Board Appointments and Executive Compensation:
A Survey of Four Alberta Provincial Agencies

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DRAFT- READY FOR REVIEW
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EXECUTIVE SUMMARY

Approach

This study examines board appointments and executive compensation at four Alberta provincial agencies: the Alberta Investment Management Corporation; Alberta Treasury Branches (ATB); the Alberta Securities Commission (ASC); and the University of Alberta (UoFA). All agencies are significant in size and their successful functioning is critical to the prosperity and well-being of Alberta’s economy and society. The data set draws from the 1996-2015 period when executive compensation data became publicly available.

The study is based on three assumptions: 1) diversity of board membership is a good thing; 2) common professions, political affiliation, and board connections work against diversity; and 3) greater income inequality is a risk to social and economic stability. The growth of executive incomes in the institutions studied, relative to average salaries within these organizations, and in the labour force in general, is a matter of public interest. Alberta is an extremely wealthy province and growing income inequality tacitly sanctioned by government-board-appointed institutions should be debated against the notion that to get the best executive leaders, only the “market” can be the final determinant.

Given that the province had been ruled by the same political party for 44 years prior to last May, it is not surprising that virtually all the directors or governors of these institutions (that could be identified through donations or public political activities) contributed to the Progressive Conservative Association of Alberta. The report summarizes a 2002 study that delves into Nova Scotia’s experiment in trying to correct the problems of patronage appointments.

Except for the Alberta Investment Management Corporation (AIMCo), the institutions examined have had a long history of operating. A considerable amount of historical background is provided to illuminate the distinct role each have played in the financial, educational, political, and economic history of the province. Since these institutions perform such distinct functions, the appointments by government to command positions (e.g. board of governors, directors) must be managed with great care. The brief organizational histories highlight key conflicts or contradictions in the roles they play between students, faculty, administrators, and government; between debtors and creditors; between pensioners and financial engineers; and between securities issuers, securities salespersons, and institutional and retail investors.

Key Findings

Board Appointments- Aggregate

Of the 138 unique individuals on these four boards, 35 were lawyers, 31 were accountants, 14 were engineers, and six worked in the agri-food business. Notably absent from the boards were medical doctors, scientists, artists, and academics. In the overall group, 63 were associated with the PCAA, one with the NDP (2016), one with the Social Credit party and two with the Alberta Liberal party and one contributing to both the Alberta Liberals and PCs. In the aggregate, over $2.3 million was donated to the PCAA by these individuals and associated companies from 2003 to 2015. The companies these individuals were associated with also donated $268 thousand to the Liberal party and $173 thousand to the Alberta Wildrose Party. There were 61 persons who sat on other provincial boards and nine that had sat on four or more provincial boards or committees. It should be emphasized that during this period, the PCAA was, in effect, “the only game in town”

1 Alberta NDP policies prohibited donations by corporations since ...

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and the fact that many of these individuals were Tories does not, in itself, diminish their contributions to these organizations nor call into question their qualifications.

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Source: Elections Alberta
AIMCo

The board appointments\(^2\) show a distinct preference to persons with a business background and knowledge of finance as mandated in the legislation. This is an example of “bounded rationality” or “cognitive capture” by lawmakers. This legislative limitation assumes individuals without a business or finance background (academics, social workers, or scientists) cannot be trusted, or are competent, to oversee investment management. While it may be “rational” to propose that individuals who serve on boards of “senior public issuers” are the most qualified to direct an investment management organization, the capital markets are far too complex and uncertain to presume that a board consisting solely of persons with finance and business backgrounds can perform better than a more diverse board. Given the directors’ common backgrounds, it would be fair to assume that these individuals share the same precepts about how economies, companies, and industries operate and the appropriate methods to motivate and compensate staff and executive officers. This psychological homogeneity informed by the acceptance of the “wisdom” of markets, would not seem the most adept at understanding the complexities of modern societies undergoing monumental transformations, whether it be climate change or political change. Most of the Alberta-based board members share common political values having contributed individually and, through associated corporations, to the governing party. The study also finds the approval of compensation packages at AIMCo illustrate a failure on the part of the board to control costs and to properly supervise pay for performance.

ATB

In spite of a fairly professional, non-arms-length appointments process, the board at ATB, commencing in the early 2000s, became a place for the Klein government to reward senior members of the party. This process has carried on in spite of reforms proposed under the Provincial Agencies Governance Act. For almost five years, the board was over-weighted by members from the Agri-food industry which accounted for a diminishing portion of ATB’s loans. While it is difficult to fault the board for the ABCP crisis, the bizarre variable pay decisions approved by the board, the continuing losses at ATB Investor Services, and their lucrative Achievement Note program all point to deficiencies in oversight. Finally, the problematic IT systems revamp showed weaknesses at both the board and senior executive level. Of future concern is the inadequate disclosure of sectoral loan concentrations and the rapidly rising loan loss provisions in the past few quarters at this agency.

ASC

Common backgrounds such as law and accounting and common business experience (oil and gas), as opposed to a common political set of values, animate the selection of the members of the ASC. Of the 44 ASC members since 1992, twenty lawyers have served on the ASC and 10 accountants. This is unsurprising since the Act, Regulations, National Policies and Rules require significant legal and accountancy training to understand, let alone adjudicate. All chairs of the commission and vice-chairs have been lawyers since 1992. With the exception of the half dozen or so persons in industries outside oil and gas, the majority of the appointments have ties with the energy industry- whether in the exploration and development end, utilities, or accounting or legal which have a considerable economic stake in the energy business. What is particularly noteworthy is the absent of persons with an institutional investor background, a relevant academic background (law, geological engineering, finance, accounting, economics), as well as persons with a retail, or even an institutional investor, focus. Ethnic diversity is

\(^2\) We only examine those directors who are Alberta residents.
not a particular characteristic of the membership of this important regulatory agency judging by the last names of the members. The 2005 leadership crisis raised serious questions about the coziness of the Commission and the industry it regulates.

UofA

The public members selected for the board have a fairly narrow range of skill sets: law, accounting and engineering dominate. This is not to say these men and women may individually value the importance of the arts, pure science, and community service. Rather the experience they bring to their role as governors is limited by their professional contacts, the social circles they move in, and the industry they operate in. The industry group represented on the board is concentrated (real estate development and construction) and, until recently, experience in technology or human resources, has not been evident on the board. Diversity of thought of course may be provided by Senate and Faculty nominated members and by students, but the voting majority is narrowly controlled by the government’s appointment of public members, including the Chair (11 to 9). In addition, the public board members are remarkably homogeneous in political orientation (100 per cent PCAA until the recent appointment of a new Chair) and this contributes to the perception that the university and administration are beholden to the government. This is not to say that on all issues, at all times, public governors would “tow the party line,” but that there remains a confraternity of interests represented on the board that precludes a fuller debate on issues critical to the future of Alberta’s preeminent university.

Executive Compensation

AIMCo and ATB- Commercial Enterprises

AIMCo’s investment performance has not been sterling to date when compared with its peers and with its predecessor organization. However, the salaries of executives have increased dramatically and so have the costs borne by the pensioners of the major funds managed by AIMCo. Economists call this phenomenon “rent-seeking” behavior. The critical variable in the compensation formula is “what are the targets set by the board and what is the definition of acceptable risk?” Also important is the role of the responsible minister in assessing the value added by the corporation since it was established in 2008. As a companion study found, it is regrettable that the Government of the day did not establish a clear process, with clear benchmarks and dates, to evaluate whether corporatization has achieved its stated goals.

With respect to ATB, salary escalation and rising ratios of CEO to average pay are evident over the period studied. Our analysis suggests that executives at both AIMCo and ATB have benefitted disproportionately from the elimination of controls by politicians over their salaries. This would be understandable in the private sector as shareholders have the option of selling shares when they disapprove of the performance of the corporation or may vote against “say on pay.” But governments can’t sell their shares easily and there are more factors than profit opportunities when divesting than with publicly traded shares (i.e., employment effects, control over investment and lending decisions).

We have also compared the performance of both AIMCo and ATB with relevant Canadian and western Canadian comparators. Compensation levels in these organizations appear to be at the high end when performance is taken into account. ATB’s return on assets, in spite of key benefits enjoyed as a Crown agent,

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3 We do not examine the background of the other board members who, while Order in Council appointments, are individuals elected or nominated by alumni, student bodies, faculty, and the Senate, except for the position of Chancellor.
4 In the October 2015 budget, Treasury Board President and Minister of Finance Joe Ceci gave direction to ATB and AIMCo to stimulate lending to small and medium sized businesses and to invest in Alberta growth companies.
remains below that of CWB and roughly on par with Alberta’s largest credit union. The review of compensation levels in the wake of the ABCP crisis and the Achievement Notes at ATBIS revealed an incoherence of variable pay and long-term incentive payments. However there was a reduction in ATB CEO’s 2011-12 salary reflecting the CORE project difficulties and negative impact on customer satisfaction and in 2015-16 reflecting the large provision for credit losses and significant decline in net income.

Compensation at organizations like AIMCo and ATB that do not compete for capital, suggest that compensation policies of executive officers must be different than those of publicly traded companies, who do compete for capital and are subject to the vicissitudes of financial markets. ATB has a public policy mandate to provide “Albertans access to financial services and enhance competition in the financial service marketplace in Alberta” while earning a return that is “fair” in the mind of the minister responsible. Thus an appropriate peer group would include the Business Development Bank, the Canada Mortgage and Housing Corporation, and the Bank of Canada, as well as smaller financial institutions in Alberta including Bank West, SERVUS, Peace Hills Trust, and AMA. Members of the Legislative Assembly, ultimately responsible for monitoring the activities of provincial agencies, still do not know which peers ATB or AIMCo directors use in their determination of executive salary ranges. This is not to say that the CEO and executives should be paid at the median level given the size and complexity and importance of the institutions, but given the public mandate, the regulatory privileges enjoyed, the current salary levels appear elevated.

At AIMCo, investment managers are essentially salaried trustees for pensioners and Alberta taxpayers. The role of overseeing portfolio managers is a complex one but, unlike mutual fund complexes, the CEO is not soliciting funds as AIMCo already has a monopoly. This monopoly does provide the benefit of being longer term in focus and not requiring constant promotion, marketing, advertising, and recruiting “star” managers to the fold. In short, the job is less stressful than the pressure cooker of quarterly demands of selling mutual funds. In a related study, we have shown that the performance of AIMCo has not been significantly better than its predecessor organization and costs have increased to the funds managed, in some cases quite significantly. Again, the suitable peer group would be both public sector CEOs like the EDC and BDC presidents, the British Columbia Investment Management Corporation, or fund managers at Adroit or Mawer.  

Alberta Securities Commission

There is virtually no disclosure at all about how the “independent” commission members arrive at the salary provided to the Chair, Vice-Chair and Executive Director. The board is not in an ideal position to remunerate the Chair as they depend on the Chair for a call to sit on hearings for which they receive part-time pay. The ASC chair should not be paid more than the Ontario Securities Commission Chair and it is arguable that the OSC chair should be paid considerably more than the Superintendent of Financial Institutions or the Governor of the Bank of Canada, who both perform significant regulatory and policy functions. A more appropriate salary scale would be Court of Queen’s Bench justices, or the Chief Justice of the Court of Appeal, given the quasi-judicial functions they oversee, with some recognition of an administrative burden. Moreover, it should be recognized that some of the administrative burden is placed on the Executive Director and two Vice-Chairs.

University of Alberta

Pay levels for the president relative to average staff, the Premier and deputy minister increased significantly beginning in 2003-04. There may be some catch-up involved as the Klein era wage roll-backs came off and employees and university administrators sought to recapture losses endured in the 1994-2000 period. It is also plausible that the publication of salaries and the role of external headhunters and internationalization of

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5 These salaries are not public but likely significantly higher than federal Crown agency CEOs.
presidential searches have contributed to salary escalation, particularly in high wage Alberta. Also, as Turpin et al have observed in the early 2000s the dismissal of Canadian university presidents has probably contributed to applicants seeking higher wages and severance pay-outs because of the perceived higher risk of taking such a position. That said, the significantly higher levels of pay at UofA and UofC, relative to their larger Canadian comparators, would suggest that expectations for superior performance were created by the appointing boards. The current government would be advised to think carefully about the desired outcomes for the UofA and compensation parameters when it begins appointing public members.

Other than the controversy about the outside employment of the President of the University of Calgary, there has been little comment about the outside boards the former UofA President served on. The obvious problem is the amount of time it takes to read the other board and committee briefing materials, attend the meetings, and otherwise engage in periodic conversation with board members and executive management of these corporations. Another concern has to do with any conflicts of interest that may arise between the corporation and the university as seen with the Enbridge-UofC episode.

Higher than market salaries at the executive level also may lead to salary escalation overall as senior administrators at Alberta’s universities and colleges come to expect being the highest paid in the country. This concern, as we have seen, exists in two of Alberta’s largest commercial enterprises and at an important regulatory commission. University Presidents historically have come from the ranks of the professoriate and historically return to the classroom and laboratory. The position of President is highly prestigious and historically pay was not significantly higher than long-serving professors. It now appears that university presidents migrate to corporate boards.

Key Recommendations

**Board appointments**

1. The Public Agencies Secretariat should develop a database that includes profession/occupation, industry sector, gender, known and demonstrated competencies, ethnicity, and political affiliation (if any) of persons willing to serve on provincial ABCs. The Secretariat should identify, in conjunction with the ABC’s board, the desirable skill sets taking into account the desirability for a breadth of relevant experience. Positions to become vacant must be properly advertised. The Government should ensure that the Secretariat have relevant expertise and staff resources and the time necessary to develop a board governance plan that reflects the needs of the board, the agency, and the government representing the public interest.

2. Names that are identified by the Secretariat using publicly available screening methods should be reviewed by the relevant Minister. A special committee of the Legislative Assembly should have the authority to veto appointments to the boards of key provincial agencies. The legislative committee should, like the Public Accounts Committee, be chaired by an opposition MLA. The committee should have sufficient time, sufficient information, and staff resources to effectively review the appointments.

3. With respect to AIMCo’s board, qualified representatives from the LAPP, MEPP, PSPP, and Special Forces Pension Plan should sit on the board. This model is followed in British Columbia and will help ensure that AIMCo’s governance structure is sensitive to the cost of managing the beneficiaries’ and members’ funds. Consideration should also be given to allowing the pension funds to contract with other investment managers if they so wish, with an appropriate transition period. This should ensure that investment performance and cost factors are the central considerations for the AIMCo’s board.
Executive Compensation

1. Compensation disclosure should be at, or above, the level of disclosure for that of publicly traded companies. Changes would include a discussion on the philosophy of compensation for executives, the basis on which bonuses, if any, are determined and paid. The annual report should include a discussion of the nature of the discretion that the board has to make extraordinary payments.

2. There should be full disclosure about the nature of the contract between the human resources consultant, if any, and the board, or committee of the board, and any relationship, if any, between the consultant and management.

3. Severance payments should be included in financial reporting as well as the payment of any sums related to the termination or retirement of an employee (Achievement Notes), as well as future payments under the contract of a retiring executive.

4. The board must describe the peer group that is used in determining compensation and support its conclusions based on a comprehensive understanding of the organization’s history and public policy mandate.

5. Boards of directors should also adopt clear policies prohibiting services on for-profit boards where the earn directors’ fees. This will prevent conflicts of interest and ensure the interests of the public agency are served first.

6. For financial organizations like AIMCo and ATB that manage risk, an in-depth analysis should be undertaken to assess whether any variable pay, let alone the largest portion of total compensation, should be in the form of variable pay. Financial institutions manage risk and the incentive to “sell” more risk products like loans must be offset against controls to ensure that credit or investments are not lavished on individuals or corporations whose risks do not warrant investment or credit.
1.0 Introduction

1.1 Background

On 29 September 2014, former Alberta Premier Jim Prentice announced the appointment of Hugh Bolton, Linda Hohol and Larry Pollock to examine: board governance; director appointment processes; chief executive officer assessment and succession planning processes; risk management strategies; and conflict-of-interest policies. The overall process was originally designed to review 52 agencies reporting directly to Government and 142 agencies, boards and commissions (ABCs) accountable to government through the Public Agencies Governance Act. According to the Press Release: "Under my leadership, your government will ensure the best Albertan for the job is appointed. Political party affiliation is not a relevant consideration."

The Bolton Committee was specifically tasked with reporting on four of Alberta’s largest financial agencies: Alberta Treasury Branches, Alberta Investment Management Corporation, Alberta Capital Finance Authority, and Agriculture Financial Services Corporation within two months. The report was submitted to the Prentice government at the end of February 2015, but to date, has not been made public. With a new NDP government, the fate of the report is unclear.

The announcement came as a surprise to public sector watchers for two reasons. Firstly, the question of provincial agency governance did not appear in the five priorities identified by Prentice during his 2014 leadership campaign. Secondly, a review of Board governance at provincial ABCs had been undertaken and completed in 2007. The final report in October 2007 examined inter alia: classification of ABCs; roles, responsibilities and accountability of ABCs; and appointment, evaluation and remuneration of CEOs and board members. What is unusual in this respect is the overlap between the mandates of two committees appointed within a relatively short timeframe.

In the first NDP budget tabled on October 27th, a comprehensive review of 301 provincial agencies, boards and commissions was announced. According to a subsequent news release, the review will seek to “improve services for Albertans and ensure value for taxpayers “through examining the role and mandate, board membership, and governance of these entities.” The review will also “identify areas of duplication and potential cost savings.” An outside consultant will also advise government on rationalizing and standardizing compensation levels. The first phase of the review includes 136 public agencies subject to the Alberta Public Agencies Governance Act and is expected to be completed by March 2016. The second phase of the review will include 141 agencies that are not governed under the Act, concluding this summer. The third and final review phase, to be completed in late fall 2016, will focus on boards of governors at public post-secondary institutions.

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6 “Prentice government to review agencies, boards and commissions,” 25 September 2014. 
7 On 9 March 2016, the author filed a Freedom of Information and Protection of Privacy Act request for the release of the full report.
8 The panel appointed by Premier Stelmach included Linda Hohol and Neil McCrank, a former Deputy Justice Minister and Allan Tupper a professor of political science.
10 Honourable Joe Ceci, Budget Address 2015, 27 October 2015, p. 2.
12 See Appendix 1 for a summary of the relevant provisions of the report At the Crossroads and the Act.
1.2 Purpose and Selection of Agencies

The purpose of this study is to examine the board appointment and executive compensation process of four major provincial agencies. The two topics are relevant and controversial since they go to the pinnacle of decision-making at these agencies. The choice of board members is critical for a number of reasons. First, boards choose the leader of an organization. A capable leader will guide the organization to meet objectives set in consultation with the board and the government. A poor leader will misunderstand the environment the organization operates in, not adequately consult with government, its board or key stakeholders and therefore will fail in meeting its stated objectives. If the board does not exercise its due diligence, fully understand its role as a steward, and properly and impartially evaluate its leader, it too will also fail in delivering the objectives set by the government. With respect to executive compensation, its determination in the 21st century in public institutions must be transparent and fair. Compensation in the broad public sector must take into account both the marketplace for executive talent and the expectation of taxpayers, depositors, or beneficiaries that they are receiving value for money paid to executives. Furthermore, given the scrutiny on executive pay in the private sector, there is no sound reason that compensation philosophy and contractual details required of public issuers, should not apply to large public agencies. This study is not about the governance of boards, but rather an in-depth analysis of two important elements of board governance.

The agencies studied are: the Alberta Investment Management Corporation (AIMCo); Alberta Treasury Branches (ATB Financial or ATB); the Alberta Securities Commission (ASC); and the University of Alberta (UofA). All organizations play a pivotal role in the Alberta economy and their prudent stewardship is of manifest interest to all Albertans. In the case of AIMCo, the corporation manages more than $83.9 billion in financial assets on behalf of 27 pension, endowment and government funds. These assets are managed for the financial well-being of Alberta citizens (Alberta Heritage Savings Trust Fund and other government funds) and hundreds of thousands of employees and retirees in the public sector. ATB is one of Alberta’s oldest provincial agencies and plays a seminal role in the intermediation of Alberta savings, investments, and lending to farmers, business and consumers. At present this deposit-taking financial institution has assets of $46.1 billion, nearly 710,000 customers, 172 branches, 135 agencies, and about 5,200 “team members.”

The Alberta Securities Commission was established in the 1950s to regulate the market conduct of the investment industry. Securities regulation has remained provincial jurisdiction and Alberta is home to the fourth largest number of investment brokers and the second largest capital market by dollars of capital raised in Canada. The Commission ensures the integrity of the capital markets through market regulation, education, fraud prosecutions and registration of industry personnel. Since 1996, the Commission has been funded by the industry, not the General Revenue Fund and is permitted to retain its funds.

The University of Alberta is Alberta’s largest and oldest post-secondary educational institution. With revenue and expenditure of over $1 billion a year, the UofA educates over 37,000 students in 16 faculties and six campuses, employs over 11,000 scholars, researchers, professionals and administrators. The institution’s 250,000 alumni include many leaders in Alberta’s business, labour, political, educational and arts communities. As a research intensive university it offers advanced degrees in law, agriculture, medicine, arts, engineering, sciences,
and business. The success and future prospects of the province and its economy are viewed by many in the university community and beyond, as inextricably linked to the quality and strengths of the UofA.

1.3 Policy Issues Considered

“The quality of board decisions depends on the quality of board members.”


Over the past two decades, and particularly after the financial crisis, the importance of good governance practices has created an educational industry centered around training and certification of corporate directors. Major failures in Canada such as Nortel and, more recently, the activist takeover of poorly performing CP Rail, are examples of weak corporate governance practices by boards ironically governed by “blue ribbon” directors. Accepting the importance of good governance, we examine two aspects of the governance process: (1) the composition of the board of directors (the quality and diversity of board members), and (2) the key compensation practices of these organizations which are determined by the boards of directors (governors) who, are ultimately responsible for defining and rewarding superior organizational performance.

1.3.1 Board Appointments

In this study, members of the board of directors or governors are appointed by Order-in-Council, unlike business corporations whose members are “elected” by individual and institutional shareholders or majority shareholders. In practice, the boards of large business corporations have nominating or governance committees whose mandate is to recommend to the annual shareholders’ meeting the slate of candidates for the board. Since shareholdings in major corporations are widely dispersed, board elections are normally routine with few directors failing to be elected. Indeed under Canadian law, the most a shareholder can do is “withhold” a vote; that is a shareholder can’t vote to reject a director! With the spotlight on executive composition, board members of the Human Resources and Compensation Committees often receive more withheld votes reflecting displeasure by institutional investors concerning executive pay.

Since there now is more scrutiny of director decision-making and board composition, more boards now engage executive search firms to recruit board candidates. Normally a mandate is given to find a certain “skill set” for a board vacancy. While governance committees have considerable leeway in the choice of candidates, they may also consult with large institutional investors like pension funds and mutual funds. Unlike the old days where banks had upwards of sixty directors, since the 1980s boards have grown smaller and are now “working,” as opposed to “networking,” boards with higher levels of accountability.¹⁶ These practices are generally followed by the agency boards that we are examining although the final appointment decision remains with the responsible minister and confirmed by cabinet.

In the examination of appointments we identify the industry, profession, political affiliation (if any), and other government board affiliations. These variables enable us to form judgments on the nature of skills that are sought (and conversely, the absence of skills on these boards); the diversity of political affiliation of members of these boards; and concentrations of government affiliation through service on a number of provincial government agencies.

1.3.2 Nova Scotia’s experience with Merit-based appointments

¹⁶ See Peter C. Newman, The Canadian Establishment, Volume1, on the function and attributes of bank boards’ prior to the 1980s. pp. 110-118.
In our view, a healthy majority of Canadians already accepts this standard as the norm. They regard patronage-based appointments to public offices to be unsavoury, antiquated and incompatible with the requirements of good democratic governance and of good public administration. In this regard, obviously, the values of Canadians clash with the values of the political class, and they do so in a way that does not do credit to the political class.

Peter Aucoin and Elizabeth Goodyear-Grant, p. 304.¹⁷

Public confidence in the integrity of the political process is diminished everywhere in Canada by partisan-patronage appointments to public offices; they weaken the legitimacy of the public sector. Equally critical, they increase the risk that the quality of executive governance required by Crown corporations, adjudicative agencies, and even advisory councils will not be secured through quality appointments to ABC boards. The significance of the risk is increased, of course, by the increasing use of ABCs by virtually all governments in Canada as alternatives to the traditional ministerial-departmental form of public administration. This increased incidence of risk is what has generated the recommendations of the Auditor General of Canada for improvements to the governance of Crown corporations, including, in particular, the reform of the process for making appointments to the boards of these corporations. In Alberta, a serious case of mal-administration by a Crown corporation that was attributed to an incompetent board of directors led the Auditor General of Alberta to recommend what subsequently became the 1993 Alberta government reform of the appointment process. For its part, the willingness of the Nova Scotia government to institute a special appointment process for the URB (and to commit itself to a similar if not identical process for all other adjudicative boards) was taken in response to the serious concerns raised by the provincial Law Reform Commission respecting the administration of justice by these powerful adjudicative boards.

Peter Aucoin and Elizabeth Goodyear-Grant, p. 321.

Appointment of agency directors by a minister or cabinet forces the appointer (the Minister) to make judgements concerning both qualifications (merit) and support for the governing party (partisanship). In an excellent article Aucoin and Goodyear-Grant argue that while ministers and cabinet should ultimately appoint directors, the selection and recommendation for appointments should be carried out at arms-length from partisan interests to ensure the best candidate is appointed. These authors undertake a case study of the efforts of Nova Scotia governments of different political stripes to reform the appointments process.

In 1993 new Conservative Premier John Savage succeeded a tired, patronage riddled government (John Buchanan) with a promise to allow a legislative committee to veto appointments to provincial boards. Predictably, the legislative committee continued to rubber stamp appointments brought to the Committee. The following election Savage’s Conservatives were returned in a minority position and, not surprisingly, about one third of the appointments were rejected by the committee. Subsequent reforms included departments establishing “screening committees” partly modeled after Alberta to weed out unqualified candidates.¹⁸ Other innovations took place as in the case of the Utility and Review Board whose members were appointed for a term ending when the individual


¹⁸ Ibid., p. 308.
turned 65. In this case an independent committee was established which included the incumbent chair of the Board, two lay representatives appointed by the minister, a human resources professional appointed by the deputy minister of the Public Service Commission, and, in the case of a full-time appointment, a member of an administrative tribunal of another province and, if there is an identified need for an appointee holding a specified professional designation, a representative of the professional association.\(^19\)

A key development during the ten year period studied was the Kaiser Settlement. Kaiser was a professor of medicine who had applied twice for a position to which he was eminently qualified but was rejected. The “settlement” by the government acknowledged the following:

- the “fundamental goal” is to select “the best candidate”;
- qualifications for a position must be stated clearly in advance;
- positions must be properly advertised;
- non-partisan advisory committees must determine which applicants are qualified and recommended;
- the government will determine the “best candidate” from those deemed qualified and recommended;
- where the government’s recommendation must go to the human resources committee (of the House of Assembly), sufficient information on the nominee must be provided;
- the entire process must be able to be scrutinized by the public;
- the government must ensure that it is accountable to the public for its record of appointments;
- in the case of adjudicative boards with quasi-judicial functions, advisory committees must be composed of a human resource professional appointed by the deputy minister of the Public Service Commission (as chair) and two lay persons and two public servants appointed by the government; and
- the committees are to recommend a shortlist (no more than six, no fewer than three) but without ranking those recommended; and all reports on those recommended are to be kept confidential to government.\(^20\)

The key policy issues then to be faced by legislators include the following:

1. Transparency including criteria for recruitment and selection and advertising and reasons for selection or rejection;
2. Role of an independent, non-partisan body in defining job qualifications, and determining merit of the individual candidates; and
3. Preserving responsible government and ministerial accountability through maintaining the discretion of the minister and/or cabinet to a veto role.

As we review the experience of four Alberta agencies, we shall see a strong preference by ministers and cabinet to appoint individuals who, through donations and political activity, support the government party. We shall explore whether the need for individuals sensitive to and close to elected officials is indeed important in board governance of these institutions.

1.3.3 Executive Compensation

\(^{19}\) Ibid., p. 310.
\(^{20}\) Ibid., pp. 311-312.
An effective board understands its central role in making good decisions on leadership issues. A board’s ability to effectively implement its mandate and move the organization forward depends significantly on finding and keeping a competent CEO.

Auditor General Fred Dunn, October 2008 Report, p. 23

Given information asymmetries, there are a myriad of opportunities to boost one’s current income, or preclude its reduction, at the expense of the long-term interests of the corporation and its stakeholders. Of equal concern is that incentives to game short-term performance for personal reward appear to be spreading beyond the corporate realm to the compensation of senior management at our large public pension plans and other institutional investors. Worse yet, policymakers appear to be encouraging pay for performance in schools, hospitals and other public institutions.

Edward Waitzer, former Chair of the Ontario Securities Commission

Over the past twenty years, executive compensation has become more complicated. Its growing complexity is a function of tax laws, human resources practices, greater transparency with legislative disclosure rules (securities laws and public sector salary disclosure), greater use of options and “pay for performance,” and the greater acceptance of market-based pay practices. Recent focus has been on the complexity of executive compensation, the role of equity-based compensation (stock options), and the function of compensation consultants in assisting boards in developing “competitive” compensation programs.

Executive compensation, like the compensation of politicians, is riddled with subjectivity and self-interest. Commencing in the early 1990s, the Government of Ontario under Premier Bob Rae was the first provincial jurisdiction to direct the disclosure of executive salaries in the private sector. Other Canadian jurisdictions followed a model that was similar to that introduced by the Securities and Exchange Commission in the 1980s. It is instructive that after the initial disclosures of bank CEOs showed Peter Godsoe’s salary of Scotiabank to be significantly lower than his Big Five peers, he was rewarded with a hefty raise the following year. While disclosure enables investment analysts, business journalists and the general public to know the pay of these individuals, like in sports, the literature suggests that executive disclosure has led to an inflation of salaries of CEOs and executive officers.

In Alberta, concerns about excessive provincial agency salaries emerged in the early 2000s when salaries of Regional Health Authority presidents rose dramatically. Controversy swirled about the pay levels, severance packages and expenses of the CEOs of the Calgary and Edmonton (Capital) Health Authorities. Such salaries, approved by the boards of these agencies, evoked strong emotions and likely contributed to the appointment of the McCrank Committee and ultimately the consolidation of all regional health authorities under Alberta health Services. High salaries for the top officer also probably contributed to salary escalation throughout the health system, including salary demands by a heavily unionized workforce.

21 “Executive Compensation- ‘a system so perfect that no one needs to be good.’” The Globe and Mail, 11 December 2015.
23 Significant revisions were made in 1978 and 1983 but disclosure goes back to 1938. See Sean A. Donahoe, 2008.
24 Alyssa Davis and Lawrence Mishel, “CEO Pay Continues to Rise as Typical Workers Are Paid Less,” Economic Policy Institute, 12 June 2014 http://www.epi.org/publication/ceo-pay-continues-to-rise/ See also Edward Waitzer, Op.cit, “While compensation disclosure has facilitated such normative judgments, it has also led to a dramatic “ratcheting up” of compensation as many predicted. No board likes to think that their senior management team is below average.”
Current national policies on executive compensation require a detailed level of disclosure. Such disclosure includes: the objectives and philosophy underlying all direct and indirect executive compensation; the decision-making process around compensation; the peer group companies included in the benchmark group and the selection criteria; specific performance goals based on objective, identifiable measures, such as earnings per share; the risk implications associated with the company’s compensation policies and practices; a description of “the skills and experience that enable the committee to make decisions on the suitability of the company’s compensation policies and practices;” the role if any played by a compensation consultant; aggregate fees billed by each consultant or advisor, or any of its affiliates, for services related to determining compensation for any of the company’s directors and executive officers, the valuation method and assumptions the company applied in quantifying the value of defined benefit pensions; and contract termination provisions, including perquisites and pension plan benefits.” Alberta’s agency disclosure on executive compensation, required under the Financial Administration Act, when compared to securities law rules, leave a great deal to be desired.

In 2008, the Auditor General studied the selection, evaluation, and compensation of chief executive officers of 61 provincial agencies. He recommended changing the existing disclosure of executive compensation by applying new private sector disclosure requirements to public agencies. This disclosure would include the rationale behind the salary and performance reward. In this respect, the Auditor suggested that a suitable peer or comparator group be used that was wide and included comparators of “similar size and complexity” and include “data on Alberta public sector CEO compensation rates to ensure that recommended compensation is fair to the CEO, the board, stakeholders, and Albertans.” In certain cases peer evaluation had too narrow a universe, some with potential for bias to the high payers in the marketplace, and the target rate for compensation was in the top quartile. This type of selection may cause a “leap frog effect”. In some cases, the Auditor General noted, external human resources consultants were working for management as well as the board which could be perceived as a conflict of interest. A key recommendation in this report was that a centralized agency collate information on CEO evaluation and compensation practices from agencies annually. The central agency would then report to Ministers so they may hold boards accountable for their decisions.

