate audience (the House of Commons). A government backed by a comfortable majority in the lower House, hardly need worry about the endorsement of its plans and policies. None the less the importance of these debates cannot be ignored. For in Parliament to-day, much of what is said or done is not primarily for the consumption of the chamber, but is addressed to the voters in the country. Thus, while the development of a solid party within the lower House has taken much of the meaning out of these debates, their purpose in winning over the audience outside the chamber, has attained added significance. At times a debate could very well change the balance of popularity against a particular party. The famous pipe-line debate, for example, in the Canadian House of Commons, was one of the contributing factors in the defeat of the Liberals in the 1957 elections.

The debates as such provide Parliament with an important opportunity to assert its authority over the administration. This obviously includes the crown corporations. It is true that the special status given these corporations does make some difference in the actual impact which these debates can make on them. We need not repeat the basic principles of corporate independence here. Nevertheless, it must be re-emphasized that Parliament is considerably limited in its right to debate any and every aspect of the management of a public corporation.

In spite of this inherent limitation there still remains considerable opportunity for it to discharge its lofty duty of guardian of the people's interests. The importance attached to this opportunity is increased by the fact that the management of the public corporations both in the United Kingdom and Canada have shown a remarkable degree of sensitivity to what is said about them in Parliament. What follows is an exposition of the various opportunities that occur in Parliament for the expression of opinion and feelings about public owned business.

These debating opportunities can be put under two broad categories in so far as they contribute to the public control of the corporations. Firstly, there are the general opportunities i.e. debates of a very general nature when any matter can be raised. Such opportunities come during the debate on address in reply to the Throne Speech, the Budget Speech, adjournment motions and motions to go into Committee of Supply. Secondly, there are the specific opportunities where the House is asked to consider bills to amend the corporate structure of a corporation, or bills to authorize loans to public corporations or to authorize the expansion or construction programme of a corporation. A particular corporation will also get detailed examination on a motion to appoint a special committee to consider its report and operation. We will discuss each of these instances in greater detail.

The opening of each parliamentary session is marked by the reading of a "Speech from The Throne". This Speech though formally delivered by the head of the state is in fact a government speech. It is "at once a review of national affairs and an indication of the measures the

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government intends to introduce in the new session". Subsequent to the Throne Speech is the debate which takes place on a motion of thanks for the speech called an "Address in Reply to the Speech from the Throne". This debate, by nature, is very discursive and the participants can raise any matter they wish. The debate on the address up until 1955, could continue for a considerable number of days. However, following a new standing order adopted in 1955 it must now be concluded within ten days.²

The debates following the Throne Speech can be used to raise matters concerning any public corporation, but reference to the corporations are usually very general and superficial. Each member during his allotted forty minutes will try to talk about everything - from the government's policy towards the United Nations Congo Operations, to a minor incident involving one or few individuals in a street scuffle. In one way such a debate very appropriately provides the occasion for the ventilation of grievances.

By tradition however, almost all the members taking part in this debate will concern themselves with those problems which are headline news in the country and the world. It is therefore not uncommon to find member after member raising the same matter in their speeches. But very rarely will even the corporations uppermost in the minds of the members get extensive consideration during this debate,³ mainly because of the

1. E. Russell Hopkins, How Parliament Works, (Queen's Printers Ottawa, 1957), P31-32.

2. Ibid., P33.

3. For example the Speech from the Throne in 1956 mentioned seven corporations and their activities. Parliament was asked to consider statutory amendments to three crown corporations and the speech reviewed the activities of the other four including the Canadian Broadcasting Corporation. During the ten days debate on the speech other corporations including the Canadian National Railways were frequently mentioned.
Vide Musolf: Op. Cit., P110.

fact that anything can be said about any matter, and members find it difficult to concentrate on a few problems.

One must not, however, forget the partisan composition of the House, for the members of the opposition are only too enthusiastic to expose the failures of the government. Very infrequently do they engage in consideration of cures or causes of such failures. Furthermore it must not be forgotten that an M.P. while taking part in such a debate has two objectives before him. Firstly to demonstrate to his constituents his efficiency as their spokesman and representative - thus he must talk about what interests his voters, and secondly, to impress his audience with his broad knowledge and understanding.

Another general opportunity exists in the "budget debate". The Finance Minister moves a motion that the House go into a committee of Ways and Means. This motion starts the traditional budget debate during which the Finance Minister delivers his budget speech. This speech outlines the economic and financial conditions in the country, and acquaints the country through Parliament with the government's financial programmes including any anticipated deficit or surplus.¹ The debate provides members with an opportunity to raise any financial, economic or other issue of concern for any part of Canada.² And conceivably an interested member could raise an issue touching on the public corporation, or more especially on one which ends up with an operating deficit which has to be met from a public subsidy. However as a matter of practice

1. Hopkins, Op. Cit., Pl43.

2. Ibid.

members do not generally raise specific questions about a corporation in this debate.

A more concentrated debate could take place when a motion to adjourn the House, to consider a matter of public importance, is allowed. In this case the participants in the debate will be obliged to confine themselves to the matter raised. In fact the rules of the House are quite strict about such motions and it is rather rare for them to even be entertained by the chair. In the 1956 session of Parliament for example, only five adjournment motions to consider matters of public importance were introduced but none of them was allowed by the chair.¹ Incidentally none of these motions made any reference to the public corporation.²

The debate on the motion of the Finance Minister that "Mr. Speaker do now leave the chair and the House go into Committee of Supply" is an opportunity for a public corporation to be discussed. The motion is debatable and an amendment or sub-amendment can be added to the original

1. Musolf, Op. Cit., P111.

2. In 1960-61 session of Parliament thirteen motions to adjourn were introduced in the House. Three out of these thirteen raised matters concerning the public corporations - the CNR, TCA and the Bank of Canada. The adjournment motion to consider the proposed lay-offs of CNR employees at the corporation's old headquarters was disallowed by the chair on the grounds that:

- (1) the matter did not involve the administrative responsibility of the Transport Minister as employment and other labour problems were the concern of the CNR management,
- (2) the proposed lay-off was not an isolated event to become a matter of public importance, but a continuation of a particular economising or administrative policy of the management,
- (3) this question would come up before Parliament again on an appropriate occasion and thus would be properly considered at that time. Debates, (1960-61), P2907.

motion. Before the 1955 reforms in the rules of procedure such a debate could drag on for a considerable time. Following the 1955 changes there are now only six supply motions. Debates on each of these motions, with any amendments or sub-amendments must be concluded within two days.¹

The debates in the Committee of Supply itself enable the members to get a penetrating review of the corporation concerned. By tradition Supply debates are the occasion for the airing of grievances and criticism of the government. Technically there is no restriction on these debates and a member can speak any number of times but for not more than thirty minutes at any one time. A member in addition can move a motion to decrease the estimates submitted. Because of the rather loose rules of debate in Committee and the absence of closure, the opposition can delay the consideration of a particular estimate or withhold the one before it for an indefinite period of time. This problem has been further accentuated by a practice developed since the war, which permits a general discussion of the affairs of a particular department during the consideration of the first item in a department's estimates.² Excluding this very general opportunity, debates in Committee of Supply are more or less relevant to the estimates under consideration. Generally speaking these supply debates have been a very effective instrument of parliamentary control over the public corporation. In making this statement one must not ignore the partisan temper of the Committee of Supply i.e. the committee of the whole House minus the speaker and certain restraining rules of procedure, for at this time the opposition is apt to show more alacrity

1. Hopkins, Op. Cit., P41-42.

2. Hopkins, loc. Cit.

in criticising the management of a corporation or government's policy towards a corporation than the back bencher of the Party in power.

Indeed, these debates provide an invaluable opportunity for Parliament to seek clarification from the government about its policy and about the results of operation of a public corporation. For example, during the consideration on the estimates of the Department of Transport in the 1960-61 session, Mr. Horner asked the minister to tell the committee:

- (i) About the new regional set-up introduced by the C.N.R. and whether this may not lead to a situation where there may be more chiefs than Indians in the organisation,
- (ii) as to the consequence of lengthening the section on the C.N.R. which has reduced the number of section men. He was not clear as to the results of dieselisation and why this should cause such changes in the employment figures,
- (iii) he also asked the minister for the net result of the C.N.R.'s \$2 million advertising campaign to win more passengers for the railways. ¹

The Supply debates also provide an outlet for the members' misgivings about a crown corporation. Taking part in the debates of the 1960 CBC estimates, Mr. Johnson (P.C.) said:

People talk of immorality in the C.B.C. I do not say that the expression is correct, I do not suggest that it is in keeping with the facts, but mention was made of this in Montreal and certainly in Toronto. Accusations of immorality have been made against the C.B.C. I am not shocked more than is necessary, but with (sic) members of this house who are the least responsible I say that this business must be cleared up because we have no right to let such accusations be made against the C.B.C. without doing anything about it. If it is true, then severe measures should be taken. If not, then the facts should be set in their true light, and this (sic) for the benefit of the C.B.C. ²

In addition, these debates, being a reflection of the country's feelings or misgivings about a corporation, at times tend to become

1. Debates, (1960-61), P5021.

2. Debates, (1960), P5998.

involved with the personalities within a public corporation. During the 1960-61 session, several members launched a bitter attack on the chairman and president of the CNR who until then had remained rather a non-controversial figure. Many members claimed that the main cause of the CNR's troubles was Mr. Gordon who was described as "inhuman",¹ "inefficient" and an "autocrat" and they demanded his removal. However, much of this outburst against Mr. Gordon was aimed at the past and present government, and he acted as the lightning conductor.² It also reflected the deep seated revulsion of some members towards public ownership.³ When such prejudices or personal aversions are introduced into these debates, they lose their effectiveness as a mirror of public opinion; however very few Canadians would for example, like the CBC to be sold to private interests. Fortunately for Canada there are few M.P.s who subscribe to the idea that public ownership has been a tremendous waste of public money. Nevertheless, such reckless and personal attacks carried out by a small group of politicians against the management of a public corporation, can prove damaging to

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1. Debates, (1960-61), P5024, 5053-54, 6040 and 6044.
 2. The members of the majority party in the House were tempted to criticise him probably because he was an appointee of the Liberal administration. The C.C.F. members had a similar motive supported by their faith that only a Socialist government knows what type of men should head a public corporation. Strangely enough most Liberal M.P.'s came to the defence of the C.N.R. president whom they seemed to consider as their man.
 3. The Montreal Star, July 20, 1961, "Crown Corporations and their Critics". This editorial points to the presence of members on the various committees who regard the existence of public corporations as a manifestation of "creeping socialism". It also points to the presence of a strong lobby in Ottawa to break public support for such bodies as the C.N.R. or the C.B.C.

its morale and detrimental to the users of the services provided by it. Speaking before the 1961 Sessional Committee on Railways, Airlines and Shipping, the CNR president said:

Consequently, may I say that this effort to undermine confidence and destroy respect for the management of the C.N.R. is a most serious matter and is against the public interest as well as the individual interests of all employees of the C.N.R. No organisation can be expected to function properly if confidence in its leadership is steadily undermined. This is particularly true when the organisation is engaged in a highly competitive business, which in its day-to-day operations, requires teamwork of high quality and high morale. The inevitable consequence of a campaign of this kind is to reduce the prestige of the Canadian National Railways in the eyes of its shippers and other customers, and this in turn will adversely affect its business and reduce its capacity to provide employment.¹

Among the specific opportunities available to Parliament, the most important one occurs when a particular corporation has to obtain Parliament's authority for its financial requirements. The Canadian National Railways Act, for example, provides that the board of directors of the company shall present the annual budget of the Company to the minister in charge who with the concurrence of the Finance Minister will² table the budget before Parliament. At this stage a subtlety has to be described. The budget that has to be laid before the House after proper endorsement by the governor-in-council is defined to include income deficits, capital expenditure, refunding of maturing securities and

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1. Sessional Committee on Railways 1961, Proceedings P294.
Mr. Gordon further told the same Sessional Committee that the C.N.R. was having difficulty in attracting qualified men to its services because of this hostile attack on him and his administration. P298.
 2. Canada, Statutes 1955, 3-4. Eliz II Vol. 1, Chap. 29, Section 37 (1), (2).

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working capital. In other words there is no statutory necessity for the CNR to table its operating budget. But since every year it ends up with a deficit, the management sends along with the capital budget, the operating budget as well. This is done to enable Parliament to examine the overall budget and be able to understand more clearly where and how the deficits have occurred before it votes money to cover the deficits.

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The debate on the bill to authorize the CNR to spend a specified amount of money on its capital outlay, and to enable the Transport Minister to advance a loan to the company to meet its income deficits, gives Parliament a good chance to examine the corporation and its policies. It must be stated at this stage that the capital budget, after proper scrutiny by the Treasury Board, is forwarded to the Sessional Committee where the management is once again asked to explain its capital requirements.

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After the CNR's budget has been approved by the

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1. Ibid., Sec. 37 (3) (a) to (d).
 2. As a matter of interest the operating budget of the Canadian National bypasses the scrutiny of the Treasury Board. It also does not require any endorsement by the governor-in-council but is sent straight to the Sessional Committee on Railways, Airlines and Shipping where it gets a close examination. It only receives proper attention in the House following the report and scrutiny of the Railway Committee.
 3. It must be noted that close consultation is carried out between the Board of Directors of the CNR and the Treasury Board on the capital requirements of the company, before the Treasury Board gives its advice to the government. However, this consultation is on a departmental basis and there is no public scrutiny of the budget at this time. See Mr. Gordon's statement to the 1961 Railway Committee P390 for the procedure the CNR budget follows.