In a follow-up Report in 2009, the Auditor General examined the executive compensation practices of provincial agencies. His general findings concluded: public agencies do not follow consistent executive

25 National Policy 51-102, part 11.6 sets out continuous disclosure requirements for executive compensation. See Form 51-102F6. The level of granularity employed is illustrated by the following wording: “all compensation paid, payable, awarded, granted, given, or otherwise provided, directly or indirectly, by the company, or a subsidiary of the company, to each NEO and director, in any capacity, including, for greater certainty, all plan and non-plan compensation, direct and indirect pay, remuneration, economic or financial award, reward, benefit, gift or perquisite paid, payable, awarded, granted, given, or otherwise provided to the NEO or director for services provided and for services to be provided, directly or indirectly, to the company or a subsidiary of the company.” Section 1(3)(1)(a). Consolidated to 30 June 2016 http://www.albertasecurities.com/Regulatory%20Instruments/5179077-v1-51-102_F6_Consolidation_Eff_June_30_2015.pdf Accessed 4 April 2016. The Form is 33 pages.
26 Report of the Auditor General of Alberta, October 2008, pp. 23-49. These entities included the UofA, the ASC and ATB Financial.
27 Ibid, p. 25. Specific deficiencies identified included: supplementary retirement plan disclosure, pension plan disclosure, termination benefits disclosure, compensation philosophy, and sale of home disclosure.
28 Ibid. For example the complexity and skill sets required to be a CEO or executive officer for the Export Development Corporation, Business Development Bank Canada, and the Bank of Canada are similar to AIMCo and ATB but salaries are substantially lower. See below for further discussion.
29 Ibid, p. 46.
30 Ibid, p. 29.
31 Ibid.
32 October 2009, pp. 19-34.
compensation practices; termination benefits paid to senior executives are not consistently disclosed; and the absence of boundaries or limits on compensation for public agency executives makes it important that agencies follow a “well-defined and transparent executive compensation system.” A key recommendation was to raise the standards for executive compensation disclosure to those of the private sector. To date these recommendations have not been fully implemented. This defect is especially significant for provincial agencies like ATB Financial and AIMCo that operate in “commercial” spheres.

1.3.5 Fairness and Inequality

Recently, former and current central bankers have questioned the fairness of executive compensation practices in the context of growing inequality of incomes and the stagnating wages of workers. Alan Greenspan has observed:

> I have two grave concerns about our ability to preserve the momentum of the world’s recent material progress. First is the emergence of increased concentration of income, which is a threat to the comity and stability of democratic societies. Such inequality may, I fear, spark a politically expedient but economically destructive backlash.

Further he noted: “Accordingly, I am not surprised that the outsize CEO compensation packages of recent years have raised public concerns of unseemliness. Most nettling has been the dramatic rise in the ratio of CEO compensation relative to gains in average employee salary.”

Other central bankers, including Mark Carney of the Bank of England and Janet Yellen, Chairwoman of the Federal Reserve, have also raised concerns about growing inequality. Given the salience of this issue and the emergence of the doctrine of corporate social responsibility, more attention is now being paid to the ratio of CEO pay to the pay of average workers. In the most recent issue of Corporate Knights, “the magazine for clean capitalism,” one of the criteria used to evaluate companies was CEO to average worker pay.

One of the more in-depth and insightful analyses of inequality in the U.S. is by Raghuram Rajan, the Governor of the Reserve Bank of India and former professor at the Booth School at the University of Chicago.

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34 Greenspan, The Age of Turbulence, p. 365. The surprising strength of Bernie Sanders’ primary campaign challenge to Hilary Clinton is apposite.
33 Greenspan, p. 425. “CEO compensation at such large U.S. companies reportedly rose by 10 percent annually between 1993 and 2006, triple the 3.1 percent annual increase of earnings of private-company production or nonsupervisory workers.” At page 426.
36 “It is no secret that the past few decades of widening inequality can be summed up as significant income and wealth gains for those at the very top and stagnant living standards for the majority. I think it is appropriate to ask whether this trend is compatible with values rooted in our nation’s history, among them the high value Americans have traditionally placed on equality of opportunity.” Yellen 2014. “The big drivers of globalisation and technology are magnifying market distributions. Moreover, returns in a globalised world are amplifying the rewards of the superstar and, though few of them would be inclined to admit it, the lucky.” Carney, 2014, p. 2.
38 Corporate Knights, “Youth at the Table,” Spring 2015, Volume 14, Issue 2. Pp. 26-27. Other criteria included the number of women on the board and “Sustainability Pay Link” (at least one senior executive’s compensation tied to “sustainability themed performance targets.”)
Rajan links the increase in inequality to the expansion of mortgage credit and the acquisition of a home as a policy salve proffered by Congress to address latent social and economic tensions and grievances. He provides empirical support on the importance of education as a filtering device that leaves children of low socio-economic groups behind.  

Why is the question of inequality relevant to our examination of board appointment processes and executive compensation? In Alberta where market capitalism, equality of opportunity, social mobility, and merit-based promotion are articles of faith, these issues have particular resonance for a culture that prides itself on “what you know, not who you know.” This context is critical for the discussion since these four provincial agencies are creatures of the Legislative Assembly of Alberta and the boards of these agencies are accountable to the relevant Minister for the mandate they carry out. What choices their boards and executive make in support of merit and equality of opportunity matters. For instance, a policy to raise tuition fees for professional faculties will likely make inequality worse over time. To the extent that political appointments to boards reinforce income inequality through excessive executive compensation packages erodes confidence in public institutions and is anathema to such shared values of equality of opportunity, the merit principle, and social mobility.

In a study by Alberto Alesina and George-Marios Angeletos (cited by Rajan) the authors argue that “perceptions in a democracy as to how high wages or wealth are obtained can create self-reinforcing patterns.” If the citizenry believe wealth and income are obtained legitimately then attitudes towards taxation of the rich are much different than when perceptions are that wealth and income were obtained by birth or crookedness. Writing recently in The Globe and Mail on the recent political fund-raising scandals in Ontario and British Columbia, Robert MacDermid of York University states:

Who funds politics matters in our lives, every day. If we accept a political finance system that permits large contributions from corporations and wealthy individuals, then we will have political policies and solutions that favour these groups more than ever. People at exclusive fundraisers are not there to talk about baseball or to benevolently support democracy. Their time is too valuable, and they paid too much for the ticket for that. They are there to push their case and their interests.

While it may be argued that little “public money” is involved with these agencies that receive revenue from customers, students, public sector employees, or public issuers, the fact remains that these organizations have critical public functions to carry out and operate with monopolies or business advantages that their commercial competitors do not have.

1.4 The Case for Diversity

The case for diversity rests on two primary claims. The first is that diversity provides equal opportunity to groups historically excluded from positions of power. The public has a “strong [] interest in ensuring that opportunities are available to all, . . .that women [and minorities] entering the labour market are able to fulfil their potential, and that we make full use of the wealth of talented women . . .” and minorities available for board service. The second claim is that diversity will improve organizational processes and performance. This “business case for diversity” tends to

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41 Ibid, p. 183.
42 “Six steps to clean up financing rules,” The Globe and Mail, 4 April 2016.
43 See section 1(1) of the Financial Administration Act for the definition of public money.

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dominate debates in part because it appeals to a culture steeped in shareholder value as the metric for corporate decision making. In an extensive survey of economic, legal and financial literature on diversity in corporate boards, Professors Deborah Rhode and Amanda Packel find that the hypothesis that increased diversity improves financial performance is inconclusive. Such studies use different methodologies, employ different time periods, and study different legal regimes producing contradictory results. The authors cite a qualitative interview study in 2009 by John M. Conley et al which concluded that the case for diversity was essentially hearsay, that corporate insiders felt it was a “good thing to do” but did not have “a clear picture of the precise ways in which diversity affects board processes or decision making.”

Given the lack of certainty respecting the impact of diversity on financial performance, the authors then examine diversity in the context of board process, corporate reputation, and good governance. Several reasons are advanced why a more diverse board will improve processes, including:

1) Women bring different strengths to a board such as they are more risk averse, more collaborative, and more trustworthy;
2) Women and minorities bring different life experiences to the boardroom table which brings different concerns and questions to the table allows the board to consider “a wider range of options and solutions to corporate issues;”
3) Diversity may generate more “conflicting opinions, knowledge, and perspectives that result in a more thorough consideration of a wide range of interpretations, alternatives, and consequences;” and
4) Diverse boards tend not to arrive at extreme positions and more likely to engage in higher quality analysis.

That said, “overall, studies on the relationship between board diversity and its capacity for strategic change have reached conflicting results.”

On matters of corporate reputation, in some sectors, the presence of female or minority directors has been shown to enhance a firm's reputation with consumers. Other studies show more women on the board is: a signal to investors that board governance has a high priority; a sign corporate social responsibility is a high priority; and is associated with higher attendance records and tougher monitoring of company performance. However, the authors caution that “correlation does not demonstrate causation, and it could be that well-governed corporate boards are more committed to diversity and seek greater gender parity” than diversity leading to better governance.

The authors then look at the mechanisms for board recruitment and cite a number of studies that illustrate the barriers which women and minorities face. Persons of an “in group”- white males-

Tend to attribute accomplishments of fellow members to intrinsic characteristics, such as intelligence, drive, and commitment. By contrast, the achievements of out-group members are often ascribed to luck or special treatment. Even in experimental situations where male and female performance is objectively equal, women are held to higher standards, and their

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46 Ibid., p. 393n.
48 Ibid., p. 397.
49 Ibid., pp. 399-401.
competence is rated lower. As one Australian study concluded, "women's competence has to be widely acknowledged in the public domain or through family connections before boards...will be prepared to 'risk' having a woman on the board." Many women directors report they have to be "twice as good as men" to get board appointments. 50

Various experiments undertaken about the perceptions towards male or female characters in case studies have shown a negative bias towards female business executives.51

While the foregoing summary is inconclusive this paper assumes that the case for diversity is compelling from an equality of opportunity, social justice, reputational, and economic inequality perspectives.52 Further, the data below show a strong case that the selection criteria for board positions have been very narrow, and the quality of governance of these four critical agencies, generally unexceptional.

1.5 Using Values as a Lens

Given that the questions surrounding board appointments and executive compensation are subjective, complex and value laden, we explore these issues by employing an analytical framework developed by Jonathan Haidt in his book The Righteous Mind.51 Haidt examines the polarization of U.S. public policy debate through the lens of behaviourial psychology and the insights of brain neurology. For our purposes we borrow Haidt’s typology of the “moral matrix” of three groups: the libertarian; the liberal; and the social conservative. The moral matrix posits six dimensions to moral behaviour:

1. Care/Harm,
2. Liberty/Oppression,
3. Fairness/Cheating,
4. Loyalty/Betrayal,
5. Authority/Subversion, and
6. Sanctity/Degradation. 54

The Liberal Moral Matrix is characterized by its most sacred value of caring for victims of oppression.55 The Liberal is strongest on items “Care/Harm”, “Liberty/Oppression”, and “Fairness/Cheating” with weak affinities to loyalty, authority and sanctity. The Libertarian is most strongly associated with liberty and fairness with minimal interest in the other moral dimensions. The Social Conservative’s most sacred value is to “preserve the institutions and traditions that sustain a moral community.”56 That said, the social conservative shares equally the importance of all these western moral dimensions.

The “lens” allows us to anchor the political affiliations of directors with their moral code. If there is a bias towards a certain political value set, then these value sets should determine or inform how decisions are made.

50 Ibid., p. 405.
51 Ibid., pp. 407-408.
52 Ibid., p. 425. We agree with Rhode and Packel who conclude “As recent initiatives make clear, board membership remains a significant issue in the struggle for more equitable leadership structures. In this context, it matters to get the arguments right, and to make the case for diversity on the basis of strong equitable and reputational arguments rather than more contested links between board membership and financial performance”.
54 This typology was developed from research based on tens of thousands of surveys concerning morals. Go to YourMorals.org.
55 Haidt, pp. 350-366 for discussion and summary of the three types. “Liberal” in Haidt’s sense should not be construed as equivalent to a Canadian Liberal although there is certainly a strong correlation.
56 Haidt, p. 357.
with respect to board appointments and executive compensation. By utilizing this value set or moral matrix framework, we present empirical data on board appointments in four categories (profession, industry, political affiliation, and other provincial agency appointments) and executive salaries in comparison to average organizational salary and in comparison with the relevant deputy minister, and relevant comparators outside the public sector. We also assume that individuals who belong to a political party will probably share the same views with respect to these moral dimensions.
1.6 Data Sources

The information on partisanship comes from Alberta Elections for donations and constituency and party association executives. Leadership candidates for the PCAA since 2000 have generally provided lists of donors. Historical data (other than current web information) on party executive was requested from party offices and were not been made available. Other supplementary sources to identify partisanship include newspaper articles and book sources. Since Alberta Elections only requires disclosure of donations above $375 and we have no information about membership, it is very likely that political affiliation in this study is under-reported.

Salary information has been gleaned from annual reports of the organizations either in electronic or paper form. These public sources which are normally subject to review by the boards of these organizations and whose financial statements are audited by the Auditor General of the jurisdiction concerned. SEDAR, the electronic disclosure system of the Canadian Securities Administrators, was a key source of data for private sector comparators with ATB. SERVUS Credit Union provided CEO compensation and return on average assets information. Information on other public sector comparators came from Ontario’s and British Columbia’s salary disclosure system, and annual reports in paper or electronic form from other Canadian jurisdictions. The period selected – 1996-2015- was chosen because the beginning of the period coincides with the disclosure of executive salaries within the Alberta public sector.

There are few standards for reporting executive compensation in the public sector, so without access to an executive’s tax return we cannot say definitely what each individual was paid in any given year. Furthermore, many compensation plans provide future pay-outs which vary in accordance with the parameters of the plan and are normally based of how investment strategies or corporate strategies panned out over the duration of the compensation arrangement. Another dimension is the discretion that can be exercised by the Board and the CEO over non-financial or “soft” parameters such as “client satisfaction.”

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57 Assistance was also provided from the B.C. Securities Commission, the University of British Columbia, and the University of Toronto.
2.0 Alberta Investment Management Corporation

2.0 Background

With the election of Ralph Klein in December 1992 as leader of the Progressive Conservative Party of Alberta and Alberta Premier, a new approach to government was adopted. His predecessor, Don Getty was saddled with an expensive government infrastructure “addicted” to high oil and natural gas prices. In 1985-6, oil prices fell significantly and the government immediately faced a deficit situation. This, in turn, led to a collapse in non-renewable resource revenue and a real estate meltdown in Alberta. During the downturn, a number of Alberta financial institutions faced liquidity and solvency issues. Casualties included two Alberta-based chartered banks, Alberta’s credit union system, Principal Group, Northwest Trust and Heritage Savings and Trust. These institutions were heavily exposed to Alberta’s real estate and energy sectors. The provincial government stepped in to rescue the credit unions and investment contract holders of Principal Group subsidiaries. However it was investments in a failed magnesium plant in southern Alberta, government financial support for the Husky Bi-provincial upgrader, loan guarantees to induce pulp and paper investment, and support for Peter Pocklington’s Gainers’ meat packing operations, which became Getty’s legacy. Debt ran up rapidly, and by the time the Tories were looking for a new premier, their party was polling in the high teens.

Klein’s twin mantras were: “the government has a spending problem, not a revenue problem” and “government should be out of the business of being in business”. The government initially privatized several aspects of government operations including liquor stores (operated by a highly unionized workforce) and motor vehicle registries. These privatizations were controversial at first, and opposed by labour unions and observers concerned that alcoholism would increase and more liquor store openings would degrade neighbourhoods. In retrospect, it appears that these both privatizations have improved service, availability and convenience to the public. Government interests in the Alberta Energy Company and Vencap Equities were sold and ownership and head offices restrictions for TELUS (formerly Alberta Government Telephones) and NOVA -An Alberta Corporation, were removed.

As the 2000s dawned, Alberta Finance was faced with challenges in keeping staff in their Alberta Investment Management Division. The financial services industry, including the management of investments of a burgeoning baby boom generation (and hundreds of billions still held by their depression-era parents), had, since the late 1980s, been expanding as a result of a confluence of factors. Firstly, communications technology now linked
stock, commodity, futures, and derivatives markets into a virtual 24 hour trading hub that required investment management teams to be trading “ahead of the other teams”. Secondly, processing speeds of computers were doubling every year or two allowing analysis of extremely large databases to discern anomalous patterns in securities pricing. This led financial firms to employ Ph.Ds in mathematics or physics who could be easily lured away from academe with an outlandish salary (by academic standards), but low by Wall Street standards.64

Thirdly, a period of what Alan Greenspan called “financial innovation” was underway.65 In the mid-1980s, innovative derivative financial products, known as interest rate swaps or foreign exchange swaps, emerged. Essentially these products were sold by investment bankers (market intermediaries) and allowed one party- for example a government- that had access to relatively cheap fixed-rate funding, to swap a stream of its fixed rate interest payment obligations with, for example, a bank that had access to low cost floating-rate deposit liabilities. The bank would pay fixed at a cheaper rate than it could get directly on the market while the government could borrow at a floating rate more cheaply than directly in the market. The investment banker shaved off a share of the spread. These markets grew explosively.66 By the turn of the century no finance department or financial institution was credible unless it was actively managing its interest rate or FX exposure with derivatives.

Investment banks led the charge in directing their whiz kids to develop more products for the “street” made up of institutional investors such as municipal governments, state and federal government treasury departments, public pension plans, private pension plans, insurance companies and mutual fund dealers. One risk that was also swapped was credit risk- the risk that a large commercial or government borrower or pools of securitized loans, would default. Serious computing and mathematical prowess was required to analyze the probability of default of one government, let alone thousands of mortgages or car loans. On top of these relatively straight-forward pools of loans was added another feature- “structured finance”. Structured finance was a way of taking these pools of loans and wrapping insurance or credit default swaps to create new complex securities with different credit ratings that would appeal to different “risk appetites”. Further complicating the mix was the existence of guarantees by governments or government agencies which could lead to “moral hazard.”

One asset class that has become more popular is private equity. This class of investment emerged in the 1980s when investment funds saw opportunities to take public companies private or re-finance private companies with debt. Typically the new management improved efficiencies and profits and sold the revitalized corporation into public equity markets at a significant profit.67 Another asset class that has also gained prominence over the past two decades is infrastructure investment. These types of investments are normally projects like roads, bridges or airports that have monopoly like characteristics and which produce a stable and usually growing cash flow after the initial outlay. The initial investment process and oversight of these investments is usually labour intensive and highly specialized.

Another example of an innovative financial product is exchange traded funds (ETFs). ETFs are premised on two notions: firstly consumers were paying too much for mutual funds that actively manage (buy and sell) a portfolio but rarely beat the market indices when fees are taken into account. Secondly, instead of paying more not to beat

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64 See Michael Lewis, The Big Short: Inside the Doomsday Machine, on the role of financial wizards. Also the movie starring Brad Pitt, Christian Bale, and Steve Carrell. Paramount Pictures, 2015. For an amusing and sobering social depiction of a financial institution in trouble because of its exposure to poor investments watch the film Margin Call with Kevin Spacey and Jeremy Irons, Before the Door Pictures, 2011.

65 The Age of Turbulence, pp. 369-372. For the role of hedge funds and credit default swaps.


67 The first blockbuster transaction of this sort was RJR Nabisco takeover by KKR in 1988. In Canada, Onex Corporation is a publicly traded company that acts as private equity investor. Blackstone Group in the United States is one of the world’s largest private equity investors. Return expectations are typically 15 to 30 per cent when the company is sold again through an initial public offering (IPO).
the index, why not pay less and get the index less a few basis points? This could be achieved through passively, and more cheaply, replicating the index. Before AIMCo was formed AIM had an investment group that formulated passive investment strategies.\textsuperscript{68} These instruments, unlike mutual funds, can be bought and sold through equity exchanges. And list grows longer each day—literally.\textsuperscript{69}

Given the above, it is evident that to be serious in the investing game requires capital for: trading information; trading desks; back office processing of transactions; travel to assess investment opportunities; sophisticated accounting and reporting systems; and human resources that can leverage the information and infrastructure to, essentially, outsmart the market.\textsuperscript{70} These were then some of the factors that were leading senior Alberta Finance department officials and elected officials to the view that it was necessary to change the organization’s structure to allow it to operate outside government strictures to attract the talent to maintain adequate returns, let alone improve returns, above current performance. AIM officials were frustrated in the hiring process as rapidly rising salaries in the investment industry were seen as a growing impediment to attract talent to the organization. This challenge came at a time when investment complexity was growing and more sophistication was seen as, not only desirable, but essential. As an interim measure, salaries in AIM were adjusted upward towards “market-based” salary levels commencing in 1998-99.\textsuperscript{71}

2.2 Capelle Associates Report\textsuperscript{72}

In 2005, the Finance Department issued an RFP to commission a report examining the organizational and governance structures of the Alberta Investment Management division. The authors addressed the following questions in their report:

- Is the current AIM organization optimal?
- If not, what are the alternative organization/governance alternatives, what are their advantages and disadvantages, and what is the best alternative?
- If AIM is going to achieve excellence, what are some other related factors that are important?
- If AIM is going to achieve excellence, what are the key success factors in relation to the chosen organization/governance alternative?\textsuperscript{73}

They examined three governance/organizational options: (1) improvements to the status quo; (2) outsource the investment operation; or (3) create a separate corporate structure. Option 2 was dismissed quickly on the basis of information asymmetry: the seller of the services (i.e. Goldman Sachs) knows more than the buyer (i.e. Alberta Finance). Moreover this option would likely be very costly with potentially very high transition costs. Furthermore, Alberta Finance would still need expert staff to oversee the investments to ensure value-added was

\textsuperscript{68} Heritage Fund, \textit{Annual Report}, 2006-07, pp. 23, 25, 43.

\textsuperscript{69} Further products include ETFs that use leverage, that hedge away currency risk, or utilize high frequency trading. For instance “Horizons BetaPro S&P500 VIX Short Term Futures Inverse ETF.”

\textsuperscript{70} Capelle Associates, “Organization and Governance Review of Alberta Investment Management,” Sessional Paper 99/2007 at page 9. “Techniques based on the mathematics of modern finance have been essential to the efficient implementation of the new risk-based investment policies and related investment mandates. However, the effective adoption of these techniques is not without cost. Their effective use requires a combination of highly trained and skilled people, high-powered mathematics, and significant, ongoing expenditures on information technology. The modern in pay-backs.”

\textsuperscript{71} AIM’s Chief Investment Officer was paid more than the Deputy Minister commencing in 1998-99- $176,000 versus $170,000.

\textsuperscript{72} Ron Capelle and Keith Ambachtsheer were the joint authors.

\textsuperscript{73} \textit{Ibid}, p. 4.
being received.\textsuperscript{74} As well, the agency problem would still remain as ministerial accountability for investment performance was part of the minister’s job description under our Westminster, parliamentary form of government. And finally, this option would vitiate the desire to build a strong, Alberta-based investment management organization.

The authors then documented a long list of disadvantages of the status quo. These disadvantages included:

\begin{itemize}
  \item The Minister and Deputy Minister were too busy to effectively oversee the investment management function;\textsuperscript{75}
  \item Restrictive human resources and budget policies and processes making it difficult to attract the right people to achieve “investment excellence”;\textsuperscript{76}
  \item There could emerge conflicts when the policy side of the department recommended changes to royalty rates, for example, that would affect the securities prices of investment holdings;\textsuperscript{77}
  \item AIM’s investment philosophy “provides a smorgasbord of individual asset class-based, active and passive strategies with which to implement the various 70-30 strategies.” The authors advanced the view that AIM should be following the investment policies of the Ontario Teachers Fund;\textsuperscript{78} and
  \item Incremental changes to improve compensation or systems still remained at the discretion of Treasury Board and the Minister. \textsuperscript{79}
\end{itemize}

\subsection{2.2.1 “Investment Excellence”}

In building the case for moving investment management outside government, the authors promoted a case for “investment excellence”. Arguing that the investment environment had moved from a world of “known risk and return volatilities” to one that challenged this view – that is, actual volatilities were much higher- should lead to a re-thinking of investment philosophy.\textsuperscript{80} Drawing on an approach adopted by the Ontario Teachers’ Fund in the mid to late 1990s, “fundamental investment choices” were broken into 1) risk minimization, 2) short-term risky, and 3) long-term risky. The authors noted that the adoption of this approach materially rewarded pensioners of the Ontario Teachers’ plan and two plans in the Netherlands- ABP and PGGM.\textsuperscript{81} In the Appendix comparing the investment beliefs of Ontario Teachers’ with AIM, the authors stated: “We believe Teachers’ potential excess return advantage is in the 2%-3% per annum range.”\textsuperscript{82}

Based on the forgoing analysis, option 3 was chosen: corporatizing Investment Management and Investment Administration Divisions. A board of directors with the “appropriate accountabilities and authorities...

\textsuperscript{74} \textit{Ibid}, pp. 6, 12.
\textsuperscript{75} Normally in government this problem is solved through administrative delegation.
\textsuperscript{76} While living in Edmonton was not seen as a big drawback, living in Edmonton and working for the government was seen as a clear disadvantage.
\textsuperscript{77} \textit{Ibid}, p. 10. This could be managed and had been managed by strict firewalls within the department for years.
\textsuperscript{78} \textit{Ibid}, p. 11. “The reality is that AIM is currently not a thought-leader in the global “investment beliefs” arena. We are convinced that becoming such a thought leader would benefit Albertans in two ways. First, we believe it would, together with the change to the governance structure recommended above, materially boost future endowment and pension fund investment returns. Second, such a shift would boost Alberta’s reputation as a global thought leader in investment fund management, with significant, positive spin-off effects for the finance and investment faculties at the Universities of Alberta and Calgary.”
\textsuperscript{79} \textit{Ibid}, pp. 4-6, 10-12.
\textsuperscript{80} \textit{Ibid}, p. 9.
\textsuperscript{81} \textit{Ibid}, p. 11.
carefully spelled out” would direct the corporation.\textsuperscript{83} The board would select a CEO, determine a risk management framework, establish performance targets, review performance, and “ensure an optimal organization design including compensation.” \textsuperscript{84}

2.3 Bill 12

Bill 12, the \textit{Alberta Investment Management Corporation Act} was introduced and passed by the Legislative Assembly in April 2007. According to Finance Minister Dr. Lyle Oberg the principal reasons for creating a new provincial agency were: consistency with other provinces, such as British Columbia; “improved governance; operational flexibility; and a much more focused investment culture.”\textsuperscript{85} The Minister of Finance stated:

We agree with these conclusions (of the Capelle report) and expect that these improvements will result in a greater investment return for AIM's clients over time. For example, every tenth of a per cent in net value-added investment returns per year would mean $16 million per year net income to the Heritage Fund or close to $50 million per year on all the \textit{balanced} investment portfolios AIM manages. Mr. Speaker, in the study they predicted that we would be seeing increases of 100 basis points, which would rise to around a $500 million improvement on a per year basis if we achieve that. We're slightly more conservative, and we're expecting to receive anywhere from 25 to 50 basis points, but even at that we're looking at a potential of $250 million.\textsuperscript{86}

The Minister added the government would appoint a “professional” board of directors. The Regulation under the Act set out clearly the professional qualifications of board members: “Individuals....... must have proven and demonstrable experience and expertise in investment management, finance, accounting or law or experience as an executive or a director in a senior publicly traded issuer.”\textsuperscript{87} AIMCo's budget would still require approval


\textsuperscript{84} \textit{Ibid}, pp. 15-16. The precedent was set in 1996 with Alberta Treasury Branches’ board recruiting a new CEO and then recommending the candidate to the Minister and to Cabinet.

\textsuperscript{85} \textit{Alberta Hansard}, 26\textsuperscript{th} Legislature, 3\textsuperscript{rd} Session, 4 April 2007, p. 411.

\textsuperscript{86} \textit{Ibid}. Emphasis added.

\textsuperscript{87} Section 5 of the Alberta Investment Management Corporation Regulation A/R 225/2007. Section 4(1)(b) of the Act required the Deputy Minister of the responsible ministry to serve on the board. This provision excludes about 99 per cent of the Alberta population from qualifying. A two section Bill, introduced in March 2009, and passed in November 2009 removed the deputy minister from the board. According to Iris Evans, the Minister of Finance at the time, the amendment reflected the fact that the deputy minister had been appointed to AIMCo’s board as the organization \textit{transitioned} to provincial agency status. Since AIMCo had transitioned successfully, the removal of the deputy minister was consistent with its arms-length status from the government. \textit{Hansard}, 3 November 2009, p. 1703. Another plausible reason for removing the deputy minister was the report of the Report of the Board Governance Review Task Force, \textit{At the Crossroads}, in October 2007 which recommended that deputy ministers not sit on provincial agency boards. At page 24. This recommendation has not been followed in the case of the Alberta Capital Finance Authority and the Credit Union Deposit Guarantee Corporation. Another issue that arose bearing
through the normal business planning and budgetary processes of government, which seems at variance with the Capelle report.

In concluding his remarks at Second Reading the Minister emphasized that the change was not because the government was “unhappy” about AIM’s performance but rather that the new corporation would “provide more flexibility” and “have the potential of creating an investment centre in Alberta.”88 The corporation’s role was to provide “investment management services” to “designated” entities determined by the Minister. In effect, AIMCo was to be given a monopoly over providing investment management services to provincial agencies, pension plans and regulated funds.89

Debate surrounding the Bill addressed such items as ethical investing policy, the potential for patronage in appointing the board, the need for appropriate legislative oversight and accountability, and the rates of return compared with other funds, such as Harvard’s Endowment Fund.90 Liberal MLA Hugh Macdonald was critical of the Bill because he felt that the Capelle Report was based on very limited discussions and interviews with a narrow group of public service officials.91 Another key question Macdonald raised was whether the pension funds, whose assets would be managed by the new AIMCo, had provided letters in support for the corporatization Bill. In all, this Bill consumed less than two hours of the Legislative Assembly’s time with the bulk of the discussion over a failed amendment to prohibit the corporation from investing in tobacco companies.92

2.3.1 “The Start of Something Big”93

In August 2007, Charles Baillie and George Gosbee were appointed chair and vice-chair respectively of the new AIMCo board.94 Charles Baillie was the erstwhile President and Chairman of the T-D Bank. Gosbee was the Chairman, President and CEO of Tristone Capital Inc., a Calgary investment bank. In November, the Government announced additional appointments to AIMCo’s board. Included in the “blue chip” board were two other senior financial executives from outside Alberta, Andrea Rosen, former Vice-Chair of T-D and Virginia Holmes, a former CEO of AXA Investments living in London England. Rounding out the board were prominent Alberta investment executives and businessmen Daryl Katz, David Bissett, Frank Layton, and Mac Van Wielingen.95 Four board committees were created: Audit; Human Resources and Compensation; Investment; and Governance. The board

on this decision was the investment by AIMCo in 2009 in Precision Drilling. News reports speculated a government motive. In the debate around Bill 56, Hugh MacDonald the Chair of the Public Accounts committee stated he was not convinced this was a good measure citing internal control concerns of the Auditor General. Alberta Hansard, 5 November 2009, pp. 1771-1772. See also comments by Rachel Notley about executive compensation and the Precision Drilling transaction. Alberta Hansard, 17 November 2009, pp. 1841-1842. See also Claudia Cattaneo, “Alberta boost for Precision is investment, not aid: AIMCo” Financial Post, 19 April 2009. http://www.edmontonjournal.com/business/Alberta+comes+Precision+Drilling/1514986/story.html Accessed 27 March 2016.

88 Certainly the reduction of the use of external managers for cost reasons as well as employment reasons was important.
89 Section 6. See AIMCO Annual Report, 2008-09. On page 3 is a listing of funds, agencies and pension plans that had been designated. In 2013, the Universities Academic Pension Plan began farming out 20 per cent of its investments to Beutel, Goodman and Company and Fiera Capital. UAPP Annual Report, 2013, pp. 2, 5.
91 Ibid. p 428-9. See also Mr. Elsalhy’s comments on patronage and questioning the merits of creating another government owned entity. Alberta Hansard, 17 April 2007, p. 623-624.
93 The title of AIMCo’s first annual report for 2008-09.
95 Order in Council 483/2007, 24 October 2007. All Alberta members have contributed substantially to the Alberta Progressive Conservative Party either personally or through associated corporations or both. See Ascah forthcoming 2016.
had adopted a Standard of Conduct and promulgated a Code of Conduct and Ethical Standards for the organization.\textsuperscript{96}

AIMCo came into being on January 1, 2008. On 30 April 2008, after an international search, AIMCo announced the appointment of Leo de Bever as President and Chief Executive Officer.\textsuperscript{97} Dr. de Bever holds a Ph.D in economics from the University of Wisconsin, Madison and had worked at the Bank of Canada, Crown Life Insurance, Manufacturers Life Assurance, Ontario Teachers Retirement Fund and the Victoria State Pension Fund.