Sessional Committee it is introduced in the House by the Minister of Finance as a financial resolution. Following the debate at the resolution stage, which is usually of a general nature, the motion is referred to the Committee of the Whole. From then onwards the bill follows the usual course and takes its legal form in the Canadian National Financing and Guarantee Act; an Act which is renewable on a yearly basis. It is natural that a debate of this type exercises an all round control on the public corporation. It is not only the government which is questioned on matters of finance and management but also management, through the Railway Committee.

Debates on the bill to authorize the CNR certain funds for its capital projects have been, as a rule, very comprehensive indeed. Members can discuss any matter about the CNR. For example, one member raised a question about the CNR's employment policy and criticised the government for being adamant about the lay-offs of the cleaning staff at the old CNR head office.¹ Some opposition members were persistent in their demand that the House should know the man who was to be appointed in charge of spending a hundred odd million dollars. Against this a government supporter argued that the consideration of the CNR Financing Bill was a routine matter and provided no special reason why the House should know about the future CNR directors.² The question at this stage was not who should spend the money voted but why and how much public money should be voted.

1. Debates, (1960-61), P7750.

2. Ibid., P7878.

A motion to amend an act governing a public corporation provides an opportunity for Parliament to concentrate on the problems facing the corporation; but it is bound to happen that in a body like Parliament some members are tempted to devote unnecessary time to small points. For instance, during the consideration of a Bill to increase the number of directors of the CNR from seven to twelve, the House spent considerable time in arguing about the danger of keeping the directors, whose terms had expired, still in charge of the management of the CNR. The opposition in particular, criticised the government's reluctance to disclose the names of the new directors and claimed that it was having a bad effect on the morale of the CNR employees. They succeeded in getting a statement from the Minister of Transport that the new directors ~~would be~~ appointed after the amendment to the act was accepted by Parliament. However this debate also thrashed out more important managerial problems¹ around the question of who should participate in decision-making.

Mr. Fisher had doubts as to how much voice the Board of Directors of the CNR had in the policies of that corporation, and he demanded that they should be called in for examination by the Sessional Railway Committee.² Further he told the House that the country was becoming indifferent towards the railways, and the continuing deficits of the Canadian National must raise doubts in the minds of some members about

1. See the Debate following the motion of the Transport Minister P4844 ff 1960-61 Debates.

2. Debates, (1960-61), P4846.

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the efficiency of the management. A former Minister of Transport expressed his disagreement with the proposition to increase the size of the CNR board, on the grounds that the country was having one of its acutest unemployment periods, and the CNR deficits had already struck a new high water mark.² During the discussion of this bill at subsequent stages the Canadian National received a detailed examination of its financial and managerial problems. Such debates by virtue of being concerned with specific facets of a corporation, tend to follow a well delineated course. The chair is particularly strict in keeping members on the right track, but there are no hard and fast rules as to what matters can be raised during this kind of debate, especially in a case like this where the proposed amendment concerned the management of the corporation.

Another specific opportunity for Parliament to discuss the corporation occurs when a corporation is required to seek parliamentary approval for its expansion programmes. The Canadian National Railways, for instance, is required to obtain statutory authority for all its

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1. Speaking on the bill Mr. Fisher criticised the tactical approach of the C.N.R.'s president: "I pointed out this afternoon that for ten years he has been coming before committees and in the past the best M.P.s in the House have taken him on and he has always been able to confound them. He always makes an annual plea about free enterprise, that the C.N.R. is to be treated as a private corporation. Then he always manages to put over a homily about how you cannot really compare the C.N.R. and the C.P.R. Then we get another little homily that certain information cannot be revealed because that will impede the competitive position of the C.N.R. Quite frankly, Mr. Gordon may consider that I have a great deal of crust and gall and am probably wickedly irresponsible in saying that I have grave doubts about the management of the Canadian National Railways. The fact remains, however, that I have this suspicion. We have recurring large deficits". Debates, (1960-61) P4855.
 2. Ibid., P4844, 4901. Mr. Chevrier.

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branch line extensions where they exceed six miles in length. The usual procedure in applying for parliamentary approval is for the Minister of Transport to move a motion that the House go into Committee of the Whole to consider a measure to authorize the construction of a certain branch line within a prescribed territory. The measure also stipulates the amount of money the company can receive as a temporary loan out of the consolidated revenue fund, as well as giving the authority to issue securities to finance the expenditure. Further the governor-in-council gets authority to guarantee such securities as the company issues to meet the expenses as fixed by the Act in this connection.

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The debates, following such a resolution, through the successive stages, enable Parliament to scrutinize the financial implications and commercial prospects of the proposed construction. The Minister of Transport will generally inform the House in a general statement as to the necessity of the project. The members of the opposition will be

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1. Statutes of Canada (1955), Chap. 29, Sec. 22 (1).
But even for the construction or extension of railway lines of less than six miles, the National Company has to seek the approval of the governor-in-council and the location has to be determined by the Minister of Transport. See sub-section (a) loc. cit.
 2. It will help illustrate this point, if the resolution tabled in the House of Commons in 1960-61, by the Transport Minister is copied here. The Minister moved a resolution: "That it is expedient to introduce a measure to provide that the C.N.R. Railway Company may construct a line of railway from a point at or near mile 72 of the Kiark Falls subdivision to Mattagami Lake in the Province of Quebec, and to authorize temporary loans to the Company out of the consolidated revenue fund, not exceeding \$9,660,000 to enable the work of construction and the completion of the railway line to proceed forthwith; and to authorize the company to issue and the governor-in-council to guarantee securities to finance the expenditures upon the said line up to the said figure". Debates, (1960-61), P2021.

particularly interested in knowing as much as possible about such project. Following the statement by the Transport Minister, Mr. Balcer, a member of the opposition (Mr. Chevrier) asked a few questions about the project. He said:

Now, coming back to the bill before us, quite a number of questions occur to me. I wonder whether the minister would be kind enough to give some attention to them later. When he made his statement on the principle, earlier this week, he did not give any details as to the financial soundness of the project. Earlier today, in his statement before the second reading of the bill, he made only brief reference to the matter.

Accordingly, I wonder if it would not be possible to have further details on the matter, because if I remember well, when in similar circumstances the question of building a similar branch line came up, the minister tabled a very comprehensive statement of accounts indicating the revenues which the National Railway expected to receive on one hand, and on the other, the expenses for the construction of the line, the depreciation and maintenance costs, and finally, the possibility of any surplus.¹

During the discussion on the aforesaid measure Mr. Chevrier also asked the Minister of Transport to tell the House whether there was any difference between the policy of the Canadian National and the government of Canada with regard to branch line construction. And if there was such a difference, what would happen where the federal government decided to go ahead with the construction of a particular branch line

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1. Debates, (1960-61), P2105. Later Mr. Chevrier enumerated his questions as:
1. The financial position of that line according to the estimates prepared by C.N.R. officials.
 2. The volume of freight added to the C.N.R. because of this construction.
 3. To what extent and in how much time will this project be self-sustaining?
 4. How will the cost of this branch line compare with other branch lines of like nature?
- Debates, (1960-61), P2105-06.