One of the more troubling policy developments in the past year relates to the announcement in the NDP government’s October 2015 budget to direct AIMCo to invest up to three per cent of the Heritage Fund’s assets ($540 million) to be targeted to growth-oriented companies in Alberta.\textsuperscript{98} In December 2015, AIMCo and the Minister of Finance released a Alberta Growth Mandate that outlined how this budget proposal was to be operationalized.\textsuperscript{99}

2.4 Compensation Philosophy

Critical to the organization’s success was “relating incentive compensation to risk adjusted returns.”\textsuperscript{100} The new CEO emphasized the requirement to invest in people, systems, and processes necessary to find and manage investment opportunities.\textsuperscript{101} In the 2009-10 Annual Report the organization’s compensation philosophy was laid out:

AIMCo’s total rewards package is designed to attract, retain and motivate performers with the specialized professional skills to produce persistent value-added. AIMCo pays competitive base salaries plus annual and long-term incentives totaling about three to five cents for every dollar of value added... Our base salaries and variable compensation plan targets are set at the median for the larger pension fund managers in Canada as determined by investment management compensation surveys conducted by consulting firms William H. Mercer and Towers Watson.\textsuperscript{102}

\textsuperscript{96} Annual Report, 2008-09, pp. 22-23.
\textsuperscript{97} AIMCo, News Release, 30 April 2008.
\textsuperscript{98} `Budget Address by the Honourable Joe Ceci, President of Treasury Board and Minister of Finance, 27 October 2015. http://www.alberta.ca/release.cfm?xID=38745A394B4AC-E351-1902-C0B529E9A001D59 Accessed 29 March 2016. \textsuperscript{99} http://www.finance.alberta.ca/business/ahstf/2015-12-AIMCo-Alberta-Growth-Mandate.pdf Accessed 29 March 2016. “In addition to satisfying the Heritage Fund’s legislative mandate of maximizing long term financial returns, investments that have at least one of the following characteristics would reasonably be expected to satisfy the announced mandate: a. Creates jobs in Alberta b. Builds new infrastructure in Alberta c. Diversifies Alberta’s economy d. Supports Alberta’s growth e. Connects Alberta’s companies to export markets f. Develops subject matter expertise within Alberta. AIMCo will execute upon this allocation in two initiatives: 1. Additional resources will be allocated to identifying and reviewing investment opportunities that would satisfy the mandate and not fit within any of AIMCo’s current investment strategies; and 2. An increased focus will be undertaken on identifying and reviewing investment opportunities that would both (a) satisfy the mandate; and (b) benefit all of AIMCo’s existing clients through existing investment strategies. Investments that are made through either of these two initiatives will be reported against the Alberta Growth Mandate.” (Emphasis added.) The last reference to existing clients is certainly beyond the mandate given by the Budget.
\textsuperscript{100} Annual Report, 2008-09, p. 4. The notion of compensating investment professionals based on “risk adjusted returns” is a difficult one to implement. The approach taken by AIMCo is to compare a benchmark which is an appropriate comparator to the asset mix or asset class that is being managed. However, a portfolio manager may take considerably more risk to gain a higher reward. However the benchmark’s return should be adjusted upward to reflect the risk being taken which appears to be not the case.
\textsuperscript{101} ibid, p. 4.
\textsuperscript{102} Annual Report, 2009-10, p. 27.
The board subsequently adumbrated the following principles of organizational compensation practices:

1) Alignment with the vision of the organization; that is to be a world class global investor with talent sourced throughout the world;
2) Pay based on performance with the largest portion in variable pay;
3) Pay based on sustained long-term performance over a rolling four year period;
4) Fairness based on market comparables based on independent expert advice;
5) Incentives for active value added investment; and
6) Pay also based on qualitative factors such as improved “employee engagement” and “communications initiatives.”

The new and evolving compensation system was made up of an annual incentive plan (AIP), a long-term incentive plan (LTIP), and “restricted fund units (RFUs)” designed to retain senior management and other key employees. The annual plan gives eligible employees the incentive to earn up to twice their base salary calculated on “value added performance over a four year period weighted to total fund and asset class (where applicable) and 2) individual performance aligned to the achievement of corporate objectives.” The LTIP program payments were based on compound rates of returns of investments measured against benchmarks over a four-year period with a value at maturity between zero and three times the original “grant” based on a portion of salary. In 2012, a Special Long-term Incentive Plan was set up to reward sustained and superior performance over an eight year period “where applicable”.

Each employee’s annual variable compensation is calculated based on a weighting between individual performance targets, AIMCo’s four-year total investment performance, and corporate objectives. Corporate objectives are based on the corporation’s “key success drivers” which include: strategic performance; investment performance; client satisfaction; financial and operational performance; and “doing business the right way”. Non-financial metrics allow executive management discretion to award bonuses when target investment performance has not been met in order to “retain talent.” Central to good pay-outs are value-added returns to the investment funds over the benchmarks.

Restricted Fund Units vest over a one to three-year period and, unlike the LTIP, the value is based on the total return of investments, not the return relative to a benchmark. While Annual, long-term and special long-term plans have “high variability” in pay-out and therefore risk, the RFUs have a lower variability.

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103 Annual Report 2013, pp. 59-60.
105 This payment could be made when “uncapped investment performance over any LTIP period (four years) exceeds the cap of 3X. Once granted, the SLTIP has the same mechanism as the LTIP. Ibid.
107 Annual Report 2009, p. 32.
Exhibit A- Annual Incentive Pay

INDIVIDUAL PERFORMANCE → Employee’s AIP Target × Weight of Individual Performance × Individual Performance Multiplier (0 – 2)

plus

FOUR-YEAR INVESTMENT PERFORMANCE → Employee’s AIP Target × Weight of Four-year Investment Performance × Four-year Performance Multiplier (0 – 2)

plus

CORPORATE OBJECTIVES → Employee’s AIP Target × Weight of Corporate Objectives × Corporate Objectives Multiplier (0 – 2)

equals

Employee’s AIP Payout (to a maximum of 2 x target)

Source: AIMCo Annual Report 2014, Invested in People, p. 64.

Exhibit B- Long-Term Incentive Pay

Employee’s LTIP Grant × Four-year Performance Multiplier × Total Fund Cumulative Rate of Return = LTIP Payout (to a maximum of 3 x grant)


By 2014, the compensation system was developed and more fully disclosed. Other recent developments on the compensation front include the provision of an opinion from an independent expert that the “total amount of incentive payments … is reasonable in the context of market…. We believe that the compensation program at AIMCo continues to be generally aligned with market practices.”

2.4.1 Performance Factors

A key determination in the LTIP bonus is the manager’s asset class performance. This performance factor is averaged over the last 4 years and the result is multiplied by a “target bonus.” As a whole the organization targets a “value–added performance” which is a cumulative total of the goals for the various asset classes. The target value added for an $83 billion portfolio was $269 million in 2014 resulting in an investment factor of 1.0 is achieved although AIMCo “strives to achieve a stretch goal of three-times target each year.” A key determination made by the board, presumably on the recommendation of the CEO, is the target value-added. If the target is set low, this means that mediocre performance is rewarded. There is limited information in the annual reports to judge whether the board is setting appropriate targets.

A second question is whether mediocre or risky investment performance is rewarded. A target bonus is achieved when a 4-year average performance factor of 1 or more is realized. Depending on how the formula works (which is not disclosed), a manager may have his or her worst years subject to a floor with no ceiling for superior performance. The effect of such a formula would mean that a manager may have an incentive to increase risk (and potential reward) while knowing that very poor years will be capped on the downside. Thus the portfolio manager is insulated somewhat from downside risk, which is underwritten by the funds being managed.

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108 Annual Report, 2014, p. 61. See Ascah, 2016 which shows that AIMCo’s performance thus far is no better than AIM’s.

2.5 AIMCO's Alberta Board Members

There is a broader question of whether government action is influenced excessively by Wall Street. I believe that when Wall Street alumni occupy powerful positions in the government or the Federal Reserve, they do what they think is best for the United States. What they think accords with their Wall Street training and with the opinions of the people they talk to and these people also are all largely from the Street. Cognitive capture is a better description of this phenomenon than crony capitalism.

Raghuram Rajan, *Fault Lines*, p. 181

2.5.1 Board Appointment Process

As noted above, the original board of AIMCo was appointed in the fall of 2007 and consisted of business persons as required by section 5 of the Regulation. Section 6 of the Regulation authorized a nominating committee to nominate the candidates to the Minister and ultimately to Cabinet. The committee was to consist of at least three members with the Chair as a member (if the post is not vacant) whose eligibility requirements are identical to board members. The committee recommends a short list to the Minister of at least double the candidates for the positions to be filled. In making the appointment, the Cabinet must have regard to the desirability of having candidates that in the aggregate have the “full range of knowledge, skills and experience to lead the corporation.”  

The Minister can only recommend persons who are on the list. Reappointments do not need to go through this process.

As Table 2.1 (next page) shows, the board of directors of AIMCo consisted of, and consists of, high profile members of Alberta’s business establishment. The members are or were executives from financial services, transportation, pharmaceutical retailing, real estate, oil and gas, law, manufacturing, and construction. A characteristic of the group is they all were CEOs or senior leaders of private sector organizations and all but one were male. This group could be considered a fair representation of the nature of Alberta’s *private* economy which heavily utilizes the expertise of law, accounting, engineering, and financial industry experience.

2.5.2 Profession/Occupation

The key professions and skills represented by board members are law (3), investment banking (2), accounting and finance (2), investment management (1), pharmacy (1), and engineering (1). These positions are consistent with the requirements of the Act and Regulation but limit the universe of opinion. More importantly, these individuals do not have any financial interests in the success of the investment management strategies for member pension funds. The directors have what is known in the private equity investment field, “no skin in the game” and would appear to have less incentive to ensure the efficient, economic management of AIMCo for the beneficiaries.

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2.5.3 Political Affiliation

What seems to unite the board, with the exception of Ms. Williams and Dr. Bird, is the board’s political affiliation with the Progressive Conservative Association of Alberta (PCAA). These directors and their companies have given significant amounts to the PCAA over the past five years.\(^\text{112}\) In financially supporting a political party and

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\(^{112}\) Daryl Katz and his company Rexall and senior executives of the Katz group contributed hundreds of thousands of dollars to the Progressive Conservative Party election campaign in 2012. Jen Gerson, “Daryl Katz’s $430,000 bulk donation to the PCs makes a mockery of Alberta’s election finance laws, opposition says,” National Post, 1 May 2013. Table 2.2 does not include these amounts from Katz and his employees. [Link](http://news.nationalpost.com/news/canada/canadian-politics/daryl-katzs-430000-bulk-donation-to-the-pcs-makes-a-mockery-of-albertas-election-finance-laws-opposition) Accessed 4 August 2015. See detailed appendix on IPE website for information on contributions by directors and their companies to the PCAA and other parties and to Progressive Conservative Party leadership candidates.

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possibly holding a party membership, these individuals share a common interest in the status quo of the political system and, presumably, support the policies of the PCAA who had formed the government over the past 44 years.

### Table 2.2 AIMCo Directors’ Donations to PCAA

<table>
<thead>
<tr>
<th>Names</th>
<th>Donations</th>
<th>Leadership Campaigns</th>
<th>Company Donations</th>
</tr>
</thead>
<tbody>
<tr>
<td>George Gosbee (Vice-Chair 2008-2015)</td>
<td>21680</td>
<td>$5000 (Redford- George &amp; Karen)</td>
<td>9400</td>
</tr>
<tr>
<td>Clive Beddoe</td>
<td>2000</td>
<td>(Redford)</td>
<td>17720</td>
</tr>
<tr>
<td>David A. Bissett</td>
<td>6995</td>
<td>$10-4999 (Dinning), $30000 (Prentice)</td>
<td></td>
</tr>
<tr>
<td>Darryl Katz</td>
<td>30000</td>
<td></td>
<td>227,275</td>
</tr>
<tr>
<td>Frank Layton</td>
<td>4438</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mac Van Wielingen (Chair 2015-)</td>
<td>18500</td>
<td>$5000-$30,000 (Dinning), $5000 (Prentice-ARC Financial); $10000 (Prentice)</td>
<td>90180</td>
</tr>
<tr>
<td>Ross Grieve</td>
<td>1500</td>
<td>$5000 TO $30,000 (Dinning-PCL), $501-$1000 (Stelmach), $10000 (Prentice), $5000 (Redford-PCL)</td>
<td>185471</td>
</tr>
<tr>
<td>Harold A. Roozen</td>
<td>3550</td>
<td>$1,001-$5000 (Stelmach) over $10,001 (Hancock)</td>
<td>5750</td>
</tr>
<tr>
<td>John Ferguson</td>
<td>86663</td>
<td>$501-$1000 (Stelmach)</td>
<td>8,275</td>
</tr>
<tr>
<td>Totals</td>
<td>86663</td>
<td></td>
<td>544071</td>
</tr>
</tbody>
</table>

**Sources:** Alberta Elections, Volunteer Disclosure documents for Dinning, Doerksen, Stelmach, Hancock, Redford, Lukasuk, and Prentice leadership campaigns.

2.5.4 Provincial Agency Boards

Unlike the case of ATB directors (highlighted below), many of whom sat on a variety of provincial agency boards, AIMCo directors have few affiliations with government boards with the exception of the post-secondary educational system (UofA (2), Mount Royal College, and the Alberta College of Art and Design).

2.5.5 Implications

By applying Haidt’s model, we classify these individuals as social conservatives. The values of social conservatives are preserving institutions and traditions- in other words, preserving the status quo. As leaders or former leaders of significant business organizations, their world experience would be strongly influenced by the demands of their work environment and experience as corporate directors. A known political affiliation, and relevant business experience, would provide comfort to the Minister responsible for appointments that such political parties did not share membership information to protect the privacy of their members.

See Appendix 1 for list of agencies, boards and commissions, including government committees and their abbreviations.
directors could be trusted to steward the organization in the direction the government, through its mandate document, wished the organization to follow.

The fact that all directors with known political affiliations should be Tories should not be a surprise. Given that AIMCo was to be run as a business, the composition of the board is also no surprise. However as noted in the discussion above about diversity, corporations with a narrow range of experience and skills (finance, law, engineering, accounting), do not make the best decisions, essentially because they form their judgements on a narrow band of experience. Moreover, the low representation of Alberta women on AIMCo’s board reflects an antiquated view that there are few qualified women able to assume these important oversight positions. The design of the board is essentially self-replicating as by Regulation the members of the nominating committee (which includes the Chair) must be from the narrow universe of those qualified to serve on the board (i.e. “proven and demonstrable experience and expertise in investment management, finance, accounting or law or experience as an executive or a director in a senior publicly traded issuer”). What is also interesting is the fact that the Regulation is consistent with the social conservative value of authority and loyalty; that is, the provision that the selection committee be composed of the same type of people as defined by qualifications, and they must choose the same type of people as their successors- a closed loop.

This finding does not mean these individuals are less competent than others who were not selected to form the new board. As the investment industry proclaims “past success is no indicator of future success.” In a previous study published by the Institute, the investment performance of AIMCo, relative to its predecessor, Alberta Investment Management Division of Alberta Finance, is no better despite claims that very significant “value-added” performance would result. As we see below executive compensation rose dramatically in spite of middling performance compared with other public sector investment managers such as the B.C. Investment Management Corporation. Over the past seven years, this board of mainly male business executives, responsible for overseeing “pay for performance,” did not exemplify strong stewardship with respect to rising expense and salary levels over the period under study.

### A note on partisanship

The tables show partisanship through electoral and financial participation: namely whether an individual has donated to a political party or leadership campaign; held a party office; or has run as a political candidate for a constituency nomination or political office. The fact that an individual has given money to a political party or a leadership candidate simply means that he or she wishes to support the tenets of the party and has the financial resources to do so. Further along the continuum are individuals that not only contribute to a party or a particular leadership candidate, but also are active in fund-raising, attending party events, who serve as a party official, and who sit as directors or governors appointed by a minister or the cabinet. While this paper does not make distinctions about degree of partisanship, it should be emphasized that, based on donations, level of party involvement, and number of boards an individual has sat on, there are directors who would be more “partisan” than others. This does not mean that such directors don’t act in the best interest of the corporation whose board they sit on, rather than they might be more inclined to consider partisan issues when considering the best interests of the corporation.

### 2.6 Executive officer compensation

In this section we examine the pay of the key executives since the corporation was formed and examine that pay in relation to the average salaries of the staff, relevant provincial deputy minister, Alberta’s Premier, and comparator peer groups. The AIMCo board, as all boards of pension fund managers, are responsible for setting
the compensation levels of their CEOs and approving the compensation regime for executive managers. These peer groups are: the Ontario Teachers’ Pension Fund; the Caisse de Depot et Placement, the CPP Investment Board, the Ontario Municipal Employees Retirement System, and the British Columbia Investment Management Corporation. While the magnitude of the numbers is interesting, the trends are most relevant.

2.6.1 Executive pay Increases

Table 2.3 illustrates that executive compensation at AIMCo has increased dramatically since becoming a provincial corporation. This should not be a surprise. Prior to corporatization, salaries were adjusted upward and were supposedly market-based or moving in that direction. There are, however, several things that are striking about the table. First, the compound annual growth rate of the compensation of the top five executive officers was 27 per cent from 2009-10 to 2014-15. This number excludes the future estimated payment of the retiring CEO which results in a lower number. If those estimates of future payments are included the annual gain is 38 per cent per annum. Secondly, the growth rate of average salaries is significantly lower. From 2007-08 to 2014-15, the annual rate was 4%. If one excludes executive compensation from total compensation, and excludes the 2008-09 fiscal year, due to the high retirement payment to the exiting Chief Investment Officer (CIO), the gain is only 0.5 per cent per annum. Thirdly, average pay peaked in 2012-13 and has since fallen. This was not the case for the top five AIMCo executives.

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115 See Andrew Coyne, “CPP board can’t escape blame for fund’s bloated state,” National Post, 18 May 2016. “So whatever Wiseman’s deficiencies, the board can hardly escape its own share of the blame for the fund’s conspicuously bloated state. The near 25-fold increase in costs over the past 10 years is not, after all, the result of a mere absence of effective spending controls, but reflects a fundamental shift in the fund’s investment strategy, undertaken with the board’s approval in 2006.” (Emphasis added.)
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Executive Officer</td>
<td>622.44</td>
<td>3168</td>
<td>1569</td>
<td>1988</td>
<td>2087</td>
<td>4049</td>
<td>3659</td>
<td>4357</td>
<td>20.3%</td>
</tr>
<tr>
<td>Second</td>
<td>2103</td>
<td>872</td>
<td>1087</td>
<td>1329</td>
<td>2390</td>
<td>2543</td>
<td>2664</td>
<td>25.0%</td>
<td></td>
</tr>
<tr>
<td>Third</td>
<td>680</td>
<td>606</td>
<td>1009</td>
<td>1251</td>
<td>2110</td>
<td>1509</td>
<td>1884</td>
<td>25.5%</td>
<td></td>
</tr>
<tr>
<td>Fourth</td>
<td>506</td>
<td>604</td>
<td>945</td>
<td>926</td>
<td>1219</td>
<td>1213</td>
<td>1474</td>
<td>20.6%</td>
<td></td>
</tr>
<tr>
<td>Fifth</td>
<td>288</td>
<td>443</td>
<td>627</td>
<td>831</td>
<td>1160</td>
<td>780</td>
<td>950</td>
<td>16.5%</td>
<td></td>
</tr>
<tr>
<td>Total Top Five</td>
<td>6745</td>
<td>4094</td>
<td>5656</td>
<td>6224</td>
<td>10928</td>
<td>9703</td>
<td>11328</td>
<td>21.7%</td>
<td></td>
</tr>
<tr>
<td>Total salaries</td>
<td>21623</td>
<td>26231</td>
<td>38647</td>
<td>47840</td>
<td>59090</td>
<td>74661</td>
<td>76979</td>
<td>76369</td>
<td>23.4%</td>
</tr>
<tr>
<td>Number of employees</td>
<td>138</td>
<td>170</td>
<td>208</td>
<td>250</td>
<td>303</td>
<td>334</td>
<td>360</td>
<td>370</td>
<td>15.1%</td>
</tr>
<tr>
<td>Average Corporate Salary</td>
<td>157</td>
<td>170</td>
<td>204</td>
<td>209</td>
<td>214</td>
<td>234</td>
<td>222</td>
<td>209</td>
<td>4.2%</td>
</tr>
<tr>
<td>Ratio- CEO to Average Salary</td>
<td>18.6</td>
<td>7.7</td>
<td>9.5</td>
<td>9.8</td>
<td>17.3</td>
<td>16.5</td>
<td>20.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ratio-CEO to Premier</td>
<td>13.8</td>
<td>5.2</td>
<td>6.5</td>
<td>8.3</td>
<td>14.7</td>
<td>13.3</td>
<td>17.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ratio- CEO to DM</td>
<td>13.8</td>
<td>5.2</td>
<td>6.5</td>
<td>8.3</td>
<td>14.7</td>
<td>13.3</td>
<td>17.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finance/Treasury Board</td>
<td>13.8</td>
<td>5.2</td>
<td>6.5</td>
<td>8.3</td>
<td>14.7</td>
<td>13.3</td>
<td>17.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ratio- CEO to Average of four Executive Officers</td>
<td>8.5</td>
<td>5.0</td>
<td>6.0</td>
<td>4.6</td>
<td>11.1</td>
<td>9.1</td>
<td>12.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Top Five to Total Salaries and Benefits %</td>
<td>3.5</td>
<td>2.5</td>
<td>2.2</td>
<td>2.0</td>
<td>2.4</td>
<td>2.4</td>
<td>2.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assets under management (S$billions)</td>
<td>68.9</td>
<td>70.7</td>
<td>68.8</td>
<td>69.7</td>
<td>71.0</td>
<td>80.4</td>
<td>83.9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Top 5 as % of AUM</td>
<td>0.010%</td>
<td>0.006%</td>
<td>0.008%</td>
<td>0.009%</td>
<td>0.015%</td>
<td>0.012%</td>
<td>0.014%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


2.6.2 CEO Pay Ratio

Chart 2.1 below examines the CEO’s salary relative to other benchmarks such as average salary and the salary of the Premier of Alberta and the responsible deputy finance minister. The chart shows a decline relative to average salaries in the early few years and then a trend towards a higher ratio. The final year excludes three years of future payments estimated at $1.45 million in 2015 with an estimated $1.2 million pay-out in the following two years. Other employees are also eligible to receive LTIP benefits when they retire. The chart also shows that a relative balance is kept with respect to the pay ratio between the CEO and the other 4 executive officers. If we reduce the CEO pay-out in 2014-15 by $1.2 million, the ratio falls from 30.5 times to 24.4 times average salary. As we have seen, salary levels have risen significantly for executives while pay levels for average employees have not resulting in a rising ratio of executive pay to average salary. This is also true for comparisons with the deputy minister responsible for AIMCo as well as the Premier. These comparisons are only illustrative. Executive pay is an area where everyone has an opinion and there is little consensus on what is “fair and equitable”.

116 This ratio of CEO to average salary measure is becoming increasingly used. See SEC rule recently promulgated. Sarah Lynch, “SEC to adopt rules on CEO-Worker Pay,” The Globe and Mail, 5 August 2015.
117 The largest estimated pay-outs occur in 2015 and 2016. As noted above, pay-outs could be zero or roughly 3 times the initial grant.
2.6.3 CEO Peer Comparisons

The following chart compares the pay levels of AIMCo’s CEO with the CEOs of the Caisse de Depot et Placement du Québec, Ontario Teachers’, British Columbia Investment Management Corporation (BCIMCo), CPP Investment Board (CPPIB) and the Ontario Municipal Employees Retirement System (OMERS). All payments are subject to individual circumstances such as whether a new CEO comes in from the outside or there is a “retiring allowance” for a long-term incumbent. Ontario Teachers’ Pension Plan, CPPIB and BCIMCo have the best performance record of the funds (see Table below).

Although each fund is different in size and each have different mandates and functions -for example, AIMCo only manages assets- it has no responsibilities in calculating pension benefits and sending payment to pensioners. However, all organizations’ primary function is to manage investments for the benefit of pensioners and governments and maximize risk within a given risk tolerance. Notably, AIMCo and BCIMCo do not use leverage but Teachers, CPP and the Caisse do employ debt. The chart illustrates clear differences in pay trends and pay philosophies. British Columbia and the Caisse pay at the bottom of the scale while Teachers’ pay top dollar and CPPIB and OMERS pay in the middle range. The pay for AIMCo’s CEO has risen steadily over that time into a middle range. In 2013 at Teachers with Jim Leech the outgoing CEO retiring, he enjoyed a huge boost in pay. The
Caisse also seems to be a special case with the incumbent, Michael Sabia, accepting no special pension entitlement.\textsuperscript{118}

<table>
<thead>
<tr>
<th>Institutional Investor</th>
<th>Total Assets ($billions)</th>
<th>Net Assets ($billions)</th>
<th>Simple Leverage Total Assets/Net Assets</th>
<th>Most recent 4-Year Rate of Return (%)</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alberta Investment Management Corporation - a)</td>
<td>83.9</td>
<td>N/A</td>
<td></td>
<td>9.3%</td>
<td></td>
</tr>
<tr>
<td>B.C. Investment Management Corporation- b)</td>
<td>123.6</td>
<td></td>
<td></td>
<td>11.1%</td>
<td></td>
</tr>
<tr>
<td>Caisse de Depot et Placement- a)</td>
<td>225.9</td>
<td>272.7</td>
<td>1.21</td>
<td>9.6%</td>
<td></td>
</tr>
<tr>
<td>Canada Pension Plan Investment Board - b)</td>
<td>264.8</td>
<td>321.8</td>
<td>1.22</td>
<td>12.3%</td>
<td>5 years</td>
</tr>
<tr>
<td>Ontario Municipal Employees Retirement- a)</td>
<td>72.1</td>
<td></td>
<td></td>
<td>7.9%</td>
<td>5 years</td>
</tr>
<tr>
<td>Ontario Teachers- a)</td>
<td>154.5</td>
<td>196.3</td>
<td>1.27</td>
<td>12.3%</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{118} Janet McFarland, “Caisse’s CEO’s earnings higher than reports indicates,” \textit{The Globe and Mail}, 16 April 2015. The numbers in the table have been adjusted to take into account the additional earnings that accrue under a special program offered Caisse executives called a co-investment deferred performance incentive compensation plan.

\textbf{Sources:} Annual Reports
2.7 Conclusion

The board appointments of Alberta individuals mandate a preference to persons with a business background and knowledge of finance. This is an example of “bounded rationality” or “cognitive capture” which posits that individuals without a business or finance background (academics, social workers, or scientists) are not qualified to oversee investment management. While it may be “rational” to propose that individuals who serve on boards of “senior public issuers” are the most qualified to direct an AIMCo, financial markets are far too complex and uncertain to presume that “rational” selection choices can be always superior to other methods. According to Simon, “the goal of classical economic theory – to predict the behavior of rational man without making an empirical investigation of psychological properties- is unattainable.”

Given the directors’ common backgrounds, it would be fair to assume that these individuals share the same assumptions about how: economies operate; how companies and industries operate; and the appropriate methods to incent and compensate chief executive and other officers. This psychological homogeneity biased to market economic rationality would not seem adept in understanding the complexities of modern societies undergoing monumental transformations. Most of the

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Ibid, p. 199.
Alberta-based board members share common political values having contributed individually and through associated corporations to the governing party.

AIMCo’s CEO and executive officers have received significant pay increases over the past half-decade. Their compensation has increased more quickly than average AIMCo compensation. While it is difficult to compare the performance of different Canadian public sector investment management teams, it would be fair to argue that all such teams seek to maximize return to their pensioners. At a high level, AIMCo has performed “ok” but not at the top of the class in Canada.\footnote{For greater detail see Ascah, 2016.} The board of directors is ultimately responsible for the performance of executive management and the corporation to the Minister and Legislative Assembly. Although the board could be regarded as “blue ribbon” by conventional board metrics, it is not a diverse board. The AIMCo board consists of mainly middle-aged to senior white males with business backgrounds. Such individuals share a political affinity and a partiality for the status quo. In short this is a board and organization that takes few risks (which may be good for the pensioners and government) but eschews diversity which now is becoming viewed as a \textit{sine qua non} for well-functioning boards. Moreover, the board has presided over mediocre investment performance and has not been overly responsive to the hundreds of thousands of pensioners, members, and taxpayers they are ultimately accountable to.\footnote{A recent article about ManuLife Financial Corporation’s executive compensation illustrates how “gaming” is carried out and concurred in my boards. David Milstead, “Trying to demystify ManuLife’s executive compensation,” Special to \textit{The Globe and Mail}, 4 May 2016. “Core earnings” which can be determined by the management rather than net income as defined under International Financial Reporting Standards, were used to award the key executives' bonuses.}

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3.0 Alberta Treasury Branches (ATB Financial)

3.1 Background

In the midst of the Great Depression, Albertans elected a Social Credit government in August 1935 that, ostensibly, was committed to the creation of a new approach to government through the application of Social Credit theory. Attraction to social credit theory was supported by the economic environment in which banks were foreclosing on farmers and small businesses and closing branches throughout Alberta (and western Canada). After several years of legislative initiatives frustrated by judicial decisions and federal opposition, including rejection by the federal government of a bank license for the province, the government settled on an ingenious way to deliver financial services to Albertans.

Under its “Interim program”, two Orders in Council were passed under the authority of the Treasury Department Act to establish “branches of the Provincial Treasury” in Alberta. Two hundred thousand dollars was appropriated by special warrant to finance the establishment of these branches. Order-in-Council 1269/38 of October 1938 established a “transfer voucher” system tackling the vexing question of how to structure a payments system that would be accepted by consumers, civil servants, merchants and municipalities, and banks. A system of bonuses payable to depositors encouraged Albertans and Alberta businesses to support the “interim program.” The first branch was opened in Rocky Mountain House on 29 September 1938. According to Bob Hesketh, the initial build-out was “beset with problems” that were “probably inevitable” with untrained staff and staff with “political credentials superior than their banking qualifications.”

Interestingly, the first branches operated from 9 a.m. to 5 p.m. and 10 a.m. to 3 p.m. on Saturdays. This was discontinued to facilitate the daily closing of accounts. A key component of the program was to encourage the purchase of Alberta-made goods. A three per cent “consumer bonus” was designed to stimulate the purchase of Alberta-made goods, to increase purchasing power and to expand the usage of an Alberta medium of exchange.

By 1940, 7,125 merchants were registered in the Interim Program and by 1942 there were 34,000 voucher accounts operating. Albertans responded to a new alternative source of depositing funds with deposits growing from $1.3 million in March 1940 to $4.9 million in March 1943.

In an effort to provide banking facilities in remote areas of the province, ATB agencies were established that could operate out of grocery stores, gas bars, or insurance agencies. Today ATB operates 133 agencies in remote rural communities such as Tilley, Newbrook, Peers, and Galahad.

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124 Bruce Alan Powe, Chapter 2.
125 These Orders were ultimately confirmed in the Treasury Branches Act passed in November 1938. Statutes of Alberta, 1938, Second Session, Chapter 3.
126 Powe, pp. 73-101 on the voucher system. The complexity of the system is documented in Powe’s thesis in Chapter 4. The Government’s sensitivity to the constitutionality of the scheme was a central factor in its design.
128 Powe, p. 83.
129 Powe, pp. 101-108. See Hesketh, 1989, who notes that the payment of the bonuses was book-keeping without the back-up of any budgetary appropriation. The bonus was sweetened to five per cent then dropped later to two per cent as profitability issues emerged. Pages 44-47.
130 Powe, p. 123.
131 According to Powe: “Through the inexpensive nature of the agency system the government was able to expand the Treasury branches throughout the province on a large scale. The agency system provided a means of extending banking facilities to districts where banks had closed down or to centres where they had never been located.” Page 265.
Initially the Treasury Branches were not authorized to lend money. The lending of money began in 1941 which required considerable thought as to the appropriate level of reserves necessary to support this new activity. Lending authority was highly centralized under the Superintendent and a loans committee chaired by the Superintendent. By 1950, ATB had a total of $10.6 million of loans outstanding mainly to commercial, industrial and agricultural borrowers on the security of tangible assets such as land. According to Powe:

Personal loans are granted for any “legitimate purpose” including home improvements, to be secured by endorsement of a third party or by salary assignment, and in the form of term loans, for periods not exceeding three months, or as monthly installment loans for periods not exceeding twelve months.

Loans guaranteed by the province were also granted.

ATB was supposed to operate independently outside of political influence and direction. As the Treasury Branches sought to establish credibility with Albertans, a shift took place in the desire to win business from merchants to encourage the purchasing power of business, not small consumers. In the early years, the Government and ATB worked assiduously to portray ATB as an orthodox, sound financial institution lending money to creditworthy customers without political interference. This was patently untrue as Hesketh’s M.A. thesis shows.

In 1943, after the death of Aberhart, Treasury Branches were given an additional mandate to be, in effect, service centres for the government including “application and licensing agencies for government departments, government information bureaus and estate service centres.” ATB’s first Superintendent, A.K. Olive, had to balance political considerations with operational ones, namely: promoting the interim program, economic development, agency and branch locations, and personnel appointments. Over time, he received the trust of Ernest Manning and began limiting party involvement in the operations of the branches and agencies, but not Manning’s influence.

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132 Overdrafts occurred prior to the formal announcement of the lending phase. Order-in-Council 812/41.
133 Powe, pp. 182-189.
134 Hesketh, 1989, pp. 55-56. Centralized control also reflected the lack of trust in the qualifications of the lenders in the early years.
135 Powe, p. 189-192.
136 Powe, p. 192.
137 Hesketh, 1989, pp. 50-51.
138 Ibid, Chapter 3.
139 Ibid., p. 53.
140 Ibid, pp. 58-61 and p. 285. Olive was appointed Acting Superintendent in 1938 and was only formally appointed Superintendent in 1949.
### Table 3.1

<table>
<thead>
<tr>
<th>Superintendent/President and CEO</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.K. Olive (Acting 1939-1949)</td>
<td>1938-1956</td>
</tr>
<tr>
<td>C.G. Davey</td>
<td>1956-1972</td>
</tr>
<tr>
<td>Fred Sparrow</td>
<td>1972-1982</td>
</tr>
<tr>
<td>R.O. Holgate</td>
<td>1982-1985</td>
</tr>
<tr>
<td>A.O. Bray</td>
<td>1985-1994</td>
</tr>
<tr>
<td>E.S. Leahy (Acting)</td>
<td>1994-1996</td>
</tr>
<tr>
<td>Paul Haggis</td>
<td>1996-2001</td>
</tr>
<tr>
<td>Robert Normand</td>
<td>2001-2007</td>
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<tr>
<td>Dave Mowat</td>
<td>2007-present</td>
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</tbody>
</table>

3.1.1 Political Lending

Superintendent Olive was heavily criticized by Provincial Auditor Keith Huckvale in the late 1940s for approving large loans without the approval of the Loans Committee. These loans often were to industrial concerns and members of the committee began to balk, leading the disputes to be resolved by Premier (and Treasurer) Manning who usually supported Olive and the borrower. Huckvale’s concerns also touched on doubtful loan accounts and the Branches’ inclination to be lenient when collecting arrears. 141 According to Hesketh, ATB also practiced “pyramiding” which was extending loans to business borrowers who could not repay loans and who were viewed to have importance in some sector or region of the Alberta economy. This approach to lending was also consistent with the view of advancing more “purchasing power” to the business, consistent with social credit principles142

The first example of a political loan took place in 1946. The Executive Council approved a loan to be advanced by ATB to Lassiter’s Limited to clear land for returning military veterans. 143 Complicating matters for ATB was also the existence of the Alberta Provincial Marketing Board (APMB) and the Alberta Industrial Corporation (AIC) who were mandated to expand economic activity through financial support to business. This mandate eventually meant that pressure was placed on ATB to loan money to businesses whom the government’s other organizations were supporting through loans or submissions for assistance to Ministers or cabinet. This, of course, placed ATB’s lenders in an awkward situation. 144

ATB business lending values were usually based on a percentage of real property and chattels whereas banks also loaned on receivables and cash. ATB’s approach was potentially problematic as real property was illiquid and its value subject to fluctuations, as well as manipulation, and therefore required vigilant monitoring. 145 Equally problematic was the absence of legislative oversight of ATB by the Public Accounts Committee. Only twice, in 1943

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141 Ibid, pp. 75-80. ATB did not establish a reserve account for doubtful loans until 1948.
142 Ibid, pp. 82-95. Large pyramiding loans included Robinson, Phelan, O’Sullivan, Podgurney, and Sparling-Davis. See below.
143 Ibid, pp. 62-63. A significant loss was expected by Olive and Lassiter’s assets were eventually sold by the Marketing Board.
144 Ibid, pp. 63-65.
145 Ibid, pp. 67-68.
and 1948, before scandal emerged in 1955 did Opposition members have the ability to question the Treasurer and Premier on the operations of the Branches.  

By the early 1950s Alberta politics was dominated by Ernest Manning and Social Credit. Known as “the good steward,” Manning was seen as deeply religious and an individual seen as competent and beyond reproach. But in the mid-1950s a little known scandal involving ATB, government departments and agencies, and paving contractors, emerged. Manning was forced to call an election in June 1955 to manage the emerging scandals involving provincial jails, provincial buildings, and ATB. During the election, the Superintendent became directly involved by writing a letter to Manning denying, and damning, opposition charges of partisan pressure and that Social Credit MLA loans had encountered repayment difficulties.

3.1.2 Scandal 1

The major scandal that erupted related to several construction firms involved in road building and pipeline construction: O’Sullivan Construction, Fred Mannix & Co. Ltd., Mannix Ltd., Mannix-O’Sullivan Paving Company, and Sparling –Davis Co. Ltd. As noted above, ATB was pyramiding loans to these companies in order to champion local construction firms. Lending was not based on profitability of the firms but on the capital asset values of machinery. These firms however were not able to make profits from government road contracts and, as more loans were advanced to maintain existing loans as current, ATB’s problem loans grew in magnitude.

In 1948 Superintendent Olive continued to advance loans without the permission of the Loans Committee to O’Sullivan. The problem was well known to the Auditor, Keith Huckvale, the Deputy Provincial Treasurer, J.F. Percival (a former banker), and to Manning, but nothing was done to remedy the situation. In the interests of economic development and social credit theory, the scheme was kept going by the awarding of road contracts to the concerned parties. O’Sullivan was taken over by Mannix on May 31, 1949: The latter was able to force a favourable deal knowing O’Sullivan was finally being squeezed by ATB to repay its loans. In an action reminiscent of the future West Edmonton Mall financing and loan guarantee, O’Sullivan’s loans were increased at the time of the takeover. From 1949 to 1950 difficult negotiations took place between Mannix, his intermediaries and Olive.

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146 Ibid, p. 105. Warning signs had been flashing publicly for some while. In his 1954 audit certificate, Auditor Keith Huckvale stated: “Provision for uncollectible accounts in the amount of $148,000.00 was made leaving the reserve for bad and doubtful accounts at $322,069.48 as a March 31, 1954. The reserve is considered quite inadequate for its purpose.” (Emphasis added.) Public Accounts of Alberta for the fiscal year ending March 31, 1954, at page 223. In 1953 Huckvale characterized the provision as “inadequate.”

147 For example, Brian Brennan’s glowing biography The Good Steward: The Ernest C. Manning Story, 2008. “Before 1955, the Social Credit government had a reputation for honesty and integrity that went virtually unchallenged. Its public persona as a party of devoted Christians kept it free from allegations of dishonesty and corruption. The personality and image of its leader defined the persona of the party, and most Albertans viewed Ernest Manning as a man of sincerity, rectitude and moral correctness.” At page 120. See also Hesketh, pp. 147-148 on the 1955 election and Liberal leader J. Harper Prowse’s reluctance to attack Manning’s saint-like status.

148 Hesketh, 1989, pp. 116-120.


150 Before the election the Canadian Construction Association criticized the quality of the public tender process in Alberta and in June 1955 the Alberta Association of Architects also criticized Alberta’s tendering process. At this time Alberta had no statutory rules requiring tenders to be publicly advertised, put to tender, or bids opened in public. See Hesketh, 1989, pp. 230-231 on myriad ways the Department of Public Works favoured certain contractors.

151 Including loans to other government entities, such as the Provincial Marketing Board and the Alberta Industrial Corporation. Hesketh, 1989, p. 222

152 ATB did not follow normal lending and monitoring practices on the O’Sullivan loan including the requirement of audited financial statements to ascertain profitability. Finally in January 1949 an audit report precipitated a major clash at the Loans Committee. Hesketh, p. 237-241.

153 Ibid, pp. 241-244.
on behalf of the Province to, in effect, support a preference for Mannix companies to win road-building contracts.\textsuperscript{154}

The second major loan that became troubled was the Sparling-Davis loan. This company also operated through Sparling Fowler, CESSCO, Hupp & Elliott, Ontario-based Sparling-Davis Tank & Manufacturing Co. Ltd., and U.S.-based Sparling-Fowler-Murphy. As with the O’Sullivan companies, the APMB and AIC were early supporters of this construction company which was a heavily involved in the emergent natural gas and oil pipeline expansion. The key social credit objective was to increase a private business’s “purchasing power” through loans provided by instruments established by the government \textit{viz.} AIC, ATB and APMB. ATB’s supposed operational independence from the government and need to maintain customer confidentiality allowed the government to shield its industrialization policy from scrutiny.\textsuperscript{155}

Sparling’s relationship with ATB began in June 1948 with a loan of $100,000 for the purchase of oil field specialty steel for expenses associated with a contract with Imperial Oil at Leduc with the understanding that AIC would accept responsibility for the loan.\textsuperscript{156} At about the same time, the Marketing Board was extending large loans to CESSCO, a Sparling affiliate. In what would become common vernacular used in ATB for decades, Olive and his associates desired to retain and acquire “connected accounts,” preferably of prominent Alberta businesses. By 1951, loans to Sparling and associated companies from ATB totaled $3 million or more than 15 per cent of the Branches’ loans.\textsuperscript{157} Further problems emerged as loans continued to be advanced to avoid embarrassment of Sparling being unable to complete contracts. These problems included inaccurate project estimations, complex inter-corporate loans, joint venture agreements with Mannix, continued lack of profitability, ATB breeches of loan limits, loan approvals after the fact, circular loan repayments involving AIC and the Marketing Board, and failure on ATB’s part to receive audited financial statements.\textsuperscript{158} As these problems mounted, the Loans Committee put greater pressure on the connection and began to dictate decision-making at these firms.

By the end of 1952 Sparling and its associated companies had liabilities of about $4.7 million mainly to ATB, but also to other branches of the Alberta government. The Alberta government had finally reached the end of its rope with Sparling but wanted to avoid the embarrassing revelations of its collective failure to professionally manage the credit to Sparling and its connected companies. Once again Fred Mannix & Co. became the white knight to rescue the government (and conceal the fiasco at ATB, AIC and the Marketing Board). In 1953, Sparling-Davis and its myriad companies were acquired by Mannix in a deal that benefited Mannix as Sparling-Davis was being squeezed by both ATB and the Marketing Board.\textsuperscript{159} By March 1954, the Sparling-Davis loans totaled $4.5 million, or over 20 per cent of ATB’s loans of $21.5 million!\textsuperscript{160}

In the last day of the election campaign after unremitting questions about the O’Sullivan and Sparling-Davis contracts and MLA loans with ATB, Manning reluctantly announced he would appoint a Royal Commission to examine the allegations. The Royal Commission’s terms of reference were narrow and its government appointees were reluctant to expand the mandate where questions remained.\textsuperscript{161} Predictably the Commission concluded that, based on the evidence presented and limited terms of reference, no preference was given to roadbuilders with

\begin{itemize}
  \item \textsuperscript{154}\textit{Ibid}, pp. 256-280.
  \item \textsuperscript{155}\textit{Ibid}, pp. 297-298.
  \item \textsuperscript{156}\textit{Ibid}, pp. 301-302.
  \item \textsuperscript{157}\textit{Ibid}, pp. 309.
  \item \textsuperscript{158}\textit{Ibid}, pp. 309-321.
  \item \textsuperscript{159}\textit{Ibid}, pp. 325-336.
  \item \textsuperscript{160}\textit{Ibid}, p. 336. Under Mannix’s ownership, Sparling Davis’ loans to ATB were gradually reduced. Olive, as he moved into retirement, was tasked with negotiating a compromise on the debt with Mannix. There is some suggestion that Mannix’s monopoly over the oilfield work in the Pembina field obtained from the Manning government, and the profits therefrom, were helpful in reducing loans to ATB. Hesketh, p. 362.
  \item \textsuperscript{161}\textit{Ibid.}, pp. 186-197.
\end{itemize}

\textbf{Board Appointments and Executive Compensation:}
\textbf{A Survey of Four Alberta Provincial Agencies}
\textit{6/26/2016 6:37 PM DRAFT}
Unfortunately, Hesketh’s M.A. thesis provides conclusive documentation which supports concerns of federal regulators and politicians that provincially-owned banks could be run on the basis of political advantage, as opposed to, commercial purposes.

The 1955 election losses meant that Manning’s cabinet had been cleared of many of the diehard Social Credit members including Lucien Maynard and C.E. Gerhart. These departures were timely as Manning’s new Treasurer A.E. Hinman was determined to bring change to ATB and move away from the “purchasing power” notions of ATB lending policies. The reserve for loan losses was buttressed through the late fifties and modest growth in loans and deposits unfolded.

In 1967, following the report of the Royal Commission on Banking and Finance (the Porter Commission) which recommended the establishment of a deposit insurance scheme for Canadian banks, The Treasury Branches Deposits Guarantee Act, was introduced to guarantee the repayment of all deposits by the Province of Alberta. Even though ATB was a division of the Treasury Department and part of the Crown in right of Alberta, it was deemed advisable to amend the Act to comfort large depositors that the government stood behind ATB.

3.1.3 ATB Expands

While ATB accumulated about $1 million in losses by 1950, as Alberta’s economy improved and as ATB became more efficient, $68.8 million in “remittances” were made to the Government of Alberta between 1964 and 1982. By 1980, ATB had 113 branches and 99 agencies operating throughout Alberta.

Total loans grew from $10.6 million in 1950 to $1.9 billion in 1981 after a two decade long period of unprecedented growth in the oil and gas sector fueled the province. By the beginnings of the 1980s, ATB was a fully integrated deposit-taking financial institution and had become a direct clearer with the Bank of Canada in the 1980s, a full scale credit contraction ensued with the chartered banks reducing credit in Alberta over the 1984-1990 period as Chart 3.1 illustrates. Meanwhile, ATB grew its loan book throughout the period. As a result, ATB gained credibility and support from many in Alberta’s business community on the basis that ATB was locally based and would not withdraw credit capriciously. As we shall discover, this philosophy was a double edged sword.

Under Superintendent Al Bray, ATB seemed to weather the financial storm better than its counterparts in Alberta. Clearly, the credit-worthiness of the Alberta government with a high credit rating meant that ATB could operate without capital with leverage ratios of about 50 times. During the 1980s, many deposit-taking institutions with geographic operations focused in Alberta failed. Local financial folklore had it that if the major banks’ operations been limited to Alberta all of them would have failed.


Sections 401.2 and 401.3 of the Bank Act prohibit provincial and federal governments (with certain exceptions such as pension funds and regulated funds) from owning and voting bank shares.


“Failure” of a financial institution can be considered along a continuum from being sold to another institution and re-capitalized to being liquidated with the assets being sold for the benefit of depositors, secured, and unsecured creditors. The following institutions “failed”: Canadian Commercial Bank, Northland Bank, Heritage Savings and Trust Company, Principal Trust, Associated Investors, First Investors, Edmonton and Calgary’s credit unions, and Northwest Trust. Government finance departments, the Bank of Canada, financial institution regulators and deposit insurers would all have been involved in this process.
In 1990, under Superintendent Al Bray, ATB introduced “Any Time Banking” that enabled customers with a touch tone phone to carry out “banking” transactions.\textsuperscript{168}

In 1992, with the election of Ralph Klein as leader of the Progressive Conservative (PC) Party of Alberta and Premier, a new approach to government was taken. Klein’s “getting out of the business of business” was a direct reversal of Don Getty’s involvement in “choosing winners and losers.”\textsuperscript{169}

3.1.4 Scandal 2

Soon after Premier Klein took office, the re-financing of West Edmonton Mall (WEM) was taking place. ATB had been a mortgagee of a later phase of the mall with an exposure of approximately $55 million. The lead lender to the mall was Gentra which was responsible for the large, problematic commercial mortgages formerly held by the Royal Trust Corporation (which had been absorbed by the Royal Bank of Canada). Gentra supposedly took an

\textsuperscript{168} Annual Report, 1990, p. 1. Use of the term is and was a violation of section 983 of the Bank Act which prohibits the use of “bank,” “banker,” and “banking” by organizations other than chartered banks. ATB also offered “Alberta Banking Machines.”

\textsuperscript{169} In fairness to Don Getty, he inherited a high cost government and, as noted above, an economy that was in recession due to falling oil prices, a collapse in non-renewable resource revenue, and a real estate collapse. That said, investments in a failed magnesium plant in southern Alberta and support for Peter Pocklington’s Gainers’ meat packing operations can be seen as lows in Alberta financial decision-making.
aggressive approach to the mall’s refinancing.\textsuperscript{170} The Ghermezian family, who controlled the mall, approached the provincial cabinet for assistance in maintaining control over its major asset.\textsuperscript{171,172}

Subsequent to this approach, in its March 31, 1995 financial statements ATB reported an increase of guarantees from $124 million to over $475 million.\textsuperscript{173} Controversy swirled around ATB when this information became public with suspicion quickly focusing on the West Edmonton Mall’s financing difficulties. Scrutiny was particularly intense in the Legislative Assembly as the Government had introduced legislation prohibiting the giving of provincial guarantees without the consent of the Assembly.\textsuperscript{174} ATB, which had heretofore not been a focus of opposition questioning became a cause celebre as allegations of political interference were brought against the government.

On 13 March 1995, in question period Liberal Opposition Treasury critic Dr. Mike Percy asked Treasurer Jim Dinning about the involvement of ATB in the refinancing of the WEM-Gentra-Nomura-TD Trust loan. Dinning’s reply was similar to earlier responses of Treasurers claiming an arms-length relationship between ATB and the Government.

\begin{quote}
I know that the hon. member would chastise me severely were I to stand on the floor of this Assembly and begin to talk about any one of the 800,000 deposit and loan accounts of the Treasury Branches, because I would be breaching a long-standing practice whereby the Treasurer, the government does not get involved with the activities of Treasury Branches in that that is a relationship between Treasury Branches and any one of its clients. I would simply ask the hon. member: if he wants me to be lured into this matter, where should I draw the line? Should I draw the line at any one of the Liberal members who may do business with Treasury Branches, draw the line at any one of the members on this side of the Assembly or any Albertan that is doing business
\end{quote}

A key concern of lenders was the high costs of deferred maintenance facing the mall’s owners.\textsuperscript{170} The Auditor General of Alberta, \textit{Report of the Auditor General on the 1994 Refinancing of West Edmonton Mall}, February 1999.

The Auditor General concluded “The political involvement was not successful. It did not achieve its objective of providing sufficient time to develop a \textit{commercially prudent alternative financing} to the Gentra/ATB agreement.” The key words are “commercially prudent.” In the preceding paragraphs (pp. 11-13), the Auditor General Peter Valentine lays out the communications and contacts between Mr. Kowalski, the Deputy Premier and Minister of Economic Development and Tourism, the Provincial Treasurer Jim Dinning, the Superintendent of Treasury Branches Al Bray, the Acting Superintendent of Treasury Branches, Elmer Leahy, the Deputy Provincial Treasurer, Finance and Revenue, A.J. McPherson and Gentra. In October 1993 Kowalski was “appointed as the Minister to deal with all aspects of the government’s interactions with Triple Five (WEM’s owner the Ghermezian family).” (p. 7.) It was clear that the Treasurer and the then Superintendent Al Bray disagreed with an “Alberta solution” and delay in the refinancing by finalizing an agreement with Gentra on 10 March 1994. This was overridden by Bray’s successor (Elmer Leahy) with a new agreement between ATB and WEM reached with an ultimate exposure of $418 million loan guarantee entered into on 31 October 1994. (p. 8) The Deputy Provincial Treasurer who was meeting monthly with the Acting Superintendent did not learn of the guarantee until after it was provided. The Provincial Treasurer was very averse to “ATB’s continuing participation in the financing of WEM, the Ghermezians and Triple Five Corporation.” p. 50. Kowalski was fired from his post as Deputy Premier and Minister of Economic Development on 15 September 1994.

\textsuperscript{172} Nader Ghermezian’s hand written letter to Kowalski of 19 May 1994 read: Despite this sound offer which is made by First Boston o Gentra, Gentra is \textit{very unreasonable} in giving it a chance and are proceeding to place the mall in bankruptcy and yesterday gave Triple Five a 10 DAY FINAL NOTICE TO PAY ALL debt which is not even due (due date August 14, 1994). UNLESS THE PREMIER CALLS THE CHAIRMAN OF GENTR MR FRASER BEATY (sic), DISASTER will happen unjustifiably.” Sessional Paper 537/2000.

\textsuperscript{173} \textit{Public Accounts of Alberta}, Volume 3, 1994-95, p. 278.

\textsuperscript{174} \textit{Business Financial Assistance Limitation Statutes Amendment Act} restricted the government’s ability to give loans or issue loan guarantees to businesses in Alberta. See also \textit{Hansard}. 23rd Legislature, Second Session, 1 March 1994 where Deputy Premier Ken Kowalski extolled the economic benefits of WEM; pp. 343-344.
with the Treasury Branches? I wouldn’t know where to draw that line, Mr. Speaker, except that I’ll draw it at point zero, and I will not cross that line.  

On 14 March 1995, Dinning responded to Percy’s WEM queries saying that Alberta taxpayers “were on the hook for nothing” and placed his faith in the auditor’s work at ATB and again reiterated he would not reveal confidential commercial information. In October, Dr. Percy turned to other ATB financings including loans to Stewart Green properties (owned by Dallas Star’s owner Norm Green) and to Peter Pocklington, owner of the Edmonton Oilers. In 1998, the Auditor General recommended a tightening up on “connected accounts.” The AG noted that:

To protect Alberta Treasury Branches’ security position and minimize risk of loss on connected loan accounts, loans should be reviewed for adequacy of security and cash flow prior to approving connected loan account applications. It is particularly important when a number of inter-company purchase or sale transactions occur or where one company generates the income and cash flow for all loans, and in substance, all companies operate as a single economic unit within the connection.

Monitoring of guarantees was also important to ensure that assets of related companies were properly secured. Consolidated financial statements were also necessary to ensure a full understanding of the corporate enterprise borrowing depositors’ money. This comment is eerily reminiscent of the problems ATB encountered 40 years before with the Mannix, Sparling-Davis and O’Sullivan companies. It also underlines the importance of having competent lenders, credit analysts, legal departments, and proper corporate governance.

3.1.5 Rebuilding

As these controversies unfolded, pressures began to build to sell ATB. Klein’s mantra of “getting government out of the business of business,” certainly applied to ATB which operated in direct competition to federal banks and provincially-regulated credit unions. In response, Provincial Treasurer Jim Dinning invited Gordon Flynn, a prominent Edmonton tax lawyer, to undertake a high level study of ATB. Flynn recommended a three stage process to modernize ATB by creating an audit committee, an advisory committee and, ultimately, a corporate board to guide its operations, amend legislation to give ATB powers commensurate with other financial institutions, remedy its capital deficiency, potentially establish it as a provincial Crown corporation, and possibly implement partial or full privatization in stage 3. Flynn’s report also recommended that its mission statement include operating “on a cost conscious, profit-motivated basis while giving fair value to customers.”

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175 Hansard, 23rd Legislature, 3rd Session, 13 March 1995, pp.508-509. Questions continued under Mike Percy’s leadership and then under Howard Sapers. 14 March 1995. Under section 8(1)(a) of the Conflicts of Interest Act, Members of Alberta’s Legislative Assembly are prohibited from borrowing from ATB.


Flynn’s report was referred to a Working Group chaired by former federal Finance Minister Don Mazankowski. Within two months the group reported general agreement with Flynn. Key findings were:

1. The Government should articulate public policy goals for ATB and measure and benchmark its performance against those goals;
2. ATB to operate at arms-length from provincial government particularly in the areas of human resources, systems and telecommunications;
3. ATB requires a board of directors to direct and oversee its operations;
4. ATB should operate on a “level playing field” with respect to its private sector competitors;
5. ATB powers should be modernized to allow it to compete with other financial institutions—specifically with respect to capital requirements, capital taxes and deposit insurance;
6. The entry into new financial services and products should be considered on a “business case” basis;
7. ATB could deliver government programs on a profit basis at reduced costs to the government;
8. ATB should operate on a “cost conscious, profit-motivated basis” and
9. ATB should be subject to an accountability regime equivalent to that of a private sector financial institutions.

The Working Group also recommended an independent process involving a human resources consulting firm for board appointments viz. that appointments be “based on merit and reflect a variety of expertise and viewpoints. Appointments must not represent special interests.”

Fairly quickly Treasurer Dinning took legislative action and on 17 May 1995 the Treasury Branches Amendment Act received Royal Assent. The legislation created a board of directors and an audit committee of the board of directors. It was announced that the Acting Superintendent would be retiring and a wide external search for a new Superintendent would be undertaken externally through a process controlled by the new board.

In a departure from previous practice, the Treasurer appointed Louis Desrochers, a prominent Liberal party lawyer from Edmonton, and Mike Maher, Dean of the University of Calgary’s business school, to lead the recruitment activity for board members. Ads inviting applications for board positions were placed in Alberta papers and hundreds of applications were received. In March 1996, the Provincial Treasurer announced the names of the new board. Coincident with the appointment of the board, Dinning wrote Marshall Williams, the new board chair to provide policy direction to the board. The letter, which was made public, was largely based on the foundation principles from the Flynn Report and Mazankowski working group. ATB was to “operate

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184 Ibid, pp. 3-6.


186 Bill 39, Treasury Branches Amendment Act, 1995. Third Session, 23rd Legislature, 1995. Section 2.1 created the board, including by-laws dealing with conflicts of interest; and section 2.7 mandated an audit committee consistent with other financial institutions’ statutes,

187 Desrochers was Chancellor of the University of Alberta from 1970 to 1974. Desrochers and Maher were assisted by human resources specialists from Ernst & Young.

188 O.C. 114/96 dated 20 March 1996. See also Press release which outlined the process of appointment and biographies of the new directors. 20 March 1996 “Government Appoints 15 Member Board of Directors for Alberta Treasury Branches.” Legislative Assembly, Sessional papers, 746/96. Over 450 applications were received. The panel was advised by Ernst & Young, who were subsequently engaged in the hiring process for the new CEO. Letter from P. Michael Maher to Honourable Jim Dinning dated 12 March 1996. Sessional Paper 747/96. Criteria listed included: “amount of previous board experience, nature of business experience, including industry representation, entrepreneurial/small business versus corporate, geographic location, and rural versus urban.”

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independently” on a “commercial basis” with the aim of “optimizing profit”. ATB was to keep its customer information confidential.\textsuperscript{189} In a presentation to the annual convention of the PCAA in March 1996, Dinning urged ATB to “concentrate on the little league endeavours rather than big league football and hockey teams.”\textsuperscript{190} While privatization was a part of the Conservatives’ agenda in these years, the new Chair, Marchall Williams gave an interview conveying the Board’s (and government’s) view that privatization was not in the cards noting “is it even realistic?”\textsuperscript{191}

Shortly after the Board was appointed, Auditor General Peter Valentine reported he was investigating “allegations of inappropriate business practices.” He also recommended that ATB “adopt a more business-like and profit-oriented approach when approving and monitoring large commercial loans,” eerily echoing a similar suggestion by a former auditor forty years earlier.\textsuperscript{192}

After the passage of the Act, speculation remained that ATB would be privatized given the government’s avowed desire to be “out of the business of being in business.”\textsuperscript{193} CIBC Wood Gundy was commissioned to study the prospects of privatization.\textsuperscript{194} However, ATB’s franchise was strong in rural communities of Alberta where the provincial Tories drew electoral strength. Internal polling and caucus discussion led to a declaration that ATB’s organization would be strengthened through an arms-length board of directors which would carry out a business plan supported by the government. In 1997, after caucus discussions, Stockwell Day, the new Treasurer introduced the \textit{Alberta Treasury Branches Act} announcing that ATB was not to be privatized.\textsuperscript{195}

In September 1996, a new Superintendent was appointed by Order in Council.\textsuperscript{196} Paul Haggis, the former chief operating officer of Metropolitan Life possessed considerable experience in banking, treasury and insurance. For the first time in early 1997, a female joined the Executive Committee as Vice-President, Public Affairs.

In October 1997 the \textit{Alberta Treasury Branches Act} was proclaimed repealing the \textit{Treasury Branches Act} and \textit{inter alia:} abolished the position of the Superintendent and created a Chief Executive Officer position appointed by the provincial Cabinet \textit{on the recommendation of the Board}; allowed ATB to establish subsidiaries in securities, trust, and investment management; established a capital adequacy regime; prudent investment standards; and related party (self-dealing) rules.\textsuperscript{197} The legislation was informed by legislative initiatives and federal-provincial “policy harmonization” in the financial services sector taking place at that time.

Shortly after the Act was proclaimed, a group of employees brought an application to de-certify ATB’s unionized workforce. The action brought before the Labour Relations Board in November 1997 led to the Board de-certifying about [700] supervisory employees while keeping about [1800] employees in the union. There existed a perception that if ATB were to be privatized, a union would be a drag on the valuation of the entity.

Haggis reorganized and restructured ATB to instill a more business-like approach as directed by the Minister and recommended by Mazankowski. Haggis launched an ambitious business turnaround strategy that included a centralized marketing department, regionalized branch management, a new asset recovery group, and a new

\begin{footnotesize}
\begin{enumerate}
\item[192] \textit{Annual Report of the Auditor General of Alberta}, 1995-96, p. 200. Other recommendations included: better quality due diligence when approving credit; better financial reporting by customers; a more effective chief inspector function; and a better way of dealing with allegations of improper conduct by customers and staff.
\item[193] Sessional Papers 837/98, 840/98 and 841/98.
\item[194] Sessional Papers 830/98 and 831/98. Ironically the return filed with the Legislative Assembly was blank: the then Provincial Treasurer and government decided not to disclose any information about the report.
\item[196] Order in Council 359/96, August 1996.
\item[197] Bill 33, \textit{Alberta Treasury Branches Act}, First Session, 24\textsuperscript{th} Legislature. Provincial Treasurer Stockwell Day was responsible for bringing forward the Bill and Regulations. Alberta Regulation 187/97, October 8, 1997.
\end{enumerate}
\end{footnotesize}
executive team mainly recruited from outside ATB. A thorough review of the loan book led to a write-down of assets of $198 million leading to a loss of $124 million in fiscal 1997. Key challenges faced by Haggis and his new team included realizing on the Edmonton Oilers, a problematic and complex loan which needed to be managed prudently and delicately given the hundreds of thousands of Oilers' fans in the province.

Key changes included the establishment of a centralized marketing function, an asset recovery group, and a new regional branch structure lead by Bob Normand, recruited from the Bank of Montreal. Under Haggis’s and Normand’s direction, the branch network was rationalized. Early in 1997, a number of senior executives left ATB and a number of new executives, some of whom worked with Haggis at Metropolitan Trust in Edmonton came on board. A key decision was to outsource Information Technology to IBM. This would have significant ramifications a decade later when ATB began to replace its legacy banking system.

On August 25, 1998 ATB launched a lawsuit against the owners of WEM and others seeking to set the refinancing agreements aside and to have the Court appoint an interim Receiver-Manager to manage the Mall. According to a footnote in ATB’s financial statements:

> In April and June 1998, WEM provided ATB with copies of purported agreements dated November 15, 1994, February 23, 1996, and March 25, 1996, that purport to amend the WEM refinancing agreements dated October 31, 1994. The agreements purport to extend the term of the guarantee to 2014 and to amend the terms of repayment and other provisions of the refinancing agreements. Management believes that it will be successful in its legal action to set aside these purported amending agreements and as a result no liability to them has been established.

Counterclaims were filed against ATB in December 1998 and January 1999 by WEM and “others” including the former Acting Superintendent Elmer Leahy. Leahy and companies controlled by Leahy, it was subsequently alleged by ATB, had received $250,000 U.S. from an Israeli bank and $70,500 from an intermediary to facilitate the refinancing of WEM. The prospect of privatization, with litigation overhanging the process, was not something the government wished to entertain at that time as investment dealers underwriting an issue would drive to discount the price of the shares given the uncertainty of a massive lawsuit.

In 2001 Bob Normand, the Executive Vice-President of ATB succeeded Paul Haggis. Normand had worked in the banking industry for over 30 years including a short stint with the Canadian Commercial Bank. A key skill set of was his branch and corporate relationship management experience. One of the other challenges he faced was the continuing litigation involving the West Edmonton Mall. In the end the litigation was settled out of court with the announcement on Christmas Eve 2002. Under Normand, ATB expanded its branch network in the burgeoning

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198 1997 ATB Business Plan
199 The fact that the loan guarantee to the Toronto-Dominion Bank for WEM was not acknowledged by the government for confidentiality reasons (check).
200 ATB Annual Report, 1997-98, footnote 20, p. 32. ATB also took a $45 million write-down: the difference between the outstanding balance of $345 million and estimated realizable value.
201 Ibid.
203 Vivone, p. 178. In responding to a question from NDP leader Brian Mason about a possible cover-up concerning the settlement, Finance Minister Shirley McClellan stated: “The crown was fully released from any claims and allegations and has recovered 100 per cent of its legal costs pertaining to this matter. Particulars of any financial arrangement between ATB and West Edmonton Mall are strictly confidential as are all dealings between ATB and its customers. ATB has a fiduciary obligation to keep customers’ files and business confidential.” Letter dated 25 November 2005. Sessional paper 700/2005. See also Jac MacDonald, Edmonton Journal, 21 December 2002, https://groups.google.com/forum/#!topic/ont.general/74fT86mZMNA Accessed 21 April 2016.
suburbs of Edmonton and Calgary and rehabilitated some of its older branches. A key organizational shift was to a “lines of business” model. Two new business lines were created – ATB Investor Services and Energy and Commercial banking to complement the core retail, independent and agricultural activities operating out of the branch network.