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which the Canadian National thought to be uneconomic. The Transport Minister Mr. Balcer, closing the debate on the second reading of the bill explained the government policy on branch line construction thus:

There is no doubt that the present project is self-sustaining; therefore the C.N.R. will not need any subvention and the government will not have to assume part of the construction costs as happened in certain cases, especially for the Chibougamau railway. As I said, each of those cases must be studied on its own merits. It is not always possible to judge or decide on the need for a railway simply on the basis of whether it is self-sustaining, and whether it will be so at once. It is often necessary to extend rail service to certain areas in order to foster their development. In many cases, and for a few years, a railway is not self-sustaining. Then the C.N.R. asks the government for a subvention to help cover the deficits of the first years.

Besides, I believe that my Hon. friend found out that the same practice has been followed in the past and on many occasions. ²

Throughout this discussion of the opportunities and methods of control, the discussions on the annual reports of the public corporations have been omitted. This omission was more or less deliberate because of the special practice prevailing in Canada. Unlike the United Kingdom, where Parliament has always seized on the opportunity to debate the contents of these reports, the Canadian House of Commons has usually left the job to its various committees. In the House itself one very rarely hears these reports being mentioned. Although both the Canadian Broadcasting Corporation and the Canadian National Railways are required to submit, through the ministers in charge, annual reports

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1. Debates, (1960-61), P2105. Mr. Chevrier explained that in the past the Canadian National had undertaken construction of branch lines on behalf of the government and, as such there were two policies. He, however, wanted to know if this distinction would continue in the future.
 2. Ibid., P2107.

of their operations, the House generally contents itself with a ministerial statement that the report has been tabled.¹ However, this does not prevent the ministers concerned, if they wish, from summarizing the contents of such reports on an appropriate occasion. For example, during the consideration of the CBC estimates in 1956, the Minister of National Revenue summarized the contents of the annual report of the corporation and expressed his hope that this would lead to further discussion on the contents of the said report.² The members, on their part, have used the contents of these reports on various occasions to illustrate their points of view or for criticism of a corporation.

Such a summary or passing references do not exhaust the interests of the members in seeking further clarification from the government and the management about a public corporation. The best place for this is the committee of the House appointed for such a purpose. The affairs of a public corporation will get adequate attention when the motion to appoint a select committee to examine the report and accounts of a corporation, is introduced in the House by the respective minister. This motion is debatable and allows the members to raise any questions concerning the corporation to be reviewed.

The government usually has not permitted very general or very detailed discussion to take place on this occasion. As far back as 1944, Prime Minister Mackenzie King objected to the discussion of earlier Committee reports on broadcasting as they were not relevant to the

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1. Among the other occasions when the House will hear about these reports are on the motion to appoint a select committee to go into their contents and when the committee's reports and recommendations are received by the House.
 2. Debates, (1956), P6599.

motion. He said:

The motion before the house is to set up a committee; it is not to discuss the report of a previous committee. I would say that the discussion should be confined to the motion. Earlier in the week we spent two days trying to get a committee on war expenditures appointed. Time was taken up, not discussing the merits of having such a committee appointed but in discussing a previous report. I do not think the time of the committee should be further consumed in that way at this time. There will be an opportunity to discuss the whole radio broadcasting question in supply or on other occasions, but in the setting up of a committee I submit that the discussion should be limited to the motion.¹

The opposition did not agree to the suggestion of the Prime Minister on the grounds that it would make the debate on the motion meaningless.

Mr. Hanson of the opposition argued that such a restricted debate would deprive the members, who are not going to be on the proposed committee,² the chance to express the views and suggestions they represent. Another member, Mr. Hansell, expressed a similar view,

that when a committee is being set up, the non-members of parliament have the right to express in parliament which is supposed to be the voice of the people, what they expect of our government-owned broadcasting corporation, and of broadcasting in general in Canada, in order that the committee, when set up may take into account the matters that have been brought before parliament by the people's representatives.³

Despite the limitations that are generally accepted as accompanying such debates, the House gets occasion to hear grievances or criticism⁴ about the operation of a corporation. The role of the speaker in

1. Debates, (1944), P866.

2. Ibid., P867.

3. Loc. Cit.

4. For example, during the debate on the motion to appoint a select committee on broadcasting in 1961, Mr. Simpson (from Churchill) pointed to the need of C.B.C. T.V. facilities in certain parts of Northern Manitoba and urged the government and the C.B.C. to take action. Another member criticised the C.B.C. for becoming an instrument in the hands of subversive and anti-Canadian elements in the country by according its broadcasting facilities to anyone without adequate safeguards. Debates, (1960-61), P1492-94.

determining the scope of such debates is very significant. For example, in 1944, the chair entertained the objection raised by the Prime Minister as to the scope of discussion on such a motion.¹ Again in the 1960-61 session of Parliament the chair asked a member to refrain from discussing specific aspects of management at lengths more than were justified by the immediate purpose of such a debate - whether or not to appoint a select committee.² Much will also depend, as regards the scope of these debates, on the wording of the motion. While the chair has been strict in restraining members from discussing matters of minute detail, it has also discouraged them from going too far afield. For example, during the discussion on a motion to appoint a Sessional Committee on Railways, Airlines and Shipping, one member asked the government to state what was its national transportation policy. The speaker brought the member to order and ruled:

In my view he is straying away from the subject matter of the motion before the house. This motion does not permit, to my mind, a general discussion on the problems of transportation or on all problems which concern the C.N.R.

Generally speaking, on a motion to set up a committee the only questions which are relevant are those mentioned in the motion and especially the expediency of setting up a committee. I do not wish to be too restrictive, but I leave this suggestion with the hon. member.³

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1. See Speaker's ruling on, Debates, (1944) P870.
 2. The chair also expressed the view that if the House was to occupy itself with minute details about a corporation, there would be no need for a committee at all. "As I have said earlier in this debate and on previous occasions, and this was also said by my predecessors, the discussion of matters which will properly come before the committee is relevant only by way of illustration of the need for the committee, or the desirability or otherwise of proceeding with the committee." Mr. Speaker. Debates, (1960-61) P1482.
See also P2470 Ibid., for a similar ruling during the discussion on the motion to appoint the Railway Committee.
 3. Debates, (1960-61), P2468.