In May 2007, Dave Mowat, former President of VanCity Savings Credit Union was appointed president. Mowat had previously worked with VanCity’s venture capital unit and with the Business Development Bank. Mowat had extensive experience in retail customer service and in building an organizational brand that was socially responsible and community-minded.

3.1.6 Third party-sponsored Asset-backed Commercial Paper (ABCP)

In August 2007, over $1.2 billion of ABCP that was owned by ATB and ATB Investor Services’ money market fund became illiquid as a result of the spreading financial crisis in U.S. and European markets. Over the next three years the restructuring of the paper and its valuation continued to consume executive resources at ATB. ATB and ATB Investor Services were not the only financial institutions caught in the financial imbroglio: Caisse de Depot ($10 billion), Caisse Desjardins ($6 billion), National Bank ($4 billion) and PSP Investment ($3 billion) had more invested than ATB. Fortunately, Alberta public sector funds did not have much in the way of exposure to these short-term investments. In 2007-08, ATB took a massive special provision for credit loss of $253 million followed by another specific provision of $225 million the following year. In his Annual Report of 2008-9 the Auditor General hinted that inappropriate incentives may have led to inadequate scrutiny of these short-term securities. (In the following section we will discuss some of the implications of ABCP on the compensation packages of ATB’s executive officers.)

3.1.7 Other Developments to Present

Beginning in 2007, ATB began a massive project to overhaul its Synergy banking system. ATB selected SAP, Accenture, and IBM to carry out the “Core” project. Originally budgeted for about $160 million, by October 2010 the project’s cost was estimated at $320 million and was more than a year behind schedule. Key problems identified by the Auditor General included: management’s misjudgments on the risk of SAP’s ability to adapt its software to North American banking standards and the failure to document and verify over 250 business processes. In addition, ATB’s contracts with SAP and Accenture did not set fixed limits on time and materials to be invoiced. Management reporting to the board failed to provide sufficient detail to allow for meaningful comparisons between current cost estimates and the original project budget costs. Eventually the system went live over the transitional Labour Day week-end in 2010 and resulted in significant problems for business customers and retail customers.

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205 UofA also had some of the affected ABCP.
206 Report of the Auditor General of Alberta, October 2008, pp. 109-149. Unusually, the names of the former CEO and Executive Vice-President and Treasurer were mentioned in the report at page 147. See also Neil Waugh, “Cracks show in people’s bank,” 27 November 2007 where the question of future write-downs and political accountability is discussed.

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In 2010, ATB entered into an arrangement to purchase 19.9 per cent of AltaCorp, an investment bank set up by the former President and CEO of Tristone Capital, George Gosbee.\textsuperscript{210} As noted above, Gosbee was a member of AIMCo’s board and a significant donor to the PCAA. Ironically this was the same Gosbee who at a provincial budget forum three years later suggested that ATB be sold.\textsuperscript{211}

One other feature of ATB in recent years has been its push to establish its brand through heavy marketing, community relations, and corporate social responsibility. In fiscal 2007 ATB spent $19.4 million on Marketing and Supplies which increased to $29 million in 2009, fell to $23 million in 2010 and rose again to $24 million in 2011 the last year in which separate reporting of marketing expenses occurred. ATB formed a relationship with the Edmonton Oil Kings, the Fringe Festival and dozens of other high profile organizations. It has launched significant media buys in \textit{The Globe and Mail} and Alberta television promoting its brand and services. Media advertising frequently features ATB personnel. Small business inserts in the Edmonton Journal have also raised ATB’s profile in the business community. In addition, CEO Mowat has developed a high profile for ATB by promoting lights on the high level bridge in Edmonton, in his role as the Campaign Chair of Alberta’s Capital Region United Way, and as recent Chair of Alberta’s royalty commission.

On the corporate social responsibility front, ATB has partnered with Habitat for Humanity, Homeward Trust, and the Boyle Street Community Services. The corporation has for over a decade worked to support the two childrens’ hospitals in Alberta through its “Teddy for a Toonie” campaign. In addition, ATB sponsors several financial literacy programs.\textsuperscript{212}

One of the most striking features of ATB’s financial evolution recently has been its shift from an agricultural and small business lending institution into commercial lending. In spite of strong growth in lending to independent business and agriculture, corporate lending had surpassed SME lending at ATB by 2004 under the lines of business model.\textsuperscript{213} From 2011 to 2015, performing loans at ATB have grown from $25.1 billion to $37.6 billion or by 49.8 per cent. In 2014-15, over two-thirds of ATB’s profits were derived from its commercial lending and deposit operations. From 2011 to 2015, commercial lending at ATB has more than doubled.\textsuperscript{214} With a decline in oil prices, it remains to be seen how this strategy will impact its government owner- an owner that has a huge exposure to changes in the price of oil. In its financial report for the nine months ending December 31, 2015, ATB profits fell by $102 million or nearly 40 per cent as the provision for credit losses increased from $20 million to $197 million.\textsuperscript{215} In Budget 2016, it was revealed the ATB’s estimated profit for the full fiscal year will now be $82 million, down from $283 million stated in the 2015-16 Budget, and also down from $208 million estimated in the Third Quarter Budget update of only eight weeks earlier.\textsuperscript{216}

A related concern is the absence of reporting of industry concentration in its commercial and small business loan portfolio. This reporting in the Management Discussion and Analysis was discontinued in 2008.\textsuperscript{217} This form of reporting is common and critical for financial institutions raising capital in public markets so as to inform investors of the loan exposure in specific sectors. It is especially important given Alberta’s heavy exposure to the energy industry and customers who work in that sector and related sectors. In the Third Quarter report to December 31, 2015, it is noted under “Industry Concentration”:

\textsuperscript{212} \textit{Annual Report}, 2015, pp. 53-55.
\textsuperscript{213} ATB’s financial statements over the decades alternate between providing breakdowns on agriculture, independent business and commercial lending making it difficult to consistently understand the evolution of these different business markets.
\textsuperscript{214} \textit{Ibid.}, p. 94.
\textsuperscript{215} \textit{ATB Financial, FY 2016 Q3 Highlights}. June 2015 numbers and September 2014 numbers were restated.
\textsuperscript{217} \textit{Annual Report}, 2008, p. 58. At March 31, 2008 nine per cent of ATB’s net loans were to mining, energy, forestry.
ATB is inherently exposed to significant concentrations of credit risk as its customers are all participants in the Alberta economy, which in the past has shown strong growth and occasional sharp declines. ATB manages its credit risk through diversification of its credit portfolio by limiting concentrations to single borrowers, industries, and geographic regions of Alberta. As at December 31, 2015, commercial real estate is the largest single industry segment at $4.6 billion (March 31, 2015: commercial real estate $4.1 billion). This represents no more than 24.7% (March 31, 2015: 23.1%) of total gross business loans. The outstanding principal for the single largest borrower is $89 million (March 31, 2015: $82 million), which represents no more than 0.22% (March 31, 2015: 0.22%) of the total gross loan portfolio.

Not only is there not a table showing other exposures such as energy, construction, and accommodation, this lack of transparency at this time in the province’s fiscal and economic history is highly problematic as the government struggles to remedy a dire financial position inherited from its predecessors.

In its budget of October 2015, Finance Minister Joe Ceci announced a program to promote access to capital for small and medium-sized businesses. ATB was to receive $1.5 billion in additional capital to boost lending to “to help our province’s entrepreneurs and job creators across the province....Lending decisions will be made and administered on the basis of sound banking practice by professionals, not politicians.” Under the new lending program, the government was to advance the capital through amending the Wholesale Borrowing Agreement with the Province to increase its limit from $5.5 billion to $7 billion. The loan would be treated as “contingent capital” and added to the institution’s capital base. This would allow ATB to lend on multiples of this “capital” injection.

Recently, the Government of Alberta’s credit rating was reduced by Moody’s. In their decision the bond rater also signaled out ATB’s performance as a factor in its downgrade. At the very time that the Government does not need additional financial pressures, its exposure to both ATB and Alberta’s credit unions (through the Credit Union Deposit Guarantee Corporation) is at an all-time high of over $60 billion in deposit liabilities. This rating action assumes ATB can remain “self-supporting” but moots the possible need for additional capital.

### 3.2 Board appointments at ATB

#### 3.2.1 Board Appointment Process

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220 The agreement allows ATB to request the provincial government to borrow on behalf of ATB and to on-lend the proceeds to ATB under certain conditions and subject to a credit limit. By 31 December 2015, ATB had availed itself of $680 million of the $1.5 billion “capital” injection via the Wholesale Borrowing Agreement.
221 Gary Lamphier, “ATB Exec outlines bank’s (sic) plan to increase lending,” Edmonton Journal, 3 December 2015. Contingent capital was de rigeur after the financial crisis. Regulators wanted financial institutions, especially systemically important ones (too big to fail) to sell this form of capital that would be converted to “equity capital”- able to absorb losses- when an institution became troubled. An earlier iteration of this idea came in 2009 when the new Finance Minister Iris Evans and Dave Mowat announced a program to extend lending to Alberta business hurt in the midst of the financial crisis.
222 “In conjunction with the weak economic outlook, the provincial guarantee of ATB Financial’s obligations may pose additional stress on the province’s level of cash and investments. ATB’s gross impaired loans doubled year-over-year to 1.1% of total loans at December 2015, reflecting some deterioration in ATB’s exploration and development loan portfolio. This may result in the need for increased capitalization of ATB. Although still considered self-supporting, ATB’s contingent liability stemming from the provincial guarantee has increased, which is reflected in the Aa1 rating.” Global Credit Research, “Moody’s Downgrades Alberta’s Rating to Aa1, Maintains Negative Outlook,” 25 Apr 2016.
As outlined in section 3.1.5, the first board of ATB was selected by an arms-length committee supported by a Human Resources consultant and two knowledgeable officials, the Deputy Provincial Treasurer and the Acting Superintendent of Treasury Branches. Unfortunately, the government nor ATB developed a public document that outlined how future board members would be selected. In 1999 the first Chair was released and several new board members were appointed without advertising or a statement of what skill sets were desirable. This continued until the report At a Crossroads that created an obligation to follow a process of advertising and employing a consultant along with government department input. ATB began to report its corporate governance “policies” beginning in 2003 with limited disclosure about its committees. The current appointments practice, which dates from about 2009, is led by the Chair of the board who engages an “independent consultant who assists the Governance and Conduct Review Committee of the board in nominating candidates for the board based on an inventory of overall skill-set requirements and competencies.” Board size, director tenure, composition, geography, diversity, and professional and industry representation are key factors.

3.2.2 Occupation/Profession

Table 3.2 below shows the names, occupations, principal place of work, other provincial agency board service, and known political affiliations of the 43 directors who have served on ATB’s board to the present. The initial board tended to be a “business board” with representation from all over the province including Lloydminster, Hinton, Lethbridge, Red Deer, and Drumheller. Unlike more current boards, two of the persons were from the municipal government (elected) sector. In terms of professions, accounting (4), engineering (3) and one lawyer served on the initial board. Several board members ran medium –sized businesses or large farms. Geography was important in the selection of the first board with a wide dispersion evident to reflect ATB’s provenance from rural areas of the province.

After the first wave of appointments, there was a general gravitation to persons with an agricultural background and to a smaller 12 person board from 16. This rural flavor was evident with the appointments of Splane, Kotelko, Froehlich and Altwasser in 2006-08. These appointments signaled the influence of the Minister recommending names to cabinet. Shirley McClellan, the powerful Minister of Finance and Deputy Premier, and former agriculture minister, had previously appointed these individuals to the board of the Alberta Agricultural Development Corporation in 2001. In 2008, then Finance Minister Lyle Oberg appointed Garnet Altwasser to the board, a prominent member of his Taber-Brooks constituency who was an executive with Lakeside, a large beef processor.

Accountancy and engineering are also prominent in board membership. Of the 43 individuals that have served on ATB’s board ten have been accountants and six have been engineers. Two engineers have chaired the board, one accountant and one with a banking background. Only four of ATB’s board members were bankers, including Paul Haggis who served on the board as President and CEO for four years. Five persons with law degrees have served on the board. After the Core banking problems, expertise on information technology has been added to the board. There has been no one with a communications, public relations, or human resources background appointed to ATB’s board.

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223 ATB Annual Report, 2015, p. 41.
<table>
<thead>
<tr>
<th>Director</th>
<th>Years</th>
<th>Primary Affiliation</th>
<th>Profession</th>
<th>Government Affiliation</th>
<th>Partisanship</th>
<th>Political Affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marshall Williams, Chair</td>
<td>1996-2000</td>
<td>TransAlta</td>
<td>Engineer</td>
<td>PACS, FRC</td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Robert Brawn</td>
<td>1996-2010</td>
<td>Danoil</td>
<td>Engineer</td>
<td>AEDA, PCES</td>
<td>PC-2</td>
<td></td>
</tr>
<tr>
<td>Garth Griffiths</td>
<td>1996-1999</td>
<td>Griffiths Ford</td>
<td>Car Dealer</td>
<td>AECORP</td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Paul Haggis</td>
<td>1996-2000</td>
<td>ATB Financial</td>
<td>Banker</td>
<td>NK</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brian Heidecker</td>
<td>1996-2006</td>
<td>Drylander Ranch Ltd.</td>
<td>Farmer</td>
<td>AADC, ASC, UofA, FMC, WGATB, AITF</td>
<td>PC - 1, 2, 3, 4</td>
<td></td>
</tr>
<tr>
<td>David Hughes</td>
<td>1996-2004</td>
<td>Canbra Foods</td>
<td>Accountant</td>
<td>UofL, UofL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>V. Diane Hunter</td>
<td>1996-1999</td>
<td>Calgary City Council</td>
<td>Municipal Councillor</td>
<td>AEDA, UofC</td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Ian M. Macdonald</td>
<td>1996-2003</td>
<td>Farmac Farm</td>
<td>Farmer</td>
<td>FC</td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Elson J. McDougald</td>
<td>1996-1999</td>
<td>Alberta Basic Industries</td>
<td>Business Owner</td>
<td>NK</td>
<td></td>
<td></td>
</tr>
<tr>
<td>J. Garnett Millard</td>
<td>1996-2000</td>
<td>Hudson's Bay Acceptance</td>
<td>Accountant</td>
<td>NK</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gail D Surkan</td>
<td>1996-2005</td>
<td>City of Red Deer</td>
<td>Mayor</td>
<td>AIHS, WGATB, UofA</td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Ron P. Triffo, Chair (2000-2006)</td>
<td>1996-2006</td>
<td>Stantec</td>
<td>Engineer</td>
<td>AEDA, PCAPA</td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>A. D. O'Brien</td>
<td>2000-2010</td>
<td>Alberta Treasury</td>
<td>Economist</td>
<td>APSC, CUDGC, ACAF, AHSTFIOC, ATRFIC, APACH, CICAA</td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Gary G. Campbell</td>
<td>2000-2007</td>
<td>Miller Thomson LLP</td>
<td>Lawyer</td>
<td>FMC, NWT, PCAPA</td>
<td>PC-4</td>
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<tr>
<td>Brian McCook</td>
<td>2000-2010</td>
<td>Great Bend Financial</td>
<td>Accountant</td>
<td>PAC, FRC, WGATB</td>
<td>PC-2</td>
<td></td>
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<tr>
<td>Linda Hohol</td>
<td>2004-2010</td>
<td>TSX Venture Exchange</td>
<td>Banker</td>
<td>AHS, BGTF, PCRABC, GAI</td>
<td>PC-2</td>
<td></td>
</tr>
<tr>
<td>Robert Clark</td>
<td>2006-2009</td>
<td>Former Alberta Ethics Commissioner</td>
<td>Politician, Legislative Officer</td>
<td>ASWMC, Ethics Commissioner, AEBC</td>
<td>Social Credit-5; PC-2</td>
<td></td>
</tr>
<tr>
<td>Arthur Froehlich</td>
<td>2006-2014</td>
<td>AdFarm</td>
<td>Agrologist</td>
<td>AIBS, AVAC, AARI, AOC, OC</td>
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<td></td>
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### Table 3.2 (cont’d) Alberta Treasury Branches Board appointments: 1996-2015

<table>
<thead>
<tr>
<th>Director</th>
<th>Years</th>
<th>Primary Affiliation</th>
<th>Profession</th>
<th>Government Affiliation</th>
<th>Partisanship</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bernard Kotelko</td>
<td>2006-2014</td>
<td>Highland Feeders</td>
<td>Farmer</td>
<td>AFSC, AVAC, AITF, AOC, LC</td>
<td>PC-2</td>
</tr>
<tr>
<td>Norman McDonald</td>
<td>2006-2010</td>
<td></td>
<td>Real Estate</td>
<td></td>
<td>PC-2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wayne Wagner</td>
<td>2008-2013</td>
<td>Lehigh Inland Cement</td>
<td>Engineer</td>
<td>AFSC, AOC</td>
<td>PC-2</td>
</tr>
<tr>
<td>Garnett Altwasser</td>
<td>2008-2015</td>
<td>Lakeside Farm Industries Ltd</td>
<td>Agri-business</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joan Hertz (Benkendorf)</td>
<td>2009-2016</td>
<td>Capital Health Authority</td>
<td>Lawyer</td>
<td>PCNC, PCAPA, CICAA</td>
<td>PC-2, 4</td>
</tr>
<tr>
<td>Doug Baker</td>
<td>2009-2015</td>
<td>Corporate Director</td>
<td>Accountant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Michael Percy</td>
<td>2009-2014</td>
<td>University of Alberta Business School</td>
<td>Economist</td>
<td>AES, AEC</td>
<td>Liberal--1, 5</td>
</tr>
<tr>
<td>James Carter</td>
<td>2010-2016</td>
<td>Synrude (retd)</td>
<td>Engineer</td>
<td>AEDA, CCEMC</td>
<td>PC-2</td>
</tr>
<tr>
<td>James Drinkwater</td>
<td>2010-2016</td>
<td>TELUS (retd)</td>
<td>Economist</td>
<td>ATRFIC, AAACF, AGIC, AT</td>
<td>PC-2</td>
</tr>
<tr>
<td>Patricia Glenn</td>
<td>2011-2013</td>
<td>CIPS (retd)</td>
<td>Information Technology</td>
<td>AEDA, PACS</td>
<td></td>
</tr>
<tr>
<td>Wendy Henkelman</td>
<td>2014-2016</td>
<td>PennWest</td>
<td>Accountant</td>
<td>Accountant</td>
<td>NK</td>
</tr>
<tr>
<td>Robert Pearce</td>
<td>2014-2017</td>
<td>North-west Upgrading</td>
<td>Engineer-Finance</td>
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<td>NK</td>
</tr>
<tr>
<td>Diane Pettie</td>
<td>2014-2017</td>
<td>Canexus</td>
<td>Lawyer</td>
<td></td>
<td>NK</td>
</tr>
</tbody>
</table>

**Sources:** ATB Annual Reports, Orders-in-Council.

#### 3.2.3 Political Affiliation

The table reveals that, except for Mike Percy, Paul Haggis, and Robert (Bob) Clark, all appointees with known political affiliations had political connections with the governing party. In the case of Percy and Clark, both individuals served under P.C. governments: Percy as Chief of Staff to Premier Jim Prentice, and Clark as Ethics Commissioner to Ralph Klein. In 2014, Haggis donated to Jim Prentice’s leadership campaign. For all intents and purposes all directors with known political affiliations can be said to share similar political values. However, what is
striking is that the initial board, had few partisans. Commencing in 1999, however, 12 of the next 16 appointments (O’Brien to Miller) were known Progressive Conservative supporters. Of those four who had not donated money to the PCAA, two had served, and would serve, on five or more other provincial agencies or committees. These individuals, without documented partisan ties, clearly held the trust of the government (O’Brien, Froehlich).

There appear to be several factors at work to explain the predominance of PCs on ATB’s board. First of all, the process for vetting new directors was undertaken by a committee of the board who would then make recommendations to the Minister. This appears to have relied on the “old boys” network and shows up in a set of appointments of men with backgrounds in agriculture, including the chair. Secondly, until term limits were legislated under the Alberta Public Agencies Governance Act, no limits were set and the expectation was that members would be re-appointed for another three-year term without any external, transparent review process other than by the Board Chair and the Governance Committee Chair.

With the publication of the McCrank report and requirements for open advertising, with a supposedly more rigorous appointments process involving outside expertise, one would expect appointments to be less partisan. Since 2009, eight of 15 directors have PC connections including Mike Percy, have governing party credentials. Joan Hertz, the first appointment under an “open process,” was a lawyer and consultant, who served as secretary to the PCAA. Wayne Wagner, a cement company executive who, or whose company donated $10,000 to Premier Stelmach’s leadership campaign, was appointed in 2008. Collette Miller, appointed in 2009 from the Premier’s Vegreville constituency donated $6308 to the PCAA from 2007 to 2013, through her professional corporation. Bob Carwell, Premier Stelmach’s leadership campaign head, was appointed in 2011.225 Linda Hohol, a former executive vice-president of CIBC and President of the Alberta Stock Exchange and then the Venture Exchange has given significant sums to the PCAA and to leadership candidates. (See Table 3.3 below).

## Table 3.3

<table>
<thead>
<tr>
<th>Name</th>
<th>Party and Candidates</th>
<th>Leadership Campaigns</th>
<th>Affiliated Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garnet Altwasser</td>
<td></td>
<td>400</td>
<td></td>
</tr>
<tr>
<td>Robert G. Brawn</td>
<td></td>
<td>515</td>
<td>127869</td>
</tr>
<tr>
<td>James Carter</td>
<td></td>
<td>1750</td>
<td>59681</td>
</tr>
<tr>
<td>Robert (Bob) Carwell</td>
<td></td>
<td>1600</td>
<td>12000</td>
</tr>
<tr>
<td>Gary G. Campbell</td>
<td></td>
<td>1025</td>
<td></td>
</tr>
<tr>
<td>James Drinkwater</td>
<td></td>
<td>$10-$4999 (Dinning)</td>
<td></td>
</tr>
<tr>
<td>Jack Halpin</td>
<td></td>
<td>1500</td>
<td></td>
</tr>
<tr>
<td>Brian Heidecker</td>
<td></td>
<td>6790</td>
<td></td>
</tr>
<tr>
<td>Brian Hesje</td>
<td></td>
<td>2500</td>
<td>18650</td>
</tr>
<tr>
<td>Linda Hohol</td>
<td></td>
<td>11295</td>
<td></td>
</tr>
<tr>
<td>Barry James</td>
<td></td>
<td>$10-$4999 (Dinning); $1,100 (Redford), $1,000 (Prentice)</td>
<td></td>
</tr>
<tr>
<td>Bernard Kotelko</td>
<td></td>
<td>7688.93</td>
<td>5125</td>
</tr>
<tr>
<td>Brian McCook</td>
<td></td>
<td>1600</td>
<td></td>
</tr>
<tr>
<td>Collette A. Miller</td>
<td></td>
<td>6308</td>
<td>$501-$1000 (Stelmach)</td>
</tr>
<tr>
<td>Robert Pearce</td>
<td></td>
<td>54760</td>
<td></td>
</tr>
<tr>
<td>Ralph Scurfield</td>
<td></td>
<td>2650</td>
<td>8000</td>
</tr>
<tr>
<td>Clayton Sissons</td>
<td></td>
<td>500</td>
<td>3600</td>
</tr>
<tr>
<td>Robert Splane</td>
<td></td>
<td>11528</td>
<td></td>
</tr>
<tr>
<td>Ron Triffo</td>
<td></td>
<td></td>
<td>70125</td>
</tr>
<tr>
<td>Wayne Wagner</td>
<td></td>
<td>$5001-10000 (Stelmach-Inland Heidelberg Cement)</td>
<td>85425</td>
</tr>
<tr>
<td>Garnett Wells</td>
<td></td>
<td>$10-$4999 (Dinning)</td>
<td></td>
</tr>
<tr>
<td>Marshall Williams</td>
<td></td>
<td>$10-$4999 (Dinning)</td>
<td></td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td>51020</td>
<td>430710</td>
</tr>
</tbody>
</table>

**Sources:** Alberta Elections, Volunteer Disclosure documents for Dinning, Doerksen, Stelmach, Hancock, Redford, Lukasuk, and Prentice leadership campaigns.

We can identify three phases of partisanship in appointments: 1) the initial phase between 1996-1999 when appointments were generally non-partisan and meritorious (3 of 16 were partisan); 2) from 1999-2009 when a very strong effort was made to place individuals with close ties to the governing party in place whether as a reward or as “safe hands”, or both (9 of 12); and 3) a more recent period where partisanship, though less important, is balanced with a more arms-length process and an effort to widen the net of individuals eligible to women and persons from outside Alberta (8 of 15).

### 3.2.4 Provincial Agency Boards

Unlike the other boards included in the study, many ATB board members have had experience sitting on other provincial boards. Of the 43 directors, only 13 had not served on other ABC boards. Three of the 13 are directors from outside Alberta. With the exception of Al O’Brien who as Deputy Provincial Treasurer by statute or
regulation served on four boards, there were 24 directors who served on two or more ABCs. Those with the most appointments were Heidecker, Kotelko, Splane, Hohol, and Froehlich. With the exception of Froehlich, all those who have donated material amounts to the governing political party personally have higher numbers of appointments than other directors.

3.3 Executive officer compensation

3.3.1 Overview

When the first Superintendent after Leahy was appointed by Cabinet, that individual’s salary range was exempted from the senior officers’ list, a regulation under the Public Service Act that set the salary ranges of deputy ministers and other senior officials, including provincial agency executives. With the move in 1997 to provincial corporation status, the salaries of all staff, not just executives, was subject to upward adjustment. A key aspect of the compensation program was “variable pay” or “pay at risk.” All employees participated, including unionized employees. Essentially the program was developed to incent staff to bring profitable business to ATB. Branch employees would be given branch targets to achieve and receive an award (a certain percentage of salary) that they would achieve as a bonus or variable pay for reaching or beating the targets. Similarly regional or corporate groups would be given targets to achieve. Corporate targets were also established based initially on profitability. More recently, the institution has moved to a “balanced scorecard” approach that takes into account factors such as employee engagement and customer satisfaction. If the corporate target was not met, variable pay would not be paid. Each employee had a variable pay “scorecard,” updated quarterly, that would indicate how much variable pay they might receive at the end of the fiscal year. The President would receive the highest percentage of his or her income in variable pay (typically over 80 per cent of total compensation), while the bank teller might get five to ten per cent of their total income from variable pay. The disclosure on executive compensation and variable pay remains inadequate despite persistent prodding by the Auditor General. This pay structure remains largely in place at ATB.

At ATB Investor Services, a program was created in 2010 called “Achievement Notes” which established a lucrative earn-in and pay-out program. As with many asset gathering organizations in the investment industry, ATB Investor Services sought to attract significant assets to grow quickly and attain scale. Growth is important in this industry because revenue to pay salaries is based on the amount of assets under management. The more assets an advisor controls, the higher their pay. But in order to attract good advisors, such advisors seek to ensure that their compensation levels remain high. Good advisors are sought because these individuals often bring clients’ assets with them. ATB, unlike the banks and investment managers, cannot offer a stock savings plan or stock options. The Achievement Notes program was designed to replicate programs offered by competing employers.

226 When the new CEO came on board there was heightened anticipation amongst staff for a significant pay raise. Since Ralph Klein came to office and cut MLA and cabinet salaries and civil service salaries (including ATB) in 1994, there was general unhappiness among ATB staff because their private sector competitors were not subject to wage restraint. However, once, the ATB Act was proclaimed in October 1997 average salaries increased from $38,000 to $48,000. New executives attracted to ATB from the private sector were typically paid through separate contracts until the new Act was proclaimed.

227 See pages 188-189 of the ATB 2015 Annual Report for base pay and total compensation, including increase in accrued pension and other obligations.

228 ATB Investor Services is the “line of business” which includes subsidiaries ATB Securities Inc., ATB Investment Management Inc., and ATB Insurance Advisors Inc.

229 ATB sold Principal at Risk Achievement Notes to certain eligible employees as an incentive for promoting the growth of the subsidiaries of ATB Financial that provide, or will in the future provide, services under the ATB Investor Services brand name. Under this plan, eligible employees could purchase a 25-year note with a rate of return linked to the value of certain ATB subsidiaries. Holders of these notes do not have an ownership interest in ATB or its
In 2010, $5.1 million in notes were issued and an expense of $2.25 million was recognized “to reflect the increase in the fair value of the notes based on the March 31, 2010 valuation of the notes.” The table below illustrates the importance of the valuation process that is completed at year end. By way of background, Investor Services major subsidiary, ATB Investor Services Inc. (ATBSI), had accumulated deficits of $101 million prior to March 31, 2013 and $93.6 million at March 31, 2014. On June 5, 2014, ATBSI completed a capital re-organization which “reduced its stated capital by the amount of its accumulated deficit ($92 million) and on June 30, 2014, it returned capital of $14 million to ATB.” In 2015, this line of business generated a return on assets of 1.7 basis points but a very high return on equity of over 50 per cent. In 2015, $7.2 million in achievement notes and increased value was distributed or 15 per cent of the total value of Achievement Notes. In the fall of 2015, the long-time business head of ATBIS departed. This executive received $2.1 million for seven months of work in 2014. His compensation excludes whatever the Achievement Note pay-out was, if any, which went unreported for the departing executive.

<table>
<thead>
<tr>
<th>Table 3.4- Achievement Notes ($000s)</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issuance</td>
<td>5097</td>
<td>844</td>
<td>1198</td>
<td>2667</td>
<td>2298</td>
<td>4146</td>
</tr>
<tr>
<td>Increase in Value</td>
<td>2253</td>
<td>4191</td>
<td>2768</td>
<td>4801</td>
<td>12936</td>
<td>6653</td>
</tr>
<tr>
<td>Liability</td>
<td>7350</td>
<td>12385</td>
<td>15903</td>
<td>22546</td>
<td>37466</td>
<td>47028</td>
</tr>
<tr>
<td>Distribution</td>
<td>0</td>
<td>0</td>
<td>448</td>
<td>826</td>
<td>314</td>
<td>7170</td>
</tr>
<tr>
<td>ATB Investor Services Profit (Loss)</td>
<td>-16680</td>
<td>-13291</td>
<td>-4593</td>
<td>6759</td>
<td>17545</td>
<td>22932</td>
</tr>
<tr>
<td>Assets under Management &amp; Administration ($millions)</td>
<td>5149</td>
<td>6256</td>
<td>7126</td>
<td>8609</td>
<td>11029</td>
<td>13691</td>
</tr>
</tbody>
</table>

Source: ATB Financial, Annual Reports, 2010-2015 and audited financial statements

A key feature in the return on the Achievement Notes is the “valuation model” prepared by an external consultant using market data. There is no disclosure on: the third party performing the valuation; details of the model; details in the original pricing of the Notes; who the consultant reports to; and whether the consultant has other engagements with ATB Financial.

### 3.3.2 CEO Pay Ratio

The chart below illustrates the ratio of CEO pay to: average salary of the staff, the salary of the deputy minister of the reporting ministry, to the average pay of the other four executive officers, and the salary of the subsidiaries, nor do they have the rights of a direct holder of an interest in ATB or its subsidiaries. Each note holder is entitled to:

- A cash payment at maturity, representing the original invested amount adjusted for a proportionate share in the change in fair value of certain ATB subsidiaries
- Cash distributions, if any, based on the net positive dividends paid by certain ATB subsidiaries to ATB

There is no public market for these notes; thus the valuation is based on a model prepared by an external consultant using market data where available. This valuation model was used to establish the initial purchase price of the notes and the changes in fair value period to period until the notes mature.” Annual Report 2015, p.201. (Emphasis added)


Annual Report, 2015, p. 204.

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Premier. Disclosure practices have evolved over time with more disclosure but remain vague by private sector standards. CEO and executive compensation consist of: base pay; pension; benefits;\textsuperscript{232} discounted banking products (e.g. below market rate mortgages); short-term incentive pay; the change in the accrued obligation for the Supplementary Retirement Plan (SRP) or Defined Benefit plan; Other Post-Employment benefits (OPEB); and long-term incentive pay (LTIP). The LTIP pay is primarily for executives to retain and reward the achievement of long-term objectives. The grant is based on the percentage of salary. The grant vests for three years and the payment is mainly dependent on return on equity target determined by the board.\textsuperscript{233}

The ratio of CEO salary to average is subject to a change made in 2003-04 to use head count instead of full-time-equivalent. Because head count includes part time employees, the ratios after 2003-04 are overstated relative to the earlier period. The average salary therefore is understated by about 10 per cent and the ratio increased by a similar amount. Another change took place in 2006-07 where the increased value of the SRP and OPEB were disclosed.

The ratio of CEO to average salary has increased from a little over five times to 45 times. It was expected that this would occur when the board was appointed and when ATB became a provincial corporation operating on a sound commercial basis. The rationale for this widening ratio was the need to attract the best executives to lead the organization under its new board and defined mandate. Significant increases in the CEO’s salary began in 2002-03 up until 2010-11 with a drop from 33 times average salary to 24 times salary in 2011-12.\textsuperscript{234} The upward trend is similar for the ratio to the Premier and Deputy Minister of Finance although sensitive to swings in the salaries of these individuals as different individuals assumed the role with pay increases, special payments for vacation pay, pay freezes, transition allowances, etc. affecting the ratio. The CEO’s pay to the average of the four highest paid executive officers appears to confirm that the board is sensitive to ensuring that the ratio stays relatively stable and does not increase to the extent that we note with average salary and public sector top salaries.

\textsuperscript{232} Benefits do not include hockey, theatre, concert tickets or meals, or a car allowance for the CEO. Severance payments to departing executives are also not disclosed.

\textsuperscript{233} Annual Report, 2014, pp. 105-107.

\textsuperscript{234} The decline would be related to a significant decline in customer satisfaction and employee engagement due to the problems of the Core banking roll-out.
3.3.3 CEO Peer Comparison

The chart below compares CEO pay at ATB with that of Canadian Western Bank (CWB) and SERVUS Credit Union and predecessor, Capital City Savings Credit Union. There is no ideal comparison between two CEO job descriptions. CWB is roughly half the size ATB, is subject to more extensive regulation by the Office of the Superintendent of Financial Institutions, raises its own capital, and operates outside Alberta. SERVUS is a credit union, only operates inside Alberta, enjoys essentially the same deposit guarantee as ATB, raises its own capital mainly through retained earnings and is about one-third the size of ATB.

In ATB’s executive compensation disclosure, there is no reference to how pay is set when compared to the marketplace. In the required disclosures for CWB, the report of the Human Resources Committee discloses the peer group that the board committee considered. CWB’s peer group included ATB Financial and 11 other financial
companies. As CWB and SERVUS compete directly with ATB Financial in Alberta and, while smaller, are of a significant size, the analysis below compares total salaries, as reported, and the return on assets before tax.

Pay at CWB increased rapidly to 2006 with pronounced reversals in 2007 due to the financial crisis with bank stock prices under assault for several years. The CEO’s salary declined in 2013 with the retirement of long-time CEO Larry Pollock and appointment of an internal candidate as the new CEO. At SERVUS, data for 2007 and 2008 excludes the huge pay-outs to the CEO hired as the successive candidate to head the tripartite merger of Capital City with Commonwealth and Community credit unions. After 2010, CEO pay at SERVUS increased rapidly, approximately doubling in five years. For ATB’s CEO, pay steadily increased to 2011, falling significantly in 2012, and then continuing to increase rather dramatically more than doubling from --- to 2015. Between 1997 and 2014, total pay of CWB’s CEO increased by 372 per cent compared with ATB (1625 per cent) and SERVUS (435 per cent). While these numbers speak to the problem of significantly underpaying financial executives, it is not clear that pay levels at a provincial corporation should rival private sector organizations which do not have access to capital supplied by the government or benefit from the province’s triple A credit rating.

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236 In 2007, the retiring CEO received a pay-out of $2.2 million and in 2008 the transition allowances for the CEOs totalled $3.9 million. We assumed $500,000 for CEO pay in 2008.
Another means of judging the fairness of CEO compensation is to examine the average return on assets before tax. Until recently, ATB did not pay tax and credit unions have special tax treatment which results in lower rate of corporate income taxation. In the first number of years at ATB, return on assets was high after write-downs were taken which later improved returns. Returns in 2008 and 2009 plummeted due to the losses on non-bank-sponsored ABCP. Since then, ATB’s returns have improved and are roughly on par with SERVUS. SERVUS’s returns have been quite steady at about 80 to 100 basis points.

Sources: ATB Annual Reports, CWB Management Proxy Circular, SERVUS management and Annual Financial Statements.

Information on SERVUS was provided by SERVUS; data from ATB and CWB derived from annual reports and audited financial statements. For CWB the return on average assets was adjusted by multiplying the reported ROAA by the reciprocal of the marginal tax rate. For ATB a similar adjustment was made beginning in 2010 to take into account the payment in lieu of tax which was set at 23 per cent.
CWB’s performance has been steady as well but at a much higher level than ATB and SERVUS. While return on average assets is only one measure of evaluating performance, this comparison suggests that ATB’s performance relative to SERVUS (which enjoys the same deposit guarantee as the province) and to CWB is weaker. If ROAA is one proxy measure for CEO performance, ATB’s CEO may be overpaid relative to in-market competitors. Another factor that is not considered here is the Wholesale Borrowing Agreement which has allowed ATB to borrow at AAA rates available to the provincial government. Since 2005, when the wholesale borrowing was disclosed at $1.1 billion, as at March 31, 2015, this borrowing had grown to $3 billion. Assuming ATB borrows at 30 basis points below CWB and SERVUS this would confer a $9 million advantage to ATB each year.

Sources: Annual Reports of CWB, ATB. SERVUS information provided by management except for 2015 (Author’s calculation). CWB and SERVUS fiscal year ends are October 31st; ATB fiscal year end is March 31.

3.3.4 Pay at Risk?

During 2008-2010, ATB took $478 million in specific provisions for credit losses associated with ABCP which resulted in significantly diminished profits well below those promised in the business plan. Under the variable pay program, if corporate attainment was not met, then no variable pay was available. In fiscal 2008 and
fiscal 2009, ATB earned a total of $36 million compared to $274 million in fiscal 2007 and compared to in the Three Year Business Plan. In a controversial move, relying on the board’s discretion, the board decided that variable pay would be paid to most staff. The organization’s Treasury department and ATBIS’s money market fund, which had exercised poor judgment in investing depositors’ and investors’ funds in the impugned ABCP, received little or no variable pay. In revealing testimony to the Public Accounts Committee, the President of ATB made the following argument to justify these payments:

You need to remember that when we’re talking about variable pay, this is the Kirstens in our Edmonton Killarney branch, or the Chrisses who work in our IT area. It’s not the fat cat bankers. Any number you’ve ever seen, 90 per cent of this is to people that aren’t executives of the organization. It isn’t an executive bonus thing that you see. It is the variable pay that we use to reward the contribution that everybody makes in the organization. Every person in the organization is part of that pool.

The trouble with the asset-backed commercial paper, which reduced our earnings, is that it wasn’t the fault of the Kirstens who work at Killarney, and it wasn’t Chris’s fault in IT. You know banks across Canada and across the world learned some lessons there. Even when we look inside the asset-backed commercial paper, we have some people who understand it now the most. We actually ended up with one of the cleanest portfolios across the country of any of the institutional investors simply because we had done our homework. The provisions that we took, the $253 million, is just that. It’s an accounting charge that provides for future circumstances. In fact, as we restructure these over a period of seven to nine years, we expect to get back virtually all of our money back that we have invested in asset-backed commercial paper.

What do we do with 4,800 people whose performance was exceptional? All of them have their own specific objective. They are accountable for their performance. You’ve got an organization that has not only performed well; it’s performed to the best level in its history. Then we have an accounting charge. To be clear, it remains a provision. We’ve got 660,000 customers who rely on our 4,800 associates to be there every day for them.

What our board did was thoughtful, took a lot of courage and I would recommend it here again today. We kept our variable pay program in place for our associates and we excluded the impact of the accounting provision. This was a market failure that these people had no influence on. They still remained accountable for their performance, so the variable pay that they received was determined by their performance and the performance of their communities. For executives we set the bar higher, and we ended up with an accountability that stands up to good governance, good business sense, and fairness. Being fair to our associates, those 4,800 people, is ultimately the test of whether we did the right thing and we did the right thing as an organization.238

As it turned out Mowat was optimistic about the accounting provision. Seven years later there was still a deficiency of $72 million between the fair value and the cost of the ABCP, having narrowed from $401 million in 2009. While there were significant recoveries made to 2015, the cumulative loss was still about $175 million with $75.7 million in interest repaid since 2010 and $284 million in principal repayments.239

238 Testimony of Dave Mowat to Public Accounts Committee, 8 October 2008, p. 131.
239 Based on audited financial statements which, beginning in 2012, no longer identified the specific provisions or losses taken for ABCP. The intent had always been to clearly separate these amounts so that the “clawback” in additional profits would not be counted for variable pay purposes. The notes to the statements included information about “adjustments to fair value” that have been included in the calculation. The numbers do not include the foregone interest on the cumulative losses.

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3.3.5 ABCP Executive Pay

When examining the salaries of four executive officers (excluding the CEO who was not responsible for the ABCP problem) in 2008 and 2009, one would expect total and variable pay to decline precipitously or be omitted entirely since profitability at ATB dropped below the levels that would trigger variable “pay at risk.” More particularly this action would affect those most directly involved- the executives responsible for Treasury and Investor Services. The Table below is incomplete because only some of the senior executives directly responsible are disclosed for the three year period. The key personnel are the Chief Financial Officer (CFO), the Executive Vice-President- ATBIS, the Treasurer, and the Chief Risk Officer. In the case of the Treasurer, who left ATB in 2009, deferred variable pay or long-term variable pay declined by 84 per cent, while annual variable pay fell by only 12 per cent. Total pay fell by 12.7 per cent from 2007 to 2008. In the case of the individual responsible for the money market investments at ATB Investment Management (as Chief Investment Officer), total pay fell by 6.7 per cent from 2008 to 2009 and the executive received deferred and variable pay that exceeded his base salary.

For the Chief Risk Officer, whose mandate is to identify and manage all enterprise risk, deferred variable pay fell 18 per cent in 2008 and then fell a further 36 per cent in 2009. His annual variable pay fell 12 per cent in 2008 and was basically flat in 2009. Total pay for the Chief Risk Officer was essentially flat over the three years. The Chief Financial Officer’s deferred variable pay fell by 8.7 per cent in 2008 and by 52 per cent in 2009. Annual variable pay dropped by only three per cent in 2008 and by 21 per cent in 2009. Total pay for the CFO went up in 2008 by eight per cent in 2008 and declined by 12 per cent in 2009. The other executive officers responsible for corporate lending and retail services saw their total salaries fall by 16.6 per cent and 5.1 per cent respectively. Most surprising is the contrast between the ATBIS leader, responsible for the money market fund losses, and the corporate banking head whose pay fell very significantly although he had no responsibility for the infected portfolios. Based on the forgoing, it appears unclear the basis on which increases to base pay, annual variable pay, and deferred variable pay were determined by the Board with input from the CEO.

240 Enterprise risk management entails oversight of credit risk, legal and compliance functions, operational risk whose roles “include formulating and implementing risk policies and frameworks, and developing risk assessment and analysis methodologies, as well as risk identification, risk approval, risk monitoring, risk reporting, and escalation of risk issues relating to ATB ’s lines of business and strategic service units. The risk functions provide independent support and guidance to all lines of business and strategic service units related to risk management and compliance, and advise the lines of business and other business units when they are approaching risk limits.” Annual Report, 2010, p. 78.
### Table 3.5 - ABCP Executive Salaries

<table>
<thead>
<tr>
<th>Position</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Base</td>
<td>Variable</td>
<td>Deferred</td>
</tr>
<tr>
<td>CFO</td>
<td>188</td>
<td>90</td>
<td>115</td>
</tr>
<tr>
<td>Treasurer *</td>
<td>180</td>
<td>74</td>
<td>98</td>
</tr>
<tr>
<td>Chief Risk Officer</td>
<td>196</td>
<td>81</td>
<td>107</td>
</tr>
<tr>
<td>EVP- Corporate</td>
<td>660</td>
<td>231</td>
<td>172</td>
</tr>
<tr>
<td>EVP- Retail</td>
<td>471</td>
<td>221</td>
<td>114</td>
</tr>
<tr>
<td>EVP- ATBIS</td>
<td>655</td>
<td>247</td>
<td>209</td>
</tr>
</tbody>
</table>

**Budget Net Income Projections**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget 2006</td>
<td>217</td>
<td>242</td>
<td>278</td>
<td></td>
</tr>
<tr>
<td>Budget 2007</td>
<td>262</td>
<td>324</td>
<td>288</td>
<td></td>
</tr>
<tr>
<td>Budget 2008</td>
<td>262</td>
<td>278</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actuals</td>
<td>274.4</td>
<td>30</td>
<td>6.4</td>
<td>127.5</td>
</tr>
</tbody>
</table>

Notes: Treasurer left after 2007-08 fiscal year.
n/a - not applicable
N/A - not available

Sources: ATB Annual Reports, Alberta Finance and Treasury Board, Ministry Business Plan, Fiscal Plan tables.

### 3.4 Conclusion

The salaries of the chief executive officers and top executive officers have grown dramatically over the past decade. Executive officer pay has grown by nearly 1600 per cent while average salaries have increased 274 per cent. Net income has grown by a less robust 285 per cent while total assets have quintupled. The compound annual growth rate of executive salaries was 16.6 per cent, twice the growth rate of salaries and benefits at ATB,
and almost three times the average salary. As with AIMCo, the corporatization of ATB has led to the capture of significant rents by the top executives of the organization.

Using the typology developed by Haidt, we again conclude that the board selected by the government shares a set of values that favours authority, hierarchy and thus the status quo. The rapid rise of executive compensation is an example of boards being sympathetic to the recommendations of management and human resources’ consultants. Disclosure of executive compensation, the role of the Human Resources Committee of the Board, ATB’s executive pay philosophy and rationale is weak and has improved little since the Auditor General’s report in 2010. In particular, there is no description of the peer group that ATB’s board uses to determine how to attract and retain its talented individuals. There is no description of the grants each year for deferred variable pay or future pay-outs of exiting executives (as with AIMCo) or the basis on which the value of these grants increase or decrease each year. Further, there is inadequate severance payments to departing executives. In the case of remuneration around ABCP and Achievement notes there remain many unanswered questions.

<table>
<thead>
<tr>
<th>Table 3.6- Change in Compensation at ATB</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td><strong>Change 1997-2015</strong></td>
</tr>
<tr>
<td>CEO</td>
</tr>
<tr>
<td>2115%</td>
</tr>
<tr>
<td>Second</td>
</tr>
<tr>
<td>1715%</td>
</tr>
<tr>
<td>Third</td>
</tr>
<tr>
<td>1152%</td>
</tr>
<tr>
<td>Fourth</td>
</tr>
<tr>
<td>1214%</td>
</tr>
<tr>
<td>Fifth</td>
</tr>
<tr>
<td>1231%</td>
</tr>
<tr>
<td><strong>Total Top Five</strong></td>
</tr>
<tr>
<td>1593%</td>
</tr>
<tr>
<td><strong>Total Salaries and Benefits</strong></td>
</tr>
<tr>
<td>444%</td>
</tr>
<tr>
<td><strong>Total FTE- Head count</strong></td>
</tr>
<tr>
<td>162%</td>
</tr>
<tr>
<td><strong>Average Corporate Salary</strong></td>
</tr>
<tr>
<td>274%</td>
</tr>
<tr>
<td><strong>Net Income</strong></td>
</tr>
<tr>
<td>385%</td>
</tr>
<tr>
<td><strong>Government Equity - Retained Earnings</strong></td>
</tr>
<tr>
<td>6615%</td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
</tr>
<tr>
<td>509%</td>
</tr>
<tr>
<td><strong>Change in Compensation at ATB</strong></td>
</tr>
<tr>
<td><strong>Compound Annual Growth Rate</strong></td>
</tr>
<tr>
<td>CEO</td>
</tr>
<tr>
<td>18.5%</td>
</tr>
<tr>
<td>Second</td>
</tr>
<tr>
<td>17.1%</td>
</tr>
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<td>Third</td>
</tr>
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<td>14.5%</td>
</tr>
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<td>Fourth</td>
</tr>
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<td>14.9%</td>
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<tr>
<td>Fifth</td>
</tr>
<tr>
<td>15.0%</td>
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<tr>
<td><strong>Total Top Five</strong></td>
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<tr>
<td>16.6%</td>
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<tr>
<td><strong>Total Salaries and Benefits</strong></td>
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<tr>
<td>8.6%</td>
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<tr>
<td><strong>Total FTE- Head count</strong></td>
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<tr>
<td>2.7%</td>
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<tr>
<td><strong>Average Corporate Salary</strong></td>
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<tr>
<td>5.8%</td>
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<tr>
<td><strong>Net Income</strong></td>
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<tr>
<td>7.8%</td>
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<tr>
<td><strong>Government Equity - Retained Earnings</strong></td>
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<tr>
<td>26.2%</td>
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<tr>
<td><strong>Total Assets</strong></td>
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<tr>
<td>9.5%</td>
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Sources: Annual Reports and Audited Financial Statements.

241 Bank disclosure in proxy circulars is 20 to 40 pages whereas ATB’s 2015 disclosure was three pages.
At the same time, however, surprising numbers of people proved willing to risk money on highly speculative issues, aiming to use the latest rumour or hot tip to make a quick and easy profit. Such a situation was, of course, rife with possibilities for both deception and self-deception. While the naïve might be unable to distinguish truth from falsehood, the cynical and the greedy could on occasion be persuaded to act with equal ease. Over-optimism as much as venality could make converts even out of the tellers of tales. How could protection be provided all at once for the honest and well-intentioned, for the innocent and the trusting, and for the greedy or self-deceived?

Christopher Armstrong

4.1 Background

4.1.1 General History

The Securities industry in Canada had its origins in the buying and trading of bonds and stock certificates in the major financial centres of Montreal and Toronto beginning in the 1840s. Capital markets can be divided into two major categories: first the sale of bonds or debentures (fixed income) which at that time was normally the sale of bonds by governments and railroads. Second, with the formation of joint stock companies in Canada in the latter part of the 19th century to finance railroad development (Canadian Pacific), banks, insurance companies, and mining, stock trading began in earnest. Trading activities were performed by brokers who acted as intermediaries in trading with individuals and other brokers. Exchanges succeeded coffee houses as the fora for trading, although purchasers could walk into brokers and buy and sell securities. Exchanges standardized trading commissions, trading processes allowing for greater volumes and liquidity, and daily disclosure of prices through a daily list. Exchanges were in effect private clubs, owned by their members, who set rules concerning the sale and purchase of seats that entitled members to trade on the floor of the Exchange.

A key tension for government policymakers that surfaces periodically is the matter of industry “self-regulation” of exchanges and brokerage industry in general. While the question of self-governance has been generally well accepted to the present day, the recent financial crisis has put into sharp relief how both the securities and banking industries in the western world have resisted regulation in order to bolster profit opportunities.

The invention of the stock ticker in 1867 brought greater transparency and liquidity to markets as traders in Montreal, Toronto and New York could see prices fluctuate in other markets and arbitrage stock prices. As Canada’s capital markets evolved, the influence of American (New York) trading practices flowed northward. Three practices, ubiquitous to securities markets, margin trading, short-selling, and wash trading received a predictable

243 E.P. Neufeld, 1972, pp. 44-46, 459- 487.
244 Armstrong, 1997, pp. 9-10.
245 The Montreal Stock Exchange was formed in 1872 from the Montreal Board of Brokers and chartered by the Quebec government two years later. The Toronto Exchange was chartered in 1854. See Armstrong, 1997, pp. 42-62.
246 Spink, 2010, pp. 11-15 for a detailed listing of the economic benefits including netting and systemic risk management.
and moralistic response from voices in the Canadian financial media. According to journalist Edward Trout of The Monetary Times: “stock speculation on margin is only inferior to horse racing as a means of betting against chance, in that in the latter the victim does at least know how much he is booked to leave on the ground, whereas stocks have a contempt for such mild privileges.” However, while some members of the exchanges supported such bans, the reality was that the volume of trading on margin and the fees were too large to give up.

After the financial panic of 1897, the securities industry began a period of growth as Canada’s economy grew through rapid immigration, a boom in commodity prices, and new mining discoveries in British Columbia and the Ontario and Québec pre-Cambrian shield. Major firms emerged including A.E. Ames, Dominion Securities, Royal Securities, and Wood Gundy. The Great War, with huge volumes of war bonds to sell, was a boon to their firms who distributed the bonds to individual investors, banks, and insurance companies. In addition, the growth of provincial and private utility companies requiring huge amounts of capital to fund construction of power dams, was another boost to the industry.

The mining industry and its culture of prospecting was the centre of most abuses in the securities industry in the late 19th and early 20th centuries. From exaggerating claims of mineral discoveries, to spreading rumours, to false promotion and insider trading, combined with the practices of margin trading, short selling, “bucket shops,” insider trading, and “wash trades,” the industry was due for some type of government regulation. Still, the voices for letting the market work generally prevailed. Mining share listings gravitated to the Standard Stock and Mining Exchange (Toronto) and the Vancouver Stock Exchange.

4.1.2 Alberta’s Capital Markets

With the discovery of natural gas (1911) and then oil (1914) in the Turner Valley, three pillars of the Calgary establishment, Sir James Lougheed, R.B. Bennett and W.H. McLaws established the Calgary Stock Exchange. There was feverish activity in the early years with 400 companies organized with a massive capitalization of $400 million. In addition, another 13 exchanges were created to compete to trade shares in newly formed oil and gas companies. Unsurprisingly the boom became a bust when in 1915, the trust company, financing the new stock exchange building, threatened to put the Exchange into liquidation. The Exchange closed its doors in 1917, re-opening to fund another boom in Turner Valley in 1926.

4.1.3 Evolution of Securities Regulation

The first securities legislation in Canada was introduced by the Dominion government in 1888. The legislation relied on the criminal head of power under section 91 (27) of the Constitution Act. This convoluted amendment to the Criminal Code relied on the “intent” of a purchaser or seller of stocks not to complete the transaction. Enacted to close out “bucket shops” which preyed on individuals hoping for a quick profit, the section brought few successful prosecutions, a problem still endemic to securities enforcement cases.

249 Other practices included the use of mailing lists (“suckers list”) and widespread advertising.

250 Armstrong, 1997, p. 18. Armstrong also recounts that the “Baptist Association of Toronto passed a resolution strongly deprecating the speculative tenor of the times, a condemnation echoed by prominent Methodist cleric S.D. Chown, at page 58.

251 An Act to Incorporate Calgary Stock Exchange, Statutes of Alberta, 1913, chapter 45. Cited in Dennis Gartner Affidavit, 7 July 2010, p.225. Section 6 of the Act gave the Exchange the power to expel members.

252 Armstrong, 1997, pp. 52-53. It’s interesting that all three founders were prominent lawyers- indicative of the centrality of law in the operation of capital markets.

253 Ibid., pp. 37-39. This is perhaps an overly broad characterization. Insider trading has been notoriously difficult to prosecute successfully. There are also concerns about police resources available to investigate securities crimes.
It was not until 1912 that provincial legislatures began to legislate directly in the field of securities law. The impetus came from U.S. developments supported by continuing losses to investors in Canada. The “Blue Sky” legislation movement comes from the story about unscrupulous stock peddlers selling credulous farmers stock on the blue sky above them.\textsuperscript{254} In a well-cited paper by Macey and Miller, the authors challenge the conventional view that securities fraud was the main driver for the action taken by the Kansas legislature to enact the first state statute to regulate the sale and distribution of securities.\textsuperscript{255} Recounting a fascinating history, Macey and Miller argue that securities fraud, as opposed to speculative offerings, was exaggerated. They point to the interests of rural legislators, small community banks, and an entrepreneurial regulator as the core of the Blue Sky regulatory movement. Community bankers faced competition from securities salespersons offering prospective returns higher than what bank deposits earned. In addition, small banks in these states did not want to see deposits drained out of the state on which their borrowing depended. In states like Kansas which had a very small broker community, political opposition to the reform proposals was hard to counteract. Wall Street banks cultivating the image of prudence and selling “blue chip” stocks were bitter critics of the “fast-talking securities promoters.”\textsuperscript{256}

J.N. Dolley, the Kansas Commissioner of Banking was the key proponent of the law. The distributor of securities were required to register with the banking Commission and to file regular financial reports.

The bank commissioner was authorized to bar an investment company from the state if he concluded, upon examining these documents, that the information about the investment company or security proposed to be sold contained any “unfair, unjust, inequitable or oppressive" provision," or that the investment company was "not solvent and d[id] not intend to do a fair and honest business, and .. .d[id] not promise a fair return on the stocks, bonds or other securities ... offered for sale." The bank commissioner was also authorized to conduct examinations of investment companies and to seek appointment of a receiver to wind up the affairs of any investment company found to be insolvent or to be run in an "unsafe, inequitable, or unauthorized manner."\textsuperscript{257} State and federal banks and trust companies were exempt from the legislation. Exempted issuers included the federal, state and municipal governments. Based on the early years of enforcement experience, the law appears to have benefitted the state banks more than protecting gullible investors.

Like the U.S. experience, Manitoba was more fertile ground to enact such legislation being rural and without a strong broker community. In 1912, the Manitoba Legislative Assembly passed the \textit{Sale of Shares Act} which applied to both issuers and selling shareholders. The Act was quickly mimicked by Alberta,\textsuperscript{258} Saskatchewan and New Brunswick. In 1928, Ontario introduced the \textit{Security Frauds Protection Act} requiring registration of brokers and salespersons and prohibiting trading without registration. With the 1929 crash, other provinces quickly adopted a uniform act modeled after Ontario.\textsuperscript{259}

Alberta’s Board of Public Utilities Commissioners was given the mandate under the 1916 law to police the emergent securities market. Section 4 of the Act set licensing requirements for persons, companies or agents selling shares, stocks, bonds or other securities. The Act also prohibited “unlawful advertising and solicitations.” The Act also required filing of disclosure documents and periodic filings, including annual returns. The Act also set out offences and securities that were exempt from registration.\textsuperscript{260}

Over the years, Alberta’s legislation and that of neighbouring provinces was built on incrementally. Securities laws, regulations, policies and rules have evolved continuously sometimes in response to frauds, scandals or


\textsuperscript{255} Ibid., pp. 359-380.

\textsuperscript{256} Ibid., pp. 357-359.

\textsuperscript{257} Ibid., p. 361.

\textsuperscript{258} The \textit{Sale of Shares Act}, S.A. Chapter 8.

\textsuperscript{259} Johnston and Rockwell, pp. 15-16.

\textsuperscript{260} Gartner, p. 225.
market failures. Ontario often took the lead in reforming securities’ law with major changes in 1945 (prompted by mining share fraud) and 1966 (takeover bids and insider trading).\footnote{261 See Armstrong, 2001, Chapter 8 which provides background to Kimber Report and the amendments to Ontario’s Securities Act.} The 1966-70 reforms were informed by the federal Royal Commission on Banking and Finance and the Atlantic Acceptance failure in 1965.\footnote{262 Ibid., pp. 215-221. “Atlantic’s collapse in the summer of 1965 provided dramatic evidence that the OSC had little authority to intervene in internal corporate affairs.” At page 220.} In 1978 Ontario introduced the “closed system” registration approach to regulation that requires an issuer of securities to file a prospectus with the commission or seek an exemption to distribute the security.\footnote{263 Ibid., pp. 226-230 and Johnston and Rockwell, pp. 16-18 and 21-23. See http://www.fin.gov.on.ca/en/publications/2003/5yrsecuritiesreview7.html Accessed 30 March 2016. “In order to provide greater certainty about when a prospectus is required, the concept of a distribution to the public was eliminated and the ‘closed system’ was introduced. Under the closed system, a prospectus is required for all distributions of securities unless a specific prospectus exemption is available. Securities issued pursuant to an exemption can be traded using a further exemption, but the system is ‘closed,’ in that trades of those securities outside the exemption system are prohibited unless a prospectus is filed and receipted or certain resale restrictions are satisfied. In this way, securities issued pursuant to a prospectus exemption become part of the ‘closed system’ and are restricted from entering the secondary market.”} In 1994, the Ontario Task Force Report on Securities Regulation (Daniels) recommended the addition of “rules making” to the regulatory tool kit of the OSC.\footnote{264 Ontario Task Force on Securities Regulation. Interim Report: Responsibility and Responsiveness. February 1994.} This approach was adopted by Alberta in 1995.\footnote{265 ASC, Annual Report, 1996, p. 3.}

The 1980s became a turbulent decade on both the securities and financial institutions regulatory fronts. Below we describe key developments in the securities field but it is important to situate these changes in the context of global and domestic developments. In the United Kingdom and the U.S., Margaret Thatcher and Ronald Reagan pushed a legislative agenda to “liberalize” or “unleash” the power of markets.\footnote{266 In 1982, the OSC abandoned its role in setting trading fees seven years after the U.S. had opened the markets to price competition. The “bought deal” was brought to Canada by Gordon Securities in 1982.} Unnecessary government regulation was scrutinized and clubby arrangements in financial services were dismantled (London’s Big bang). The notion of “financial supermarkets,” financial conglomerates undertaking insurance, stock-brokerage, commercial lending, and underwriting activities (“universal banking”), allowed on the Continent, was receiving attention in North America.

In the Canadian market, two trends were emerging: first the decline of broker-dealers and the emergence of national securities dealers, some with international offices.\footnote{267 Armstrong, 2001, pp. 259-280.} This meant the gravitation of the mining promoters from Toronto to Vancouver. The other key development was economic: the recession in Alberta caused by the decline in oil and natural gas prices. As noted in section 2, a variety of financial institutions were liquidated, sold or rescued by governments, including two chartered banks.\footnote{268 Honourable Justice Willard Estey, Inquiry in the Collapse of the CCB and Northland Banks. 1986.} The collapse of the two Alberta-based banks led to a much needed overhaul of the federal government’s regulation of financial institutions. Reviews were carried out of the deposit insurance system as well during this time.\footnote{269 Final Report of the Working Committee on the Canada Deposit Insurance Corporation, 24 April 1985 which recommended strengthening CDIC’s powers, using co-insurance, and risk-adjusted premiums.}
4.1.4 Objectives of Securities Regulation

Investor protection and efficiency, transparency, and fairness of capital markets are recognized as the twin, but sometimes overlapping goals of securities regulation. Recently added to the list is the goal of reducing "systemic risk." The twin principles may be referred to as "integrity of the market" and "efficiency of the market." The key regulating principles flowing from these goals are:

1. Transparent markets for pricing of securities trading;
2. Continuous disclosure that is "full, true and plain" through receipt of prospectuses and filing quarterly and annual financial disclosures and in material changes reports;
3. Regulated entry into the industry, including registration of salespersons, traders, investment managers, and firms and ensuring the "character" and financial soundness of participants;
4. Sanctions against market participants who abuse their market position including insiders, brokers, securities issuers, and firms. The exemption granted to purchasers with more than $97,000 to invest became a critical issue in the fallout from the non-bank ABCP restructuring referred to above. Johnston and Rockwell, pp. 254-260.
5. Industry self-regulation to support enforcement by securities commissions and police;
6. Exemptions from registration of securities including government debt issues and exempt purchasers such as sophisticated institutional investors like pension funds and wealthy individuals.

Securities regulation has been traditionally performed through stand-alone government agencies (state, provincial or federal) whose members enjoy a quasi-judicial status with longer term appointments and usually some degree of independence from political interference. Such agencies do not traditionally enjoy the same degree of independence as central banks or the judiciary. Rather it is their powers to sanction market participants that require insulation from political interference. Under the Public Agencies Governance Act, the quasi-judicial functions of the ASC are recognized by permitting a consecutive term of up to twelve years.

It should also be noted that laws governing the establishment and governance of corporations is jurisdiction that is shared between the federal and provincial governments. Within these statutes are provisions that govern the issuance and transfer of securities of these corporations. Provincial legislation governing the issuance of securities by federally incorporated companies and banks must be carefully crafted.

4.1.5 Need for policy co-ordination

Even in the 1920s, provincial securities regulators recognized the need to co-ordinate their regulatory activities given the investment industry operated nationally (and internationally) and industry miscreants could easily cross boundaries to peddle questionable securities. Professor Armstrong recounts that in the 1930s Premier Brownlee wrote to Ontario Premier Howard Ferguson inquiring whether Ontario would launch an investigation in the brokerage Solloway, Mills which did a large amount of trading on the Calgary exchange. Brownlee and his officials believed violations of the Securities Frauds Prevention Act had been occurring.
In 1964, the Porter Royal Commission on Banking and Finance reviewed Canada’s financial system including the securities in industry. The Commission noted a number of deficiencies in the system of regulation and self-regulation. The Commission was particularly interested in the cost and efficiency of raising capital in Canada as opposed to the United States. It noted the extraordinarily high commissions paid on junior financings. With respect to securities regulation, the Porter Commission observed:

Our studies of the securities administrations across Canada revealed that they are inadequately staffed both in quantity and quality, that salary scales have not been attractive enough in general to interest and retain sufficient experienced men, and that few securities commissioners have had much practical industry experience prior to their appointments....Indeed, some commissions have no one on their staff who is in a position to analyse financial reports.