One would tend to conclude that the debates on this type of motion are quite restricted in scope and content. The chair is particularly active in keeping the gamut of these debates within reasonable limits. The various rulings quoted so far show an awareness on the part, at least of the chair, of the different opportunities enjoyed by Parliament to exercise its influence on the public corporations.¹ There ought to be no occasion where the House swerves off its course while discharging the functions of a controlling and enquiring body. If the members were allowed too much latitude in these various opportunities there would be a tremendous waste of time and energy both for Parliament and the government. Moreover, much of the effectiveness of the discussions as instruments of public control would be vitiated.

(3) PARLIAMENTARY COMMITTEES:

This brings us to the third technique of parliamentary control - the various committees of Parliament, appointed for the express purpose of obtaining a complete and clearer perspective of the administrative mechanism. It would not be out of place here to discuss briefly, the main "raison d'etre" of the parliamentary committees. The most common reason is that they help in what Arthur Meighen once said, "spreading a little wider the heavy burden that more and more devolves upon us as the Parliament of Canada"; and for enabling us "to secure from the hon. members what they are capable of doing in the exercise of their functions as watchdog of public interests".² Secondly, experience has shown that committee deliberations are more intimate, instructive and less partisan

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1. See Chair's remark on P2470 of the 1960-61 Debates.
 2. Debates, (1921), P1590. Italics mine.

than discussions in the House.¹ Also a committee provides a valuable opportunity for the management of a public corporation to appear before that body to explain its programmes and plans in greater detail.² Thus a committee entrusted to examine the operations of a public corporation will help the management "to establish themselves with the public more than they can do by any other means to which they may resort to inspire or to obtain public confidence".³

A parliamentary committee, although a useful innovation, was not intended to dictate but to educate both the government and Parliament in the formulation of policies.⁴ The parliamentary committees in Canada have played a very active role as instruments of parliamentary control over the public corporations. As we will see presently, the two corporations under study have greatly benefited from the deliberations and recommendations of the Broadcasting and Railway Committees. In fact, the government as well as Parliament drew heavily upon the suggestions and recommendations of the various parliamentary committees on

1. Ibid., P1188.

2. By tradition the board of a public corporation cannot appear before Parliament itself. Its official spokesman in the House - the minister in charge - is not always a very useful agent to explain to the people's representatives its problems and difficulties. A direct confrontation between the management and the M.P.s as such, serves a useful purpose in this respect, through the instrumentality of the Committees.

3. Debates, (1921), P1581.

4. During the debate on the motion to appoint a committee on National Railways, one member outlined the role of such a committee as "the instrument for disclosing full information that is much needed, all of which would go to inform parliament, to educate the country and thus gradually evolve a sound public policy". Ibid., P1580.

broadcasting, with regard to future policy and administration in this developing field.¹ Likewise over the years, the Sessional Committee on Railways, Airlines and Shipping has proved very useful both to management and government as a means of improving organisation and formulating policies.

These parliamentary committees can be divided into two groups. Firstly, a public corporation can be examined by the standing committee on Public Accounts and secondly by a special or sessional committee.

The Standing Committee on Public Accounts as its name suggests is a committee of the House charged with the function of examining the public accounts of Canada. It dates back to the first Canadian Parliament after Confederation. After a somewhat vigorous start, the Committee fell into a state of inaction and ineffectiveness. For many years it did not meet at all, and much of its usefulness as an instrument of public control, especially over public expenditure, was lost because of "its large size, its composition, its partisan attitude,² and the infrequency of its meetings".

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1. For a brief account of some of the recommendations adopted by the government, see Chapter I of this work.

Speaking of the merits and defects of a parliamentary committee Professor Ward summarised them thus: "At their weakest, the committees could degenerate on occasion into personal vendettas, as did the special committee on the Civil Service Act in 1938; and they could bow too readily to ministerial influence, as the committee on publicly owned railways and shipping tended to do after 1936, in the face of the formidable C.D. Howe. At their best, the committee, which was frequently unanimous, provided Parliament with information on obscure topics, and frequently made critical findings and recommendations which obliged the government to justify or alter its position".

Norman Ward: The Public Purse: A Study in Canadian Democracy (Univ. of Toronto Press 1962), P177.

2. Quoted in Musolf: Op. Cit., P117-18.

However, Professor Ward in his recent book is of the opinion that the Committee on Public Accounts has been gaining in importance as an active instrument of parliamentary control since the early '50's. The Committee instead of providing a protective shield to the government as it has been suspected of doing up to now, especially where there was a large government majority in its membership, has seriously addressed itself to the task of a careful scrutiny of public expenditures.¹ As a result it has recaptured the lost confidence and respect of the House and more especially of the opposition. The Diefenbaker government since its ascent to power has tried to give it more semblance of independence. Since 1958 a new precedent has been set in that the Committee is now chaired by a member of the opposition, a fact which has gone a long way to restore the general confidence.

In spite of its infrequent sittings the committee on Public Accounts has not been completely ineffective. By tradition the committee has gathered to itself an aura of prestige and influence and its reports have generally been given wide publicity in the press and have drawn respectful consideration from the government and its various departments.² The Public Accounts Committee has shown interest in the problem of public control over the public corporations. It was on its suggestion that since 1952 reports and accounts of all Canadian public corporations are included in the second volume of the publication - "Public Accounts of Canada". The Committee, however, was aware of the limitations in this and suggested that the investigation of accounts and operations by select

1. Ward, Op. Cit., P206-7 and P223.

2. Musolf, Op. Cit., P118.

or special committees should be extended to more and more public

¹ corporations. Above all the Auditor-General audits the accounts of all except seven public corporations. This enables the committee to utilize the experience of the Auditor-General - a procedure unknown in Great

² Britain. The Financial Administration Act (Part VIII) 1951 enables the

Auditor-General of Canada to be appointed either as an auditor or Joint

³ Auditor for any Corporation. Further, the Auditor-General usually adds his prefatory remark to the general financial statements about the public corporations, contained in the second volume of the Public Accounts of Canada. All this puts the Canadian Auditor-General in a very different position from his British counterpart vis-a-vis the public corporations and committees.

The Public Accounts Committee of Canada therefore, is possessed of great potentiality as an instrument of public control over the corporations. However, it has not been very aggressive in this field, for three reasons. Firstly the Committee has shown its faith in and appreciation of the ability of the Auditor-General. Secondly, it has been realistic in acknowledging its functional limitations and its lack of penetration as compared with the Select or Special Committees with their clearer terms of reference. Finally, the committee has shown its preference for avoiding any major upset of the managerial autonomy symbolised in the

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1. Standing Committee on Public Accounts, Minutes of Proceedings and Evidence, (1951), 2nd Session, Pl11.
 2. It may be added that in Britain there have been several suggestions to provide an expert as adviser to the various Select Committees on Nationalised Industries in place of the Auditor-General, who cannot examine the books of the British Nationalised Industries. It has been said that without an expert's assistance such committees cannot effectively exercise control over the corporations.
 3. Statutes of Canada, (1951) George VI, Chap. 12, Sec. 77 (2).