Repeating concerns raised forty years later, Porter noted the difficulties of issuers facing delays as filings were reviewed by ten or more jurisdictions. On enforcement, some jurisdictions were hesitant to execute warrants for fear that “they were apparently unwilling to run the risk of taking action that they believed might diminish natural resources exploration and development in their province.” On improving legislative uniformity, the Commission urged the federal government to “use its influence to encourage the development of high and uniform standards in security legislation and regulation.” Going further, it was suggested that the federal government establish a federal agency that would require registration of issues sold inter-provincially and internationally. Other concerns exposed by Porter included the poor training, ease of registration and poor supervision of sales personnel, solicitation of short-term capital, insider trading provisions and enforcement, takeover bids, and more stringent disclosure laws, and the problems of “front-end loading” in mutual fund sales.

During the mid-1980s, technology and global regulatory changes began to impact the nature of trading securities. In London, the “Big Bang” led to big mergers between commercial banks and merchant banks and the general “de-regulation” or re-regulation of markets. As communications and computer technology progressed, more and more trading was being done with computers. And increasingly, trading was cross-border both between provinces and internationally. Stocks were inter-listed meaning more and more Canadian corporations were listing in the U.S. to source alternative funding in deeper capital markets.

While the federal Finance department and Bank of Canada were always concerned about the efficiency of capital markets, it had generally deferred to provincial jurisdictions. Commencing in 1978 with the publication of

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276 Porter Commission, p. 341. “Moreover, our concern about the appropriateness of this means of financing is heightened by the conclusion of a study prepared for us that of approximately $340 million of cash raised for junior mining treasuries (i.e. after deduction of expenses) by such underwritings in the 1953—60) period, no more than $150-$160 million was actually spent on exploration by those companies.”
279 Ibid., p. 348.
280 Ibid.
281 Ibid., pp. 349-355.
the Anisman Report, the assumption that provinces could and should continue to regulate the securities market became an open question, at least to key policy-makers in Ottawa.

In 1983, the Ontario Securities Commission examined the question of discount brokerage. This business model would allow an investor to trade securities without the benefit of investment advice. The underlying context was the federal banks’ desire to enter into the securities business— a business the provinces had largely prohibited the banks from entering with Ottawa’s tacit agreement. Unlike the banks whose shares were legally required to owned by a broad range of institutional and individual investors, securities firms, even the largest ones, were still privately owned by partners and did not have the capital of the banks to compete in a de-regulated environment. The securities industry was therefore concerned about unfettered bank entry.

Much was made of the economic power of the banks which, it was asserted, would enable them to displace the securities dealers initially from the discount brokerage business altogether. Everyone is aware of the awesome size of the banks by any measure, and in particular in relation to the size of the Canadian economy. But size does not necessarily translate into dominance, particularly in a service industry where the bureaucracy of size may be a hindrance...

We have great confidence in the ability of brokers to compete with other financial institutions in the delivery of brokerage services.

The Report was premised on the “Four Pillars” framework which described the Canadian financial system as consisting of 1) banks whose “core function” is to lend money; 2) securities dealers who underwrite and trade securities; 3) insurers that insure businesses and households; and 4) trust companies that carry out “fiduciary” activities such as estate administration. The OSC proposed a new category of registration for discount brokers subject to conditions that banks not provide advice or tie the client to direct business to the discount broker (bank).

The next key intergovernmental and industry regulatory development was the “Dey Report” on entry into the securities industry. Heretofore, entry was strictly controlled to those individuals and firms meeting registration requirements which practically excluded the banks and foreign institutions from owning securities dealers. By 1985, it was increasingly clear that eventually the banks would enter the securities industry through discount brokerage.

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282 Department of Consumer and Corporate Affairs Canada, *Proposals for a Securities market Law for Canada*, was based on the twin objectives of investor protection and market efficiency. The three-volume report was comprehensive but lacked any implementation plans and lack of consultation with the provinces. The legislation would not apply to the intra-provincial trade in securities.

283 In 1938 the Dominion Finance Minister Charles “Dunning was fully prepared to regulate against the abuses of the 1926-29 period under the trade and commerce clause if the dealers were unwilling to institute a satisfactory form of self-regulation.” threatened investment dealers... see Robert L. Ascah, 1984, p. 232. Also the Report of the Royal Commission on Banking and Finance (Porter), 1964, Chapter 8. Spink cites Cooper who says that generations of federal Finance officials have sought to control and regulate securities. Spink, 2013, p. 21.

284 Report on the Implications for the Canadian Capital markets of the Provision by Financial Institutions of Access to Discount Brokerage Services. 31 October 1983. The study was initiated by the de-regulation of trading commissions and the offering by T-D Bank of a trade execution service for its customers.

285 Ibid., pp. 69-70.

286 Ibid., pp. 14-17


288 Named after Peter Dey, the then Chairman of the OSC.

business and the major Bay Street dealers would either have to merge, go public, or sell to the big banks. The Dey Report recommended a framework for entry for foreign firms and a 30 per cent ownership position by a Canadian financial institution in a securities dealer. These recommendations were accepted by the Ontario Minister in June 1986 and would implement them January 1987. But industry pressure built during the fall of 1986 and on 4 December 1986, the Honourable Monte Kwinter, announced he would permit domestic financial institution entry in 1987 and foreign entry in 1988. On 18 December, the federal Minister of State responsible for financial institutions announced that federal financial institutions (banks, insurers, and trust and loan companies) would be able to own securities dealers as subsidiaries. The ownership dam had been broken and, within ten years, the banks had bought up the largest players in the industry. This change accelerated a two and a half decade long fight over federal jurisdiction in the securities arena.

As noted above, one of the three objectives of securities regulation is investor protection. Through the 1980s and 1990s, a form of securities that had become increasingly popular was mutual funds. In 1995, Glorianne Stromberg a lawyer who served as a commissioner with the Ontario Securities Commission presented a report to the Canadian Securities Administrators proposing a new regulatory framework for mutual funds. The report was controversial and took aim at the disclosure system; specifically simplifying explanations about the security sold, use and presentation of performance information, and improved disclosures on the commissions and other fees paid to salespersons and fund managers. The issue of disclosure of commissions and other fees, particularly trailer commissions, still remains a contentious point with the industry. Twenty years after the Stromberg report, provincial securities regulators are nearing implementation of disclosure policies for the investment funds industry.

4.1.6 Push for a National Securities Commission

As international and technological developments pushed convergence in regulatory matters and industry structure, the federal Senate Standing Committee on Banking, Trade and Commerce under the leadership of Michael Kirby pushed for a more aggressive role by Ottawa. It commissioned three prominent

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Ontario government instituted a new set of rules to block ownership of Canadian firms. pp. 4-5. See also Ascah, 1990, pp. 18-22 on both the ownership debate in the securities field and more broadly in the financial sector. Parenthetically, in 1983 Quebec amended its Securities Act to permit bank ownership of Quebec securities dealers. Scotiabank used section 196 of the Bank Act as a means of establishing Scotia Securities. However, with most of the big firms in Toronto and Ontario Canada’s largest capital market, the OSC had paramount regulatory discretion.

290 ibid., pp. (iii)-(v).
293 There have been many proposals, reports and task forces on the subject over the years. A search on the CSA website using “disclosure of sales commissions” produced 22 hits from 2008 to 2014. Rules are now expected to come into effect in 2017. The new proposal is euphemistically called “The Customer Relationship Model” to ensure consumer have the most honest and transparent understanding of their accounts. More recently, efforts to protect investors have centred on the “best interest standard” adopted by Australia and the United Kingdom. The initiative faces the historical problem of different commissions with slightly different views on the policy area thus vitiating a national standard. Barbara Shecter, “Regulators eye reforms for financial advisors,” Edmonton Journal, 29 April 2016 and Clare O’Hara, “Regulatory changes aim to improve relationship between advisers, clients,” The Globe and Mail, 28 April 2016. An earlier consultation paper was published in 2012. "Currently regulators in Ontario and New Brunswick are the only jurisdictions who are strongly backing the introduction of a regulatory best interest standard, while Alberta, Quebec, Manitoba and Nova Scotia want to further explore the proposal.”
law firms to study the “costs of a decentralized securities system.” 294 The study polled securities lawyers, registrants, and companies about the costs of the current system of regulation. The authors concluded that the decentralized system is “perceived” to impose costs and delays in accessing capital; “despite concerns” a national system of securities regulation would make regulation in Canada more effective and less costly; a national securities commission should replace, not complement the existing system; a national system should “recognize the regional diversity and interests of capital markets participants across Canada,” and despite current inter-provincial initiatives (i.e. the CSA more uniform system for national filings and regulatory reviews), there may be benefits for implementing a national system of securities regulation. 295

Commencing in 1994, the “Canadian Securities Commission (CSC)” process produced a greater effort on the part of key provincial jurisdictions to co-operate to form national policies under the aegis of the CSA. 296 The goal was to forge uniform securities legislation (and regulation) without provinces conceding jurisdiction. A key battleground was where the head office and regional offices would be located and the sum to compensate provinces for loss of revenue. The federal government would introduce comprehensive legislation establishing the CSC with provinces repealing their legislation. The federal government would then represent Canada at the IOSCO meetings. 297 Provinces could decide to opt out with Québec and British Columbia quickly signaling they would not participate.

The subsequent failure of this initial salvo convinced the Government of Ontario to be more aggressive in supporting a greater role for the federal government in securities regulation. 298 Ontario believed that any organization would, by virtue of Ontario’s pre-eminent financial and economic clout, be headquartered in Ontario. Thus began a decade and a half of studies, supported by the federal and Ontario governments, which attempted to establish a legal, political and economic rationale for a pronounced federal or ‘national’ role in securities regulation.

In 2002, the OSC released a five-year legislative review of the Securities Act produced by a panel chaired by Purdy Crawford, a well-respected Bay Street corporate lawyer and director. 299 The report recommended:

- recognizing the distinctive nature of Canada’s capital markets, including the large proportion of small issuers and significant number of companies with controlling shareholders;
- establishing a single national securities regulator;
- continuing to harmonize securities regulation across Canada;
- giving the OSC broader powers to make corporate governance rules, which are currently within the domain of the TSX;
- extending to investors in secondary markets the right to sue for misleading or inadequate disclosure; and
- streamlining registration requirements for securities dealers and other participants in the capital markets.

295 Ibid., pp. 39-40.
296 See Johnston and Rockwell, pp. 324-328.
297 This was a key issue for federal officials who were annoyed that Ontario and Quebec represented Canada while the federal government only had observer status.
298 Johnston and Rockwell, p. 310n citing a June 1996 speech by Ed Waitzer the OSC’s former chair “Too Many Cooks…”
Crawford’s report was critical of the CSA process which was slow, fragmented, lacking in accountability and enforcement powers.\textsuperscript{301} This report initiated a “Wise Persons Review” undertaken by Harold MacKay, a Saskatchewan corporate lawyer and former Chair of the 1998 federal Task Force on the Canadian Financial Services Sector, thus continuing federal efforts to improve provincial harmonization efforts.\textsuperscript{302} MacKay undertook consultations and found:

- Achieving a sound, efficient, securities regulatory system \textit{is a matter of national importance}.
- In an increasingly competitive world, Canada’s regulatory structures have to be world-class, not run-of-the-mill. They should be designed to \textit{achieve competitive advantage for Canada} and Canadians. This is especially true in respect of securities regulation because of the ongoing challenge to define the role of Canadian capital markets in achieving Canadian goals in the face of the powerful tug of the economy and capital markets of the United States.
- It is \textit{important to take regional interests fully into account} in achieving improvements to the system and, in particular, to build on the expertise that exists among regulators across Canada.\textsuperscript{303}

 Shortly after the Crawford report was released, the CSA did produce a draft \textit{Uniform Securities Act}.\textsuperscript{304} This undertaking was headed up by Stephen Sibold, Chair of the ASC. The report acknowledged that in Québec, given its unique Civil Code, adjustments to the uniform legislation would be required. At the time, British Columbia was undertaking a massive streamlining of its regulatory approach which meant that “harmonized interfaces” with the legislation would be made “to ensure that market participants would not be facing conflicting requirements.” The paper contained a “Model Administration Act” providing for common powers, governance, procedures, and administrative and judicial review of decisions.\textsuperscript{305} Progress continued to be made in the development of a “passport system” which assisted issuers selling securities across the country.\textsuperscript{306}

 In 2005 Purdy Crawford was again enlisted by Ontario’s Minister of Finance to examine a single securities regulator. The final report entitled \textit{Blueprint for a Canadian Securities Commission} was released on 7 June 2006. Crawford and his colleagues\textsuperscript{307} laid out a model for a single securities regulator, including the regulatory structure, participants, office location, fee structure, and transitional matters along with a table of contents for draft legislation. Competitiveness was a key part of the rationale advanced for a national commission with a council of federal-provincial ministers providing oversight and policy direction.\textsuperscript{308} A nominating committee independent of governments would select the Board of Directors who would then decide where to locate the head office, deftly stick-handling away from a thorny political issue.\textsuperscript{309}

\textsuperscript{301} Johnston and Rockwell, p. 330.
\textsuperscript{302} http://www.collectionscanada.gc.ca/webarchives/20071126005223/http://www.fin.gc.ca/news02/data/02-094_2e.html
\textsuperscript{303} http://www.collectionscanada.gc.ca/webarchives/20071124030613/http://www.fin.gc.ca/news02/data/02-094_1e.html
\textsuperscript{305} Michael Tims, the Chairman of Peters & Company, Calgary-based energy boutique securities dealer, served on this committee.
\textsuperscript{307} \textit{ibid.}, pp. 1-4.
\textsuperscript{308} Currently the Passport System applies only to specific areas of securities law that were already highly harmonized among the passport jurisdictions, and more progress is needed in those areas of securities law where there has historically been little harmonization. From 2006 Crawford Report. At p.. 13n.
\textsuperscript{309} Gwyn Morgan a Vice-Chairman of Encana and Brian Canfield, Chair of TELUS were western Canadian representatives.
\textsuperscript{301} There are some interesting parallels between the structure of the Loans Council proposed by the Dominion Government in 1935-6 to coordinate the borrowing of provincial governments and the federal-provincial securities regulator.
\textsuperscript{302} 2006 Crawford Report, p. 8. Mark Lisac in \textit{Alberta Politics Uncovered} offers a very interesting perspective on Alberta’s position to oppose the national securities regulator. Lisac argues that a national regulator meet all the requirements of the
With the election of the Conservatives in 2005, Finance Minister Jim Flaherty increased pressure on the provinces to reach agreement on a national securities regulatory framework. On 19 June 2007, Flaherty appointed Thomas Hockin to chair an expert panel to recommend a process to forge a national regulator. Hockin was a Mulroney cabinet minister with intimate knowledge of Ottawa and the investment industry. He was the President of the Investment Funds Institute of Canada (IFIC) for 12 years after leaving politics. The Report included a roadmap to engage provincial governments in a process to write a national securities Act. The report also briefly addressed investor issues, often ignored in technical discussions that bordered on arcane accounting, legal questions and territorial preservation. A key matter was how to build a mechanism allowing provinces to opt into the scheme. The Report built upon the 2006 Crawford report keeping momentum behind the federal push into the securities arena. The Panel also side-stepped the question of where the head office of the single regulator would be located noting it should be in one of the four major capital markets’ province: Alberta, B.C., Québec or Ontario. Regional offices would specialize in certain areas such as mining or financial services or derivatives. Another key recommendation had to do with shifting the highly prescriptive, detailed rules-based regulatory structure to a more flexible “principles-based approach” that had been advocated by British Columbia. A national regulator would vitiate the need for 13 different interpretations of a principle.

Immediately following release of the report, Iris Evans, Alberta’s Finance Minister issued a press release noting “Alberta remains steadfastly opposed to a single federal regulator. Securities regulation is a provincial responsibility, and this would be an intrusion into an area of provincial jurisdiction. We will continue to oppose, through all available avenues, including legal action if necessary, any move toward establishing a single national regulator.” She emphasized that the passport system was working well and the federal report was an “obstacle” to further progress. Finance Minister Flaherty continued to push ahead however by pledging in his 2009 budget $150 million for financial arrangements with participating provinces and territories.

Following the report, the federal government brought Doug Hyndman, erstwhile Chair of the B.C. Securities Commission (and one time critic of a national securities regulator), to Ottawa to begin drafting a federal Securities Act. On 25 May 2010, the Department of Finance issued a background paper on a new Canadian Securities Regulatory Authority and the next day a proposed Securities Act was tabled and referred to the Supreme Court of Canada. Some of the commentary supporting the project was taken from reports of the International Monetary Fund and the Organization for Economic Co-operation and Development, organizations that had been critical for years of Canada’s fragmented securities market. The paper laid out the mandate of the new agency, its role in supporting financial stability, the latter a consideration in the eventual court case culminating in the Supreme Court’s support of provincial jurisdiction. Federal Finance established the Canadian Securities Transition Office and outlined a timeline to bring the Act into force. Another critical issue for the federal government was to promote the notion that a national regulator would

Klein government’s approach to policy—the national project had the backing of business; costs would be lower, greater transparency, better enforcement and simpler for business. Pp. 6-7.

310 Hal Kvisle, President and CEO of TransCanada Corporation sat on the panel and Ian Bruce, CEO of Peters & Company.


313 Expert panel, pp. 17-21.


316 Backgrounder: A New Canadian Securities Regulatory Authority, p. 2.

317 “Investors and issuers of all sizes are located in every province and territory, and capital now flows across Canada and its borders as never before. The evolving capital markets also feature increasingly complex financial products and methods of distribution and trading that require oversight and a responsive regulatory regime.” at page 2.
have more tools to effectively enforce the capital markets. The launch of the Agency was expected by 2012 dependent on the Supreme Court’s judgment on the validity of the federal Securities Act.

On 13 September 2010, Alberta Finance and Enterprise Minister Ted Morton and Québec’s Minister of Revenue and Finance, Claude Bachand urged other provinces not to rush to sign development agreements with the federal government. Morton argued that a national securities regulator would hinder investment opportunities for many Alberta businesses and investors because it wouldn’t be responsive to regional interests. According to Morton, the status quo of harmonized regulation was fine.

On 8 March 2011, the Alberta Court of Appeal, in a unanimous decision written by the Honourable Justice Frans Slatter held that the Parliament of Canada did not have jurisdiction to pass a comprehensive securities law. Justice Slatter relied heavily upon Canadian Western Bank v. Alberta which he had authored. The central constitutional argument relied upon provincial jurisdiction over property and civil rights and the regulation of professions. The Court cited the enumeration of various economic heads of power - bills of exchange, bankruptcy and insolvency- to demonstrate the narrowness of federal economic jurisdiction and the width of property and civil rights. Federal claims for jurisdiction arose from the “general” branch of the trade and commerce power, criminal law, and “systemic risk.”

The appellate Court appeared to recognize that a dispassionate observer would agree that the current division of powers in the securities field was sub-optimal:

The questions posed by the Reference must be answered in accordance with the principles of constitutional statutory interpretation, and not based on the Court’s assessment of the ideal allocation of jurisdiction between the federal and provincial government....But as noted in Canadian Western ban at para 94, commercial convenience does not transfer jurisdiction from one level [sic] of government to another.

The Alberta Appeal Court eviscerated federal counsels’ arguments using “systemic risk” noting it was not a head of power and noting the statute does not do anything that is not already being done in a co-ordinated and co-operative way. “Systemic risk at best is the tail in this Reference, not the dog.” Turning to the trade and commerce power, Justice Slatter observed that the “Canadian tradition” has not given wide and generous scope to the federal government as to rely on a “too wide” interpretation of trade and commerce would eviscerate provincial jurisdiction over property and civil rights. In summary, the Court found that the combination of regulating professions, contracts, property, specific industries and the preservation of local powers and local diversity plus provincial occupation of the field for almost a century trumped an ill-defined national interest.

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318 Press Release, Governments of Alberta and Quebec, “Alberta and Quebec urge provinces to resist federal push on national securities regulator- Provinces should not sign onto Ottawa's plan.” 13 September 2010.
320 Justice Slatter was an ASC commission member from 1988 to 1996.
322 Ibid, p. 10.
323 Ibid, pp. 2-4.
324 Ibid, p. 5. (Emphasis added)
325 Ibid, pp. 8-10. Spink, 2013, p. 23 argues that systemic risk is not a new phenomenon to securities regulators.
326 Citing Citizens Insurance Co. of Canada v. Parsons (1881) and Canadian Western Bank (2007).
327 Ibid, p. 18.
In April 2011, the Supreme Court found the proposed Act was not a valid exercise of federal jurisdiction under section 91(2) of the Constitution Act, 1867.  

Applying the settled case law, the Act, viewed in its entirety, cannot be classified as falling within the general trade and commerce power. Its main thrust does not address a matter of genuine national importance and scope going to trade as a whole in a way that is distinct and different from provincial concerns. Canada has not established that the area of securities has been so transformed that it now falls to be regulated under the federal head of power.

The court did not agree that the world had changed significantly since 1867. It did not appear sympathetic to national and multi-national businesses desirous of standardized rules which exchanges and clearing houses were based upon. Relying on the jurisprudence of settled case law dating back into the 1870s, the Court continued the emasculation of the trade and commerce power into the 21st century. Instead of pioneering a new doctrine of loosening provincial bureaucratic and economic interests to forge a new constitutional jurisprudence for today’s economic and technological realities of virtual markets, the court sided with the status quo.

The federal case advanced only the general trade and commerce power (s. 91(2)) and not powers over the regulation interprovincial commerce. The Court viewed the province’s right to regulate local businesses and industries within their boundaries as limiting federal incursions. For federal securities law to be constitutional the Court stated “legislation must engage the national interest in a manner that is qualitatively different from provincial concerns.” The Court observed “the management of systemic risk and national data collection” appeared to be related to the general trade and commerce power and might be a genuine exercise of federal power.

In order to support the validity of the referenced legislation, the Court set the following tests:

1. whether the law is part of a general regulatory scheme;
2. whether the scheme is under the oversight of a regulatory agency;
3. whether the legislation is concerned with trade as a whole rather than with a particular industry;
4. whether it is of such a nature that provinces, acting alone or in concert, would be constitutionally incapable of enacting it;

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329 Ibid., p. 339.
328 Ibid.
5. whether the legislative scheme is such that the failure to include one or more provinces or localities in the scheme would jeopardize its successful operation in other parts of the country.\textsuperscript{330}

Certainly, the Act passed the first two tests. With respect to the third, the legislation dealt not only with the traditional securities brokerage and underwriting activity dating back to the early 20th century but, in effect, to the whole financial services industry which extends to banks selling mutual funds, owning securities dealers, credit unions selling mutual funds, and investment managers, many of whom were now owned by federal financial institutions. This line of argument was rejected in Canadian Western Bank and, generally speaking, provincial regulation of consumer complaints with financial institutions in non-bank areas, has been supported by the courts, With respect to the fourth test, perhaps the best argument would be that since banking is exclusive federal jurisdiction and the banks own most of the securities industry then provinces are \textit{incapable} of exercising \textit{effective} jurisdiction over that segment of the banks’ activities. While the Court placed a great deal of emphasis on property and civil rights, allowing Canadian investors access to international markets is indeed a pre-eminent jurisdiction of the federal government—an area provinces like to engage in but for which their powers of enforcement are weak.\textsuperscript{331}

On the fifth point, the scheme was built on an opt-in structure to accommodate recalcitrant provinces such as Alberta and Québec. With Ontario and British Columbia signed up, and representing roughly 50 to 60 per cent of capital markets activities, the national regulator would have the scale and capacity to function effectively in these markets. Without Québec and Alberta, there would certainly be a situation where differences in regulatory requirements could seriously impair the workings of capital markets if, for example, adjudicative tribunals arbitrated differently on a merger. Nevertheless, if the smaller provinces joined the federal agency and Alberta participated, Québec’s capital markets would be isolated and likely strong pressure applied to the Government by Québec’s investment industry to at least co-operate with the federal agency.

\textsuperscript{330} \textit{Ibid.}, p. 839.
\textsuperscript{331} The Conrad Black prosecution is one example where the former media baron was video-taped taking carrying documents from his Toronto office in an effort to thwart prosecutors. Another example is the failure of Sino-Forest Products, a Chinese-based company that raised $3 billion from Canadian investors. The hearings on this massive fraud case have occupied 170 days over two years and it is unlikely the culprits will face justice having decamped to China. See Barrie McKenna, “Crime and No Punishment: Sino-Forest.” \textit{The Globe and Mail}, 23 April 2016.
In the end the Court suggested that Ottawa and the provinces go back to the drawing board to forge a “cooperative approach that permits a scheme recognizing the essentially provincial nature of securities regulation while allowing Parliament to deal with genuinely national concerns.”

While views differed on how co-operative the discussions had been for the two previous decades, Flaherty did not give up. In March 2013, $4.2 million was appropriated to continue the work of the Canadian Securities Transition Office located in Toronto and Vancouver. On 19 September 2013, finance ministers from Ontario, British Columbia and the federal government released an Agreement in Principle to Move towards a Cooperative Capital Markets Regulatory System. The agreement invited other ministers to join the “CCMRS”. The proposal was generally consistent with earlier proposals with a Council of Ministers, appointments, uniform legislation, offices and complementary federal legislation respecting criminal matters, systemic risk in national capital markets, and national data collection. As of the end of 2015 besides Ontario and British Columbia, participating provinces included Saskatchewan, New Brunswick, Prince Edward Island, and the Yukon still leaving a significant hole with Alberta, Québec, Manitoba, Newfoundland and Labrador and Nova Scotia to come on board.

In July 2015, the Government of Québec initiated a challenge to the CCMRS via a reference to Quebec’s Court of Appeal. The two questions referred to the superior court were:

1. Does the Constitution of Canada authorize the implementation of a pan-Canadian securities regulator under the authority of a single regulator, according to the model established by the most recent publication of the “Memorandum of Agreement regarding the Cooperative Markets Regulatory system?”
2. Does the most recent version of the draft of the Capital Markets Stability Act exceed the authority of the Parliament of Canada trade and commerce power under section 91(2) of the Constitution Act, 1867?

In late March 2016, Alberta Finance Minister Joe Ceci reaffirmed the previous government’s commitment to the status quo. Like his predecessors, Ceci noted that Alberta has a unique and specialized capital market, which requires local and specialized knowledge from its securities regulator.

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1.7 Alberta Developments

Alberta’s present securities regulatory structure dates back to January 1957 when the Alberta Securities Commission ASC was established as a stand-alone government entity. By the 1970s, the entity was responsible for administering the Securities Act, the Prearranged Funerals Act, the Mortgage Brokers Regulation Act, and the Deposits Regulation Act. According to its 1976 annual report the basic function of the Commission was to “to protect the public in its investments and thereby fostering a healthy investment climate in the province.” Further “(T)o achieve this objective the Commission reviews the character and experience of those persons and companies proposing to deal in securities, mortgages, franchises, and so on. This is done to ensure that only persons of good character and sufficient skill, knowledge and experience deal with the public in these areas.” A key part of the ASC’s mandate was to vet applications for the issuance of securities to ensure “full, plain and true disclosure of all material facts.” Besides vetting of information circulars and prospectuses, the ASC acted as a quasi-judicial tribunal granting various exemptions, making orders to cease trading, and to rule on offences under the Act brought forward by staff of the ASC.

During this period of intense economic growth and capital raising, a number of real estate investment schemes, most notably Abacus Cities, lead to a major investigation years after investors had lost millions in their investments in the Alberta housing market. In 1977 lawyer Joanne Veit became chair presiding over an organization with a $521,000 budget and four part-time members. A key aspect of provincial regulation was reliance on self-governing bodies. Another key dimension to Alberta’s approach to securities markets was the importance of raising capital for the energy industry. Like some segments of the securities industry in Ontario and B.C. that catered to mining companies, the securities industry in Calgary was dominated by local firms that catered to raising relatively small amounts of capital. Thus any efforts to convey regulatory control outside Alberta’s (and British Columbia’s borders) were viewed as a loss of autonomy with control being ceded to Bay Street. Toronto and Montreal-based firms had the large industrial, railway, financial institutions’ business sewn up and viewed raising capital for miners and energy companies as one part strenuous and one part too small to matter.

However, when the Leduc gusher came in, Bay Street did notice that Alberta companies had become worthy of their attention from a capital raising point of view. As a capital intensive industry, the Alberta economy grew ever faster during the 1950s and 1960s. By 1973 when OPEC’s embargo quadrupled oil prices, Alberta’s economy grew more rapidly. Capital flowed to Alberta and the securities industry grew rapidly. In 1978 for example 15 new firms were registered. In 1977-78, the trading on the ASE was the second highest ever and so was the number of charges laid under the Act. According to the ASC’s annual report, “Resources (were) stretched to the limit as a result of frenzied investment activity sparked by the Pembina oil play.” During 1977-78, the Commission faced a 10 per cent increase in securities registrants and $3 billion in new prospectus submissions with a 25 member staff.

The boom continued into the late seventies and the Commission repeated its concern about resources being stretched to the limit. Pressures to respond included the rise of drilling funds, real estate tax shelters and other securities tailored to take advantage of tax benefits and the use of “commercial syndicate agreements,” a

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342 Ibid., p. 1.
vehicle unique to the Canadian investment landscape. During 1976-77, charges against a numbered company improperly operating as a mortgage broker was another example of a frothy economy. In May 1979, a Special investigation into Abacus Cities Ltd was initiated. A hearing was held by the Commission in 1984.

At the end of the 1970s, a new Securities Act and Commodity Futures Act were tabled in the Legislative Assembly. The ASC staff increased to 39 positions to increase market surveillance activity and a 35% increase in rulings, orders of the commission. In 1979-80, resources were again “stretched to the limit” as workload grew by 32%, private placements raised over $5.5 billion plus $2.725 billion in prospectus issues, along with a 170% increase in share volume traded during the 1979 calendar year.

In 1983, William Pidruchney, who had been a part-time commissioner succeeded Joanne Veit. A new Securities Act brought in the closed system of regulation based on the Ontario model. Other initiatives included a Prompt Offering Qualification System - (Alberta Policy 3-23) allowing Alberta issuers to access Alberta another provincial capital markets more quickly. Other national innovations adopted by Alberta included the Annual Information form and the Short form prospectus.

From 1980 to 1990, the ASC’s staff grew from 49 to 58 with a budget of $4 million. In 1986, a new initiative, “Junior Capital Pool offerings” (JCPs) were created to foster capital raising through an initial public financing without first having completed a business plan or having acquired any assets.” This policy initiative was frequently cited as a reason to preserve provincial jurisdiction in the securities area. In 1986-7, the Securities Commission was re-organized by separating out the quasi-judicial function from the operations creating the position of Chief of Securities Administration.

There is increasing public interest in the adequacy of the regulation of financial institutions and public companies. The Commission recognizes a public expectation for greater protection and accountability, but is also aware that an over-zealous regulatory environment may stifle legitimate business ventures.


In 1992, William, Hess a lawyer from Code Hunter in Calgary was appointed Chairman of the ASC. Key developments in the 1990s included a new ASC policy on investment contracts, multi-jurisdictional disclosure system being developed by American and Canadian securities administrators; shelf prospectuses to qualify securities for distribution during a two year period; a special order to distribute instalment receipts in the privatization of Alberta Government Telephones (TELUS) (1991); Exchange Offering Prospectus program delegated to the Alberta Stock Exchange; the introduction of the Securities Disclosure and Reporting System (SEDAR); the development of a Canadian Securities Commission proposal (1994); industry self-funding (1995); and the granting of rule-making powers (1996). Another important development taking place in this period was the move of the Commission’s offices to Calgary from Edmonton bringing the ASC closer to the industry it regulates.

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346 Ibid., p. 19.
348 ASC Annual Report, 1980, 1981. The number of positions grown to 49; over 950 complaints were received and 28 charges laid. Dollar trading volume increased by 220 per cent and Orders and rulings up 73 per cent to 410.
350 Ibid., pp. 8-10.
351 ASC Annual Report, 1987. 114 filings for the JCPs were received to March 31, 1987, p. 7.
352 This followed the liquidation of two Principal Group contract companies, First Investors and Associated Investors. The inadequacy of the Alberta government’s regulatory system under the former department of Consumer and Corporate Affairs was evident in the Final Report by the Inspector William Code, Q.C., 18 July 1989.
In November 1999, Hess moved over to the Canadian Venture Exchange as President. Shortly before Hess left, the Alberta, Vancouver and Winnipeg exchanges merged. 353 Stephen Sibold, a securities lawyer who had worked for 20 years with Bennett Jones and was a senior executive with Canadian Airlines International, became the new Chair in 2000. Around the fall of 2004, disgruntlement about unprofessional behavior in the executive offices of the ASC circulated and morale was low among staff. The former Director of Enforcement told the Financial Post that securities laws were being “inconsistently enforced.” 354 Concerns spread that the Government might appoint Sibold for another five-year term. In December 2004, senior members of the staff called Thomas Cooke, a part-time commissioner, to complain about the management style of the two top ASC executives, Sibold and David Linder, the Executive Director. Highly disturbing were allegations that enforcement files were being interfered with by the Chair’s office including an inquiry into the insider trading of a “prominent Alberta businessman.” Concerned with the state of morale at the Commission and the allegations, Finance Minister Shirley McClellan directed an inquiry. To reduce the influence of executive management on the conduct of any investigation, independent counsel was engaged and an independent investigator was hired to explore complaints. Two reports went to the part-time commissioners in February and March. 355

On 23 March 2005, Theresa Tedesco of the National Post wrote two explosive articles which reported on the results of an investigation launched by the part-time members of the Commission. The article reported an unprecedented review into the conduct of the provincial watchdog’s senior executives, including claims they “interfered with enforcement cases, engaged in favouritism and condoned a highly sexualized work environment.” 356 The article also referenced concerns among the staff that if a career was sought on the outside, it was important “to be nice” to industry clients.