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public corporations.

We shall now turn to discuss the impact of special or sessional committees of the House on the public corporations. Canada has been using this form of committee investigation for a few of her public corporations for a long time. Because of the preoccupation of the House with legislative business in the main, it has generally had to rely on its sessional or select committees to examine the operational side of a corporation. Since the present study is confined to the CBC and the CNR, we shall concentrate on the workings of the Sessional Committee on Railways, Airlines and Shipping and the Special Broadcasting Committee.

The Sessional Committee on Railways has been very regular in its annual meetings. It has shown a remarkable degree of endurance in the face of the stresses and strains of changing governments in Ottawa during its life of thirty-six years. In the main it has been bold in its criticism both of management and the government with the result that many useful and important changes have been introduced. On other occasions it has demonstrated a degree of deference and complacency which has led many to doubt the point of it meeting at all.

This Committee has also provided a valuable forum for the railway management and the members of the Committee. The management for example has used these committee appearances to push its claim for a greater share of government business than is given to the CPR. The members have, besides communicating the wishes of their constituents on railway services, used the committee meetings as a media of sales promotion for a particular commodity of their constituencies.

1. Musolf: Op. Cit., P120.

2. Ward: Op. Cit., P261-62.

The Sessional Committee gets its authority and terms of reference for the investigation of the CNR through a resolution passed by the House. The House has been very conscious of the fact that the Railway Committee is a subordinate agency and should not in any way appear to be more powerful than the House itself. However, due to the fact that the committee has a much narrower field to survey and because of its different characteristics from those of Parliament, it has been able to give much more careful attention to the problems of the Canadian National Railways. Through the years a practice has been established of members of Parliament raising any matter affecting management in committee, rather than in the House. For example in the year 1952 members tried to discuss the transfer of a CNR hotel manager from Winnipeg to Brandon. The opposition insisted that the Transport Minister must provide the necessary information about this transfer, which they suspected, was¹ made following political pressure from outside the management. The Transport Minister refused to deal with the question in the House as it concerned managerial matters which were outside his control. The Minister, however, suggested to the interested member that he raise his question in the sessional committee which would have the opportunity to examine the management personally.²

This seems to leave the impression that a member of the committee is at liberty to raise any matter relating to the administration of the corporation. To some extent this is true, but one must remember the

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1. For full story of the transfer of Robert Pitt, Manager Fort Garry Hotel, Winnipeg, see the Minutes and Proceedings of the Sessional Committee on Railways, etc. 1953, P90-147.
 2. Debates, (1952), P657.

operating limits of these committees. Firstly, all such committees are creatures of the House and are entrusted with certain specified functions, which they cannot exceed. Secondly, even within their permitted field of investigation, the committees are obliged to accept the right of the management to refuse answers to questions which may, in the opinion of management, be prejudicial to the interests of the business.

The sessional committee on Railways, has usually shown a fair degree of understanding for the special problems inherent in a corporate form of management. During the discussion in the 1953 sessional committee of the "Pitt incident", one member tabled a resolution asking for papers and correspondence from the CNR management, concerning the transfer of Robert Pitt from Winnipeg to Brandon. The chairman of that year's

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1. During the committee investigation of the C.N.R., one member wanted to know the price C.N.R. was paying for charcoal. To this, the president of the railway replied: "It has been clearly established practice, I believe, through this committee, that Canadian National Railways are not required to divulge the prices at which it buys materials which are purchased by tender. It would obviously be unfair to the people who tender, and it would make it impossible for us to get competitive bids".

Mr. Gordon to the 1954 Sessional Committee on Railways, P84-85. Again in 1959, Mr. Gordon reminded the committee of management's right not to disclose facts which may prove harmful to the C.N.R. Mr. Gordon explained to the committee the cases where management has refused to provide the committee with information. He enumerated them as:

- (i) in cases where such information disclosed would constitute a breach of confidence or violation of privacy affecting those doing business with the C.N.R.,
- (ii) such information as that from the personal files of officers and employees,
- (iii) information prejudicial to the competitive position of the C.N.R.,
- (iv) information tending to restrict the ability of the C.N.R. to buy or sell on advantageous terms. See 1959 Sessional Committee on Railways, P197-99.

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committee ruled the resolution as out of order. The committee has also prevented its members from indulging in an inquisition which does not in any way contribute to the accountability of public corporations. The members of the committee, individually, have also shown a tendency to raise very trivial matters affecting the CBC or the CNR in the respective committees. In the 1959 Railway Sessional Committee, for example, the chairman requested the members

to take as little time of the committee as possible in making speeches which would indicate our desire to tell Mr. Gordon how to run the railroad. We are here to enquire from him how he is running it. I think our duty is to ask questions to find out, under our orders of reference, and to investigate the present situation rather than to go into fixed policy or tell the management how to run the railroad. ²

The chairman and president of the Canadian National Railways, Mr. Gordon, also told the Railway Committee not to occupy itself with the minutest details of operation. He explained to the Committee how much stress this annual appearance before the Committee was causing him and his officers and thereby undermining their ability to give time and thought to the actual administrative problems facing the organisation. ³ He

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1. See Minutes and Proceedings of the Sessional Committee on Railways, (1953), P107.
 2. Sessional Committee (Railways, etc.), (1959), P83. Again in 1961, the members of the Committee were reminded of their exact business in the committee - See Minutes and Proceedings of the Sessional Committee on Railways, (1961), P202.
 3. Sessional Committee on Railways, (1959), P210-11. Mr. Pickersgill also had a similar view about the job of the Special Committee on Broadcasting when he criticised some members of the committee for raising trivial matters of administration. By doing so the committee was in a way usurping the rights and functions of the Board of Directors of the C.B.C. The main task of the committee he said, was "to review the work of directors, and not to attempt to run the administration or to go into all the details of the administration". See the 1961 Special Committee on Broadcasting, P528.

submitted it to the committee that their main job was to tell the management of the CNR if it was efficient or not. At times members of a committee have found justification for their penetrating queries about a public corporation, for example in its heavy outlay of public funds. In the 1961 Special Committee on Radio Broadcasting one member explained why it should investigate CBC operations minutely, in these words:

It seems to me that one of the reasons for the committee being in existence is to investigate whether or not the money that is used from the public funds is justified, and the cumulative total seems to me rather meaningless. Unless in certain areas we can get specific information the whole point of our enquiring is lost. It means little to me that it cost \$26 million to run the C.B.C. in a certain area. I know there are other people checking the expenses of the C.B.C. from an auditing point of view but, after all, it is our duty to justify or not justify the general expenses for the expansion of the C.B.C. That presents a very difficult problem for us, and may be the importance of the line of questioning pursued by Mr. Pratt should override the sensitivity and minor difficulty which it might cause.¹

As regards the deliberations of these committees it is rather difficult to generalise on the course they take. However one attitude permits generalisation and that is that members of the committees as well as the House are conscious of the relatively wide latitude given them to discuss a question they wish to raise about a corporation.² One also must not forget the partisan nature of these committees. Though the party lines are less distinct there, they are not totally non-existent, for the opposition members on a committee feel tempted to look for political gains out of the committee's deliberations. At times their penetrating investigation of a corporation is not implemented as a corrective move, but as an attempt to expose the

1. Special Committee on Broadcasting, (1961), P515.

2. See Debates, (1960-61), P4852.

government of the day. Thus in the 1953 Railway Committee, the opposition members were rather tenacious in their charge that there had been political interference in the CNR management. The committee examined the president of the CNR for six hours about the transfer of a hotel manager, with a view to discovering political pressure for this action. In all such cases where the discussions seem to point to a censure of the government, the members of the committees will rally under their party banners. Almost always all such committees have a majority of members supporting the government. Any move therefore intended to censure the government will be voted down. On other occasions, the committee deliberations are coloured by the personal predilections of the members. For example, a few supporters of the government criticised the management of the CBC and the CNR in the last session of the House and in the two committees. They were suspected of being under the pressure of lobbies determined to discredit public ownership,¹ and to see these corporations as manifestations of "creeping socialism".

Within these limits and despite a few drawbacks the broadcasting and railway committees have been useful adjuncts to Parliament for enforcing the public accountability of the two corporations reviewed in this study. In spite of the frequent complaints by management against the vituperative desire of some committee members to prod their way into trivial matters, the general mood prevailing in committees and in management, has been that of cooperation and mutual understanding. Both committees have expressed their understanding and appreciation of

1. Cf. The Montreal Star, July 20, 1961 (ed), "Crown Corporations and their critics".

the difficulties faced by the management of these two corporations. The two committees have been asked to study the capital and operating budgets of the CBC and the CNR. In the former case, the committee has been able to utilise the expert services of the Auditor-General of Canada who audits the accounts of the CBC.¹ The capital budget of the CNR which requires parliamentary authorization receives a careful examination in committee where the management is on hand to explain any matter raised.² The committee members on their part seem to be aware of the benefit committee investigations have brought the country and the corporations as a whole. Speaking in the 1961 Sessional Committee on Railways, Mr. Horner explained the useful contribution that can be made by the committee. He said:

We can bring new life, a fresh approach and a fresh viewpoint which may be of assistance to the president and his staff. They may be the best staff of any railroad system in the world, but they are not perfect, they are not omnipotent and they are not omniscient, I say that the railroad is gaining out of these committees,

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1. The Auditor-General was called as witness by the Special Committee on Broadcasting when the C.B.C. finances were under committee investigation. The committee asked the Auditor-General's opinion on the present system of financing the public broadcasting services. The Auditor-General, in principle, expressed his approval for the present method through which the C.B.C. gets needed funds.
Vide Minutes and Proceedings of the Special Broadcasting Committee, (1961), P741.
 2. Professor Ward expressed his doubts as to the effectiveness of the Sessional Committee as an instrument to reinforce Parliament's control over the Canadian National expenditures. He thought that although the Committee, as one of its tasks has been entrusted with the scrutiny of the C.N.R. budgets, it generally has approved all such estimates submitted to it. He also discovered that the Committee, while occupying itself with the task of examining the C.N.R. budgets, has generally used these occasions more to discuss local aspects of the corporation than the overall financial problems of the Canadian National Railways. Ward: Op. Cit., P261.

that instead of complaining about the work you have to do to prepare for this committee - and this is the only one you make in the year - you should be glad that this committee is a functioning committee, a good committee and a worthwhile committee.¹

To conclude this discussion on committee investigation, one might add that such investigations are generally inspired by the intensity of interest shown by the members of Parliament in a particular affair. The ultimate cause of such interest may be either in the members' greater understanding of a certain administrative or policy problem, or may very well be created by the pressure of public interest. In either case the result is the same.

The fact that both the CBC and the CNR and more especially the latter, have experienced almost incessant committee investigations proves both the factors mentioned. The CBC because of its importance as an instrument of communication and information has generally raised the greater interest in the House. In a society based on the principles of freedom of thought and expression, the individual M.P.s have stood as watchdogs to see that no single group or party gets an undue advantage from the use of the mass media. Set against this the Canadian National Railways has provided a more tangible form of service, and has attracted equal interest both from inside and outside Parliament.

1. Minutes and Proceedings of the Sessional Committee on Railways, Airlines and Shipping, (1961), P302.

SUMMARY AND CONCLUSIONS

The present study reveals that the growth of public ownership in Canada has been influenced by both pragmatic and national considerations. It was adopted in the railways and broadcasting as the best possible solution to the problems of the time. That the well established CPR was left alone to operate in competition with the CNR is an indication of the pragmatic basis on which the public enterprise was established. Underlying this dualistic arrangement were elements of "laissez-faire" traditionalism. As we saw in the chapter on the development of public ownership, the country abhorred the idea of a monopoly in the operation of the railways, be it a private or a public one.

The situation in broadcasting was different in that public ownership was adopted not to save the collapsing private railways, but to further develop and supplement what private broadcasting had already accomplished. Nor was public broadcasting launched as a competitor to the private operators but as a means to ensure a distinctly Canadian content in programming with the help and co-operation of the private stations. In the actual operation, public broadcasting was seen as serving the national interest and was not expected to show any commercial inclinations. The Canadian National, on the contrary, was expected to pay its way, despite the fact that its formation as a public corporation was in large measure due to its complete failure to

show any profit as a private enterprise.

To the general question of public ownership in Canada, the country's two major political parties - Conservatives and Liberals - have disliked the idea of being doctrinaire in their approach. The Conservative Party which is generally thought of as the party of free enterprise, has been one of the main contributors to the growth of public ownership in Canada. The Liberals, though displaying greater readiness to accept public ownership in theory, have forcefully denied the label of a public enterprise party.

One idea that runs like a thread through the theory of public business and is not very healthy considered from the point of view of the public interest, is to see public enterprise as subservient to private ownership. Suggestions have come from this school of thought that the state should undertake exploratory work in new areas of economic development, develop them and once they are on their feet, hand them over to private business - in essence a plan to subsidize private profits from public funds. This type of approach to the problems of ownership suggests an underlying belief that prospects of profit are more efficiently exploited by private enterprise, while the role of the state is to provide large capital outlays and subsidize essential community services that run at a loss. This same belief sets efficiency in false opposition to the public interest as if they were incompatible. Yet the problem is rather one of working out a balance between these two opposites.

However, the trouble does not end here. Once the state is forced to assume an unprofitable undertaking, complaints begin to pour in that the public is bearing the bulk of cost. This point is illustrated in the history of both the CBC and the CNR. Over the years it has been a common complaint that these two corporations are costing the taxpayers a fortune, yet there is little realization of the difficult conditions under which they operate. It is true that the Fowler Commission on Broadcasting recommended the CBC to search for more of its profits from the advertiser, but the increasing number of private radio and television stations have tended to erode the prospects of the CBC in this direction. As for the Canadian National and its old rival the CPR, both now confront the increasingly fierce challenge and encroachment of the fast growing road and air transport services; above all both continue to operate under much stricter statutory limitations (reminiscent of the era of railway monopoly) than any business can profitably bear. The MacPherson Royal Commission on Transportation pointed to this anomalous situation thus:

The competitive position of the railways has been seriously weakened, we are convinced, because of the burden which the railways continue to carry as a legacy from the monopolistic environment of the past. It is a burden which, in our view, derives in part from public policy and in part from policies pursued by the railway industry. This burden, which bears upon the plant, the rate and the regulatory structure within which the railways operate, prevents them from adapting fully to the new competitive environment and must be lifted if the railways are to take their

place in a transportation system which adequately reflects the needs of our Canadian society.¹

Another important problem that has been discussed in this work is that of the most efficient form of management for the public corporation. The departmental model of administration has not found much favour in Canada. Different arguments have been advanced against it of which the most common is that state owned business is different from other state entities and is most similar to a private enterprise. Consequently, that form of management ought to be adopted which has worked best in private business. A second and more controversial argument has been that state business should be insulated from political interference and this can be best achieved by entrusting the management to a body outside the departmental orbit. The difficulty with this line of argument is that public owned business cannot be divorced from politics in the same sense as can private business. The very adoption of public ownership brings politics into such business. Of course, the distinction can and should be made between unhealthy political interference and the inevitable political control that follows the moment the public interest is involved. But the same argument can equally well be put in favour of the civil service administration. Once it is accepted that political concern (if not interference) is inevitable in a publicly owned business then there can be no excuse for the situation where this concern has to operate in the dark without adequate public knowledge or discussion.

1. Report, March 1961, Vol. I, P28.

Thirdly, a typically Canadian argument put forward in support of the principle of corporate independence has been that a state enterprise, operating in competition with a privately owned company, should not be asked to make public more than its rival does to its shareholders. Any excess in the quantity or quality of information that is available to the public about a public business, will seriously damage the competitive nature of that enterprise. Although this argument appears more convincing than others, it does not justify the veil of secrecy under which the country and Parliament are forced to live in regard to the public enterprise, more especially when the enterprise in question is subsidized out of the public purse. Further, the argument is spurious since rivals in business generally do know about each other and similarly it cannot be applied to a public enterprise which is non-competitive. The crux of the whole question is that the corporate form of management seems to provide a compromise between on the one hand, complete independence from political control to ensure that objectives (decided by political processes) are achieved without unnecessary political interference and, on the other, complete dependence on political control to ensure that no objectives are achieved without full political discussion.

The question of accountability and the means of enforcing it have also been given due consideration in the present study of the CBC and CNR. Canada seems to have an implicit faith in the theory that competition provides the best safeguard of the public interest.

Nonetheless, the question of public regulation and control over the public corporations has not been neglected. The various incorporating acts have taken due care to ensure that the chain of accountability is not broken with the adoption of a corporate form of management, and consequently, the two corporations under review are subject to a very elaborate system of control by the government and ultimately Parliament. Unfortunately, Parliament has not been generous in believing in the bona fides of either the government or the management, both of which in the last analysis are subject to parliamentary mandate. Ministers at times have been tempted to use "behind the scene" tactics to influence management, with the result that Parliament's field of perception vis-a-vis the public corporations has been unhealthily one-sided. The real problem is not so much to eliminate the suspected ministerial pressure tactics on management, but to make clear to Parliament the fact of its increasing reliance on the government to exercise and enforce its ultimate authority, not only in the corporation but in the supposed strongholds of parliamentary rule i.e. the civil service administration. If Parliament will quietly accept the leadership of the government in the latter field, there is no reason why it should cry for the independent exercise of its own authority over the management of a corporation, a management which has been intentionally removed from the usual sphere of parliamentary interest.

Occasionally Parliament has protested the secret board-minister consultations on the grounds that it feels by-passed. But it is a fact

that with the growing complexity of administrative science, a Parliament comprised of laymen and amateur administrators, has no other choice but to content itself with the role of a body representing the collective commonsense of the community. If it tries to tell the experts not what to do but how to do it, it will make its own position ambivalent and even ridiculous.

The Canadian Parliament has at different times shown all these tendencies. Throughout its scrutiny of the Canadian National Railways, for example, it has been tempted more to tell management what to do than asking the management what it has done and why. Parliament is at its best not when it tells management how to run a business but when it tries to learn what has been done. At most, Parliament can explain its wishes to management. This position then raises the question of whether Parliament is possessed of adequate techniques through which it can express and implement its wishes, and whether there are sufficient opportunities for their expression. This constitutes the crucial point for viewing the structure and function of public ownership especially in a country wedded to the principles of responsible government. A review of the methods and opportunities for parliamentary control over the CBC and CNR leaves the impression that the opportunities are fairly extensive; what is seriously lacking is not so much the number of methods and opportunities, but parliamentary discipline on the part of those who use them. A more organized approach by the members of Parliament and the various committees

to the problems of corporate accountability should go a long way to reinforce and revitalize these techniques.

In addition, Parliament in order to recapture its status as a general reviewing body will have to interest itself more in overall problems of management than in bickering over minor details which can very adequately be dealt with outside the parliamentary arena. Somehow members both in the House and in the two committees which study the operation of these two corporations under review, have tended to spend extra-ordinarily long hours scrutinising those matters which cannot substantially achieve the main purpose of accountability. This however, is not to suggest that all the discussions and examinations in the respective committees or within the House itself have been a tremendous waste of time and effort. But it remains true that a more effective use of these techniques is a much to be desired need.

There is one other point which deserves mention here.

Intentionally or otherwise a tendency has developed in Canada to compare the results of operation of the CNR for example with that of the privately owned CPR. This "balance sheet" mentality is not always the best and only guide in deciding the efficiency of an enterprise, especially when the primary aim is to serve the national interest. No one has ever disputed the invaluable contribution of the CBC in the cultural field. Yet the complaint has been widespread that national broadcasting is costing the taxpayer too much. If any service is devoted to national ends, the cost is or should be a secondary

problem. Similarly, the CNR has been a pioneering enterprise in opening up new areas of economic development. Ironically enough it has been quietly forgotten for the services it initiated, and the importance of which in the course of time has tended to be eroded by the increasing competition from the road transport services. A realistic Parliament while enforcing its control must note these characteristics which are prominent in a fair number of the Canadian public corporations, and allow them to guide its actions and policies for the greater efficiency and service of the national interest.

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