Chair Sibold responded aggressively to the story threatening a lawsuit against the National Post and Tedesco. 357 David Linder, the Executive Director of the Commission also responded aggressively to the allegations contained in the story. 358 Throughout 2005, the Commission was paralyzed by resignations of senior staff and a bizarre confrontation between Auditor General Fred Dunn and the ASC over the OAG’s powers to conduct an

353 The merged entity was later merged into the TSX and became the TSX Venture Exchange in 2001 headquartered in Calgary. Hess as Chair would have been responsible for approving the merger of these exchanges.
354 Kate MacNamara, ASC enforcement record criticized ’Financial Post, 13 September 2004. 
357 Statement by Stephen S. Sibold Q.C. Chair and Chief Executive Officer, Alberta Securities, 23 March 2005. See http://investorvoice.ca/Scandals/ASC/ASC_index.htm. Accessed 10 January 2016. 357 Sibold stated “I am deeply troubled and disappointed that these malicious and vicious allegations have been made anonymously by persons who I can only conclude are bent on harming me and others to advance their own interests, whatever those interests may be. I challenge these cowardly and depraved individuals who are hiding behind anonymity to come forward, identify themselves and present what they take to be evidence supporting their baseless and false allegations.”
358 Press Release issued by David C. Linder, 23 March 2005. “In these circumstances, it was with utter shock and outrage that this morning I read two articles in the National Post, including one on the front page, containing numerous unsubstantiated and anonymous allegations maligning both me personally and my management practices within the Commission. These allegations are viciously prejudicial, untrue and calculated irrepairably to harm my good character and reputation. I intend to take all appropriate steps to respond to and seek redress as a result of the unfair and malicious publication of these unfounded attacks on my integrity.” Linder remains Executive Director of the ASC.
359 High profile departures included the ASC’s General Council and another Legal Counsel.

Board Appointments and Executive Compensation:
A Survey of Four Alberta Provincial Agencies
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At the end of April, Rod McLeod an independent director issued a press release that demanded the OAG meet the following conditions if it would receive cooperation of the ASC. These were:

- Complainants must be prepared to be identified, provide sworn testimony and submit to cross examination;
- The Auditor General may not review information subject to solicitor-client privilege;
- The ASC will appoint a representative to work with the Auditor General in all dealings with ASC personnel.

“We are required by the Securities Act to hold confidential all information acquired pursuant to investigations,” said Rod McLeod on behalf of the Independent Directors of the Commission. “To the extent that the Auditor’s examination does not intrude on that legislated requirement and agrees to other conditions, we will be pleased to work with him.”

Thus the OAG would be required to expose the whistleblowers to cross-examination and he would not have the freedom to seriously explore allegations of interference with enforcement proceedings where solicitor-client privilege came into play. The next day, McLeod met with the Auditor General and then issued another news release that remained firm about the conditions of the inquiry and added:

We are appealing to Albertans’ sense of basic fairness and refuse to accept information as truthful when it comes from anonymous informants who do not present themselves to be questioned by those they accused. We must stop boxing shadows and ghosts and begin dealing with the issues in a fair and transparent manner.

Eventually this battle ended up in court. On May 25th, Justice Hart of the Court of Queen’s Bench ruled against the ASC and gave a liberal interpretation to the Auditor General’s powers. In a twist of irony, the Acting Chair of the Commission, Peter Valentine, the former Auditor General, issued a press release stating “We are pleased that a sound legal foundation seems to have been created upon which we will be able to co-operate with the Auditor General in the timely completion of his statutory obligations.”

In the Auditor General’s subsequent report he did not find sufficient evidence that any enforcement cases be re-opened and that the former Chair and Executive Director provided “detailed and plausible explanations” for all the enforcement decisions reviewed. However, he identified a number of problems with conflicts of interest, human resources practices, and governance issues. He made a number of recommendations to improve enforcement effectiveness, improve the enforcement of conflicts of interest for commission members and
employees, and to diminish the significant power of the Chair vis-à-vis the independent directors of the commission.366

Sibold’s term, which had been extended a few months, ended in May 2005 and he was eventually replaced by William Rice, a senior partner of Bennett Jones LLP. David Linder remained as Executive Director and guided the reorganization effort through the summer of 2005 before and during Rice’s arrival. Responding to the earlier scandal, in January 2006 the Commission put into place an Ethical Conduct Policy which provided a reporting ("whistleblowing") protocol to be followed in the circumstance of observed wrongdoing.367

Key regulatory developments in the 2006-2015 period included work on the passport system; work on systemic risk; and a national instrument on prospectus exemptions. In the 2008 Annual Report no mention was made of the ABCP crisis. Nearly two years after the crisis, the ASC opined that the regulatory framework “has actually stood up rather well.”368 The report went on to note that the ASC “participated in relevant policy decisions made by the umbrella group of Canadian Securities Administrators (CSA), exchanged information and views with the regulators of other areas of the Canadian financial system, evaluated the potential for damage to participants in the Alberta capital market, reviewed the timeliness and relevancy of public company disclosure in the context of the financial turbulence, educated the investing public in practices that will improve its appreciation of risk and carefully monitored the market for activity that contravenes Alberta securities laws.” This seemed to be a passive position for the Commission to take when over 1400 Canadians369 lost sleep for nearly two years before Purdy Crawford’s Committee enabled these small investors to get their money back from what they had considered a safe investment sold under exemptions under the provincial securities structure.370 Tom Courchene however cites Purdy Crawford who stated to Le Devoir that a single regulator would not have made a difference because the exemptions would have been available to issuers of commercial paper.371

The Montreal Protocol and the Crawford Committee and subsequent applications to the Ontario Superior Court Justice Colin Campbell for an arrangement under the Companies’ Creditors Arrangement Act generally ignored the small noteholders. Leading up to the application in early 2008, pressure was brought to bear on Canaccord Capital Inc. to settle with their smaller noteholders. Justice Campbell citing the “the urgent need for a decision in this matter” allowed the vote to go ahead based on the requirements of a two-thirds majority (i.e. the

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366 Ibid., pp. 1-10. In his 2005-06 Annual Report, the Auditor General noted that with respect to the enforcement problems, five recommendations had been implemented and five rated with satisfactory progress. P. 102.
367 ASC Annual Report, 2007, p. 7. “the latter feature is the first to be formally implemented by one of Canada’s provincial or territorial securities regulators.
370 Soon after the crisis struck, OSFI put out an eight page Backgrounder to rebut comments that its capital rules for banks caused the chartered banks, who had provided liquidity facilities to non-bank ABCP trusts, not to advance funds when needed because there was not a “general market disruption.” “Pure liquidity lines” that carried the “general market disruption” clause would not require capital to be set aside. The critical issue was that DBRS elected to give these the non-bank sponsored ABCP vehicles the highest rating despite some uncertainty over whether these liquidity lines could be accessed in a crisis. The backgrounder also noted inter alia that “Canadian investors also have protection; it lies with the provincial securities commissions......ABCP was a security, but because it was structured as a short-term, highly rated debt instrument, it was exempt from Securities Act disclosure requirements.” p. 7. See also Standard & Poor’s. "Liquidity Lines for Canadian ABCP,” Canadian Focus. August 1998. pp. 3-4 and Standard & Poor’s 1 August 2002 report “Leap of Faith: Canadian Asset-backed Commercial paper Often Lacks Liquidity Back up.”
It appears that provincial commissions did place pressure on the industry regulatory association to put pressure on Canaccord to settle with the note holders.

Increasingly ASC reports referred to the efforts of the Canadian Securities Administrators and its agreements with members of IOSCO confirming that securities activities were more than local in nature. Over the past decade and a half, there was persistent reference to Alberta being the province with the second largest capital market - that is about 25 per cent of the aggregate market capitalization of TSX and TSXV companies with head offices in Alberta. Reports also emphasized enforcement matters an area that provincial regulators were heavily criticized for in the media and by their federal counterparts.

During Rice’s term, the organization grew from 117 full-time-equivalent staff to 177 and its budget grew to $38.5 million from $20.1 million. On 30 September 2015 Bill Rice retired and was replaced by Vice-Chair Tom Cotter while a public search for a successor was undertaken. On 31 March 2016, Finance Minister Joe Ceci announced the appointment of Stan Magidson, the former President of the Institute of Corporate Directors. Magidson is a former partner with the national law firm Osler, Hoskin & Harcourt LLP who worked in both Calgary and Toronto. Magidson also had worked on secondment to the OSC.

### 4.2 Commission Appointments

#### 4.2.1 Board Appointment Process

In November 2010, the Commission Chair and Finance Minister Ted Morton signed off a Mandate and Roles document. The document laid out the Minister’s role in setting policy direction, taking legislation forward while consulting with the Commission, approving the ASC’s budget and business plan, and recommending appointments to Cabinet of Commission members. Most of the detail of the role and responsibilities of ASC

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373 ASC Annual Report, 2012, pp. 3-5. On the ASC website many reports are now from the CSA. This raises questions about the potential for duplication between the roles of a diminished CSA (without Ontario and B.C.) and the new Canadian Co-operative Market Regulator.


375 Ibid., p. 8. “The ASC has the experience and knowledge of the Alberta capital market, as well as the resources required, to effectively investigate and curtail breaches of Alberta securities laws. Our staff has the expertise to deal with threats to Alberta investors and to provide the Alberta capital market with prompt, fair and visible enforcement.” Separate enforcement reports began in 2013 with CSA enforcement reports beginning in 2008. Over the years complaints in the media have focused on the Integrated Market Surveillance Group and the work of the RCMP to follow through on criminal investigations. Commissions have responded to judicial decisions that find defendants not guilty by refining legislation, regulation or rules further. See David Dodge, “Meeting Global Economic Challenges: The Need for Flexibility,” Remarks, Calgary Chamber of Commerce, 8 March 2007. “From the analysis that we have done at the Bank of Canada, it’s clearly in the interests of all Canadians, but particularly in the interests of Calgarians, to establish a uniform Canadian regulatory framework. This must be based on uniform principles, which are applied appropriately, taking into account the size and complexity of the issuer. And our securities laws must be consistently enforced.” [http://www.bankofcanada.ca/2007/03/meeting-global-economic-challenges/](http://www.bankofcanada.ca/2007/03/meeting-global-economic-challenges/) Accessed 1 April 2016.


378 Ibid., section 2- Duties and Responsibilities.
members is spelled out in the “governance policy” incorporated by reference in the Mandate document.\textsuperscript{379} The Governance Policy sets out the responsibilities of commission members which included: “advising the Chair before introducing significant or previously unknown information or material at a Commission meeting; and understanding the difference between governing and managing and not encroach on Senior Management’s areas of responsibility, and conduct his or her business and personal affairs in such a manner that no embarrassment to the Commission could reasonably result therefrom.”\textsuperscript{380} The Chair shall, among other things: “ensure that Senior Management is aware of, and responsive to, the concerns of the Members, the Government and other stakeholders and maintain effective communications with the Deputy Minister, senior staff in the Ministry, other Ministries as required, stakeholders and other business partners.”\textsuperscript{381}

The Governance Policy retains significant authority for the incumbents to determine who their colleagues will be.\textsuperscript{382} A Governance Committee made up of the non-full-time members of the commission can recommend whether to support the extension of a member’s term. The Committee is mandated to provide a position profile which is submitted to the Deputy Minister “for consideration and comment.” The Chair and Committee will be responsible for the selection and interviewing of candidates with the Deputy Minister invited to be present at all meetings. The Committee and Deputy then are required to put forward a slate of names that is one and a half times the total number of appointments to be filled. The Minister will be advised by the Chair on the relative ranking of the candidates. A Member who will have served as a Member for six or more years upon the expiration of that Member’s term is not eligible for re-appointment.

4.1.1 Profession /Occupation

The table below shows the characteristics of the 44 ASC members since 1994. The two principal professions of the members are law and accounting. This is unsurprising since the Act, Regulations, national Policies and Rules require significant legal and accountancy training to understand. All chairs of the commission and vice-chairs have been lawyers since 1992. Twenty lawyers have served on the ASC and 10 accountants. Other professions represented include Chartered Financial Analysts (2), professional engineers (1), an insurance broker, three securities brokers, and two investment bankers. Other areas of business expertise include real estate, travel, publishing, communications, and oil and gas. With the exception of the five or so persons in industries outside oil and gas, the majority of the appointments have ties with the energy industry- whether in the exploration and development end, utilities, or accounting or legal practices which have a considerable economic stake in the energy business. What is particularly noteworthy is the absent of persons with an institutional investor background, a relevant academic background (law, geological engineering, finance, accounting, economics), as well as persons with a consumer investor focus. This suggests that in the future securities commissions ought to have access to persons that have a good knowledge of investment (institutional and retail) and they provide input into both policy development and quasi-judicial proceedings.

\textsuperscript{380} \textit{Ibid.}, section 3B(1).
\textsuperscript{381} \textit{Ibid.}, sections 3C(2) and (3).
\textsuperscript{382} \textit{Ibid.}, Section 4(A)(1)
Table 4.1  
ASC Board Appointments

<table>
<thead>
<tr>
<th>Names</th>
<th>Years</th>
<th>Primary Affiliation</th>
<th>Profession</th>
<th>Government Boards</th>
<th>Partisanship</th>
<th>Partisan Affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>William L. Hess</td>
<td>1992-1999</td>
<td>Chair of ASC</td>
<td>Lawyer</td>
<td>ASCFRC</td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Ian E. W. McConnan</td>
<td>1991-2000</td>
<td>Harris McConnan</td>
<td>Accountant</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Thomas D. Pinder</td>
<td>1995-2001</td>
<td>Intra Travel</td>
<td>Business</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Eric T. Spink- (Vice Chair)</td>
<td>1995-2003</td>
<td>Alberta Law Reform Commission</td>
<td>Lawyer</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Wendy E. Best</td>
<td>1995-2003</td>
<td>Dunhy Calvert</td>
<td>Lawyer</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Walter B. O'Donoghue</td>
<td>1997-2003</td>
<td>Bennett Jones Vercheres</td>
<td>Lawyer</td>
<td>TELUS/AGT, ASCSAC</td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>John W. Cranston</td>
<td>1998-2004</td>
<td>Simcoe Press Ltd.</td>
<td>Corporate Director</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>James E. Allard</td>
<td>1999-2006</td>
<td>Amoco Petroleum</td>
<td>Oil Executive</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Jerry A. Bennis</td>
<td>1999-2006</td>
<td>Private Practice</td>
<td>Accountant</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Stephen P. Sibold (Chair)</td>
<td>2000-2005</td>
<td>Bennett Jones</td>
<td>Lawyer</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Glenda A. Campbell (Vice-Chair)</td>
<td>1999-2013</td>
<td>ASC</td>
<td>Lawyer</td>
<td>ASC</td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Thomas G. Cooke</td>
<td>2000-2006</td>
<td>Cooke Law</td>
<td>Lawyer</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>John T. McCarthy</td>
<td>2001-2003</td>
<td>Miles Davison McCarthy McNiven LLP</td>
<td>Lawyer</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>James A. Millard</td>
<td>2001-2007</td>
<td>Mackimmie Matthews LLP</td>
<td>Lawyer</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Stephen R. Murison (Vice-Chair)</td>
<td>2003-</td>
<td>ASC</td>
<td>Lawyer</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Dennis A. Anderson</td>
<td>2003-2009</td>
<td>KPMG</td>
<td>Accountant</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Mazhar H. Shaikh</td>
<td>2003-2006</td>
<td>Accounting firm</td>
<td>Accountant</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Peter Valentine (Interim Chair)</td>
<td>2005</td>
<td>Auditor General</td>
<td>Accountant</td>
<td>ASCAAC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>William S. Rice</td>
<td>2005-2015</td>
<td>Bennett Jones</td>
<td>Lawyer</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Beverley Brennan</td>
<td>2006-2012</td>
<td>Philom Bios Inc.</td>
<td>Accountant</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>Allan Edgeworth</td>
<td>2006-2012</td>
<td>Duke Energy</td>
<td>Engineer</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
<tr>
<td>The Honourable Jack Major</td>
<td>2006-2012</td>
<td>Supreme Court of Canada/Bennett Jones</td>
<td>Lawyer</td>
<td>PC-1, 2, 4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Neil Murphy</td>
<td>2006-2012</td>
<td>RBC Dominion Securities</td>
<td>Securities broker</td>
<td>PC-2, ALP-2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Karen Prentice</td>
<td>2006-2012</td>
<td>ENMAX</td>
<td>Lawyer</td>
<td>PC-2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Roderick McKay</td>
<td>2007-2013</td>
<td>KPMG</td>
<td>Accountant</td>
<td></td>
<td>NK</td>
<td></td>
</tr>
</tbody>
</table>
4.2.3 Political Affiliation

As the table below illustrates ten of the members of the Commission have donated money to the PCAA or to leadership campaigns over the past years. While the amounts are not large, in comparison to ATB, AIMCo and UofA, the role of an ASC commissioner as a member of an adjudicative body requires a high degree of independence from political and economic influence. It is indeed surprising that only one member had any academic background (Spink) and one member, the Honourable Jack Major had extensive background in the judiciary. The strong emphasis on knowing Alberta business, and especially the oil and gas industry, and a high degree of movement between industry (including law firms) and the Commission, suggests that more thought be given to choosing commissioners with a broader background and thus greater independence from the industry it regulates.383

383 There is a considerable economics literature on regulatory agencies being subject to capture of the industry they are regulating. George Stigler’s Economic Theory of Regulation, is the classic in the field.

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**Table 4.1 (Continued)**

<table>
<thead>
<tr>
<th>Names</th>
<th>Years</th>
<th>Primary Affiliation</th>
<th>Profession</th>
<th>Government Boards</th>
<th>Partisanship - 1-member, 2-donor-party or leadership, 3-candidate, 4-party official, 5-MLA or MP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kenneth Potter</td>
<td>2007-2013</td>
<td>Macleod Dixon LLP</td>
<td>Lawyer</td>
<td></td>
<td>NK</td>
</tr>
<tr>
<td>Glen Roane</td>
<td>2007-2013</td>
<td>Corporate Director</td>
<td>Investment Banker</td>
<td></td>
<td>NK</td>
</tr>
<tr>
<td>Daniel McKinley</td>
<td>2010-2016</td>
<td>Grant Thornton</td>
<td>Accountant</td>
<td></td>
<td>NK</td>
</tr>
<tr>
<td>Richard A. Shaw</td>
<td>2011-17</td>
<td>McCarthy Tetrault LLP</td>
<td>Lawyer</td>
<td>ASCFRC, MRU</td>
<td>PC-2</td>
</tr>
<tr>
<td>Fred R. N. Snell</td>
<td>2011-17</td>
<td>ASC</td>
<td>Accountant</td>
<td>ASCAAC</td>
<td>NK</td>
</tr>
<tr>
<td>Maureen McCaw</td>
<td>2012-2015</td>
<td>Leger Marketing</td>
<td>Communications</td>
<td></td>
<td>NK</td>
</tr>
<tr>
<td>Webster Macdonald</td>
<td>2012-2018</td>
<td>Blake, Cassels &amp; Graydon LLP</td>
<td>Lawyer</td>
<td>Glenbow Museum?</td>
<td>ALP-2</td>
</tr>
<tr>
<td>Ian Beddis</td>
<td>2013-2016</td>
<td>Scotia McLeod</td>
<td>Securities broker</td>
<td></td>
<td>NK</td>
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<tr>
<td>Brad Nemetz</td>
<td>2013-2016</td>
<td>Bennett Jones LLP</td>
<td>Lawyer</td>
<td></td>
<td>NK</td>
</tr>
<tr>
<td>Ann Rooney</td>
<td>2013-2016</td>
<td>ICAA</td>
<td>Accountant</td>
<td></td>
<td>NK</td>
</tr>
<tr>
<td>Tom Cotter (Vice-Chair)</td>
<td>2014-2020</td>
<td>McCarthy Tétrault LLP</td>
<td>Lawyer</td>
<td></td>
<td>PC-2</td>
</tr>
<tr>
<td>Kathryn Chisholm</td>
<td>2015-2018</td>
<td>Capital Power</td>
<td>Lawyer</td>
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</tr>
</tbody>
</table>

Source: Orders in Council, ASC Annual Reports.

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Board Appointments and Executive Compensation: A Survey of Four Alberta Provincial Agencies
6/26/2016 6:37 PM DRAFT
Table 4.2 ASC Members' Donations to PCAA

<table>
<thead>
<tr>
<th>ASC Member</th>
<th>Party and Candidates</th>
<th>Leadership Campaigns</th>
<th>Affiliated Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Terry Allen</td>
<td>2275</td>
<td></td>
<td>1500</td>
</tr>
<tr>
<td>David Betts</td>
<td>3390</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tom Cotter</td>
<td>2450</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Karl Ewoniak</td>
<td>425</td>
<td>$500-$999 (Hancock)</td>
<td></td>
</tr>
<tr>
<td>Webster Macdonald</td>
<td>500</td>
<td>$1000 (Prentice)</td>
<td></td>
</tr>
<tr>
<td>Roderick J. Mcleod</td>
<td></td>
<td></td>
<td>1930</td>
</tr>
<tr>
<td>Neil Murphy</td>
<td>500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Karen Prentice</td>
<td>1500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Richard Shaw</td>
<td>425</td>
<td>$500 (Redford)</td>
<td></td>
</tr>
<tr>
<td>Tom Shields</td>
<td>425</td>
<td>$1000-$5000 (Stelmach)</td>
<td></td>
</tr>
<tr>
<td>Totals</td>
<td>11890</td>
<td>3430</td>
<td></td>
</tr>
</tbody>
</table>

Sources: Alberta Elections, Volunteer Disclosure documents for Dinning, Doerksen, Stelmach, Hancock, Redford, Lukasuk, and Prentice leadership campaigns.

4.2.4 Provincial Boards

Unlike ATB, AIMCo and UofA, the members of the Commission did not receive many appointments to other provincial agencies. Most provincial agencies do not pay their directors (AIMCo, ATB and the ASC are exceptions) and that may be a factor. What is more frequent were appointments to advisory committees established by the ASC that serve as a recruiting mechanism for members (O’Donoghue, Snell, Valentine, Magidson, and Shaw).

4.2.5 Conclusion

Common backgrounds and business experience, as opposed to a common political set of values, animate the selection of the members of the ASC. Diversity is not a characteristic of the membership of this important regulatory agency. Indeed, even the last names of the members denote a very solidly western European background. In the context of broader policy questions such as investor protection and a national securities regulator, it seems that the Chair and executive management of the Commission set the policy agenda. The Sibold-Linder affair raised serious questions about the coziness of the Commission and the industry it is regulating. It could be argued that the policy agenda is not influenced by the Minister or department but rather is set by the nexus of securities lawyers, accountants and large issuers satisfied with the evermore complex status quo. The concerns of the Porter Commission of 40 years ago about the unwillingness to enforce laws for fear of impeding capital raising and the issues explored by the Auditor General on conflicts of interest merit serious discussion and...
debate about provincial enforcement. A national securities regulator with a strong regional office would still be able to respond but its executive management would not be captured with key enforcement and policy decisions made outside the small pool of securities specialists in the Commission and the regulated industry.

4.3 Executive officer compensation

4.3.1 Chair Pay Ratios

Figure 4.1 illustrates the evolution of the ASC’s CEO compensation as a ratio compared with average staff salary, and the salary of the Deputy Finance Minister, and the Premier of Alberta. Since 2010 with the passage of the Alberta Provincial Agencies Governance Act, the salaries of the Chair and Vice-Chairs have been set by the part-time Commission members.\textsuperscript{385} The Chair is subject to an annual evaluation process by the Human Resources Committee. Chart 4.1 illustrates that the ratio relative to staff increased significantly in the first few years when the Commission was self-funding. Unlike the case of AIMCo and ATB where salaries of the CEOs and executive officers relative to average salaries grew rapidly, the ratio has crept up from between four and five times to close to six times. In the case of the ratio with the Premier, the ratio has increased from about 1.5 times to close to four times. The ratio compared with the deputy minister has increased from two times to nearly 2.5 times. In the case of the Securities Commission the compound annual growth rate for the Chair and other executive officers grew faster than the salary of the average employees, but the rate differential was much lower than that observed at AIMCo and ATB Financial. It may be difficult to speculate why that is the case. Employees at the Commission are generally very marketable and are well credentialed as lawyers or accountants. That said, the activities are much more governmental in nature (i.e. enforcement, policy development, administrative filings, revenue collection). There is also the issue, examined below of comparability with the other major securities commissions in Ontario, Québec and British Columbia.

\textsuperscript{385} Governance Policy, section IV (B)(3).
4.3.2 Chair Peer Comparison

Chart 4.2 shows the very rapid growth of Chair salaries commencing in the late 1990s. This corresponds to the new self-funding model adopted by commissions across the country. What is noteworthy about the Alberta Chair is the continued growth in salary and benefits. In B.C. since Doug Hyndman left, the salary of the Chair has been frozen while in Ontario the salary of Chair Wetston has remained around $700,000. In the case of Ontario, the OSC Chair’s salary does not include the agency’s contribution to a pension plan or other employment benefits. To provide some context, the annual pay for the current Chair of the U.S. Securities and Exchange Commission is $168,700 U.S. or about $245,000.\(^\text{386}\) Table 4.2 below divulges the current pay levels of “CEOs” of large, complex

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386 Wikipedia. [https://en.wikipedia.org/wiki/Executive_Schedule#Boards_and_Commissions](https://en.wikipedia.org/wiki/Executive_Schedule#Boards_and_Commissions) The Chair of the Federal Reserve is paid $203,000 U.S.
Every one of these positions entail at least as much complexity as a securities chair and much larger organization and budgets.\footnote{Kevin Carmichael and Tara Perkins, "Why it’s so hard to replace OSFI’s Julie Dickson,” The Globe and Mail, 21 January 2014. \url{http://www.theglobeandmail.com/report-on-business/when-the-shortlist-is-too-short/article16441710/}. Accessed 18 January 2016. Dickson’s pay in 2013 was between $260,000 and $305,000.}

<table>
<thead>
<tr>
<th>Organization</th>
<th>Classification</th>
<th>Salary Range</th>
<th>Maximum Bonus</th>
</tr>
</thead>
<tbody>
<tr>
<td>BDC President</td>
<td>CEO 6</td>
<td>$309,500 - $364,100</td>
<td>0.28</td>
</tr>
<tr>
<td>EDC President and CEO</td>
<td>CEO 6</td>
<td>$309,500 - $364,100</td>
<td>0.28</td>
</tr>
<tr>
<td>CDIC President and CEO</td>
<td>CEO-4</td>
<td>$214,900 - $252,800</td>
<td>0.26</td>
</tr>
<tr>
<td>CMHC President</td>
<td>CEO-7</td>
<td>$371,200 - $436,700</td>
<td>0.28</td>
</tr>
<tr>
<td>OSFI Superintendent</td>
<td>GCQ 9</td>
<td>$265,300 - $312,100</td>
<td>N/A</td>
</tr>
<tr>
<td>Bank of Canada- Governor</td>
<td>CEO-8</td>
<td>$445,000- $523,900</td>
<td>0.33</td>
</tr>
</tbody>
</table>

\textit{Table 4.3 - Federal Agency CEO Salaries}

\textbf{Sources:} \url{http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=secretariats&sub=spsp-psps&doc=sal/sal2015-eng.htm}

A 2001 Fraser Institute study by Chant and Mohindra examined the implications of governments ceding financial and budgetary authority to commissions in three jurisdictions- Alberta, British Columbia, and Ontario. The authors found that nearly 80 per cent of budgets are for labour costs (salary, benefits, contract work) and that virtually all revenue comes from mandatory fees paid by issuers and registrants. The ASC was given the most latitude after the 1994 reforms with no review of its budget and had a “strong” claim to surpluses generated.\footnote{Chant and Mohindra, pp. 11-13.} As noted earlier, the Commission was ceded control of its budget including the power to remunerate all staff, including the Chair and part-time commissioners.\footnote{\textit{Ibid}, pp. 14-16. Section 11.1 of the Securities Act, SA, chapter .} Chant and Mohindra also question the rationale of budgetary independence by arguing that the financing of the enforcement system does not necessarily have to be carried out independently of government to prevent political interference. There is ample precedent for enforcement (policing, prosecutions) and the administration of justice (courts) that do not compromise the objectivity of enforcement or quasi-judicial officials.\footnote{\textit{Ibid}, pp. 40-41.}

4.3.3 Conclusion

Ontario’s compensation disclosure commenced in 1996. For Ontario salary “means salary before taxes, and does not include taxable benefits. However, for those who are paid $100,000 or more, the total value of these taxable benefits must be disclosed. Beginning with 2012 salaries, the definition of salary now also includes per diems and/or retainers paid to employees, in addition to amounts reported as employment income on the Canada Revenue Agency T4 slip. The Act does not authorize employers to disclose what the specific benefits are.”  
http://www.fin.gov.on.ca/en/publications/salarydisclosure/pssd_info.html. For British Columbia, starting in 2008,” disclosure of executive compensation across British Columbia’s public sector was expanded to increase transparency and accountability. Employers are now required to move beyond simply reporting what was paid to a more detailed explanation on all the elements that make up the compensation package for the individual. Disclosures must include an explanation of the employer’s compensation philosophy, the objectives of the compensation program and what it is designed to reward, and how the payment of salary holdbacks for the top five executives relate to the organization’s performance targets. These reporting requirements are modeled on those of the Canadian Securities Administrators’ requirements of publicly-traded companies.” http://www.fin.gov.bc.ca/psec/disclosure/
Executive compensation at the ASC has grown significantly since it received the authority to be self-funding and delegation was given to the Commission to set salaries. The Chair and commission members are in a potential conflict position because higher salaries for staff cause salary inflation in the marketplace which feeds a cycle of escalating salaries. The Alberta Chair’s salary relative to average staff has grown but not as dramatically as at ATB and AIMCo, in keeping with a regulatory agency staffed by well-paid lawyers and accountants. A comparison with B.C. and Ontario shows ASC Chairs have been at the top in the nation over the past decade after catching up with Ontario. When compared with Canadian federal regulatory officials, the ASC Chair is arguably overpaid. It shall be interesting to note the pay level of the incoming Chair.
4.0 University of Alberta

We were small, light-hearted company, hardly more than a score of us. We lived in a clearing, in the poplar bush on the south bank of the North Saskatchewan River. On the sloping sides of the great valley and on the flats below the coyotes barked and howled at night, but on top of the bank we taught mathematics and physics, Greek and history, English literature, and biology,... We were the University of Alberta; and we felt sure that the future belonged to us, not to the coyotes.  

4.1 A Brief History

The early history of the University of Alberta is inextricably linked with the role of government and province-building. In 1906, the Legislative Assembly passed an Act establishing a provincial university. The approach to the development of a public university is consistent with the state or “land grant” universities in the United States. Key principles were the institution was to be non-sectarian and that provision shall be made for the education of women. In an interesting historical tidbit, Rutherford approached the Dominion government for an “endowment” to which Prime Minister Laurier replied:

I must refer to your request that we have lately so increased the subsidies to the provinces that a further contribution from the Federal treasury does not seem to be advisable. The provinces of Alberta and Saskatchewan are now more wealthy than the Dominion government.

Premier A.C. Rutherford personally recruited Dr. Henry Marshall Tory, then a lecturer in physics and mathematics at McGill University as the UofA’s first president. Dr. Tory, who also presided over the establishment of a number of other Canadian universities, served as President from 1908 to 1928. The University opened in the fall of 1908 with 45 students, four professors, and a budget of $28,000. His energy and enthusiasm resulted in the rapid evolution of a diverse university which by 1926 encompassed Faculties of Arts and Science, Applied Science (Engineering), Law, Extension, Agriculture, Medicine along with a School of Commerce and Department of Household Economics. The Faculty of Extension played an especially critical role in the early years reaching out to thousands of Albertans in over 100 communities with lectures each year and “package libraries for debaters.” Another interesting development was the establishment of a tar sands “separation plant” in the basement of the power plant on campus in 1924. During the 1920s the seeds of an education faculty were sown by the Philosophy and Psychology department under the leadership of Dr. M.E. Lazerte.
After the First World War, the Department of Education facilitated the education of some returning soldiers through organizing a summer school to help remediate lost skills of the men coming back from Europe. Registration in the early post war years increased rapidly.

In 1928, Tory was succeeded by Dr. R.C. Wallace, formerly of the Department of Geology at the University of Manitoba. One key innovation during Wallace’s presidency was a junior college affiliation with Mount Royal College in Calgary and the introduction of fraternities (which Tory had opposed). The University faced severe cutbacks in government funding during the depression and had to suspend salary increases or cut salaries while new hiring was postponed. A key event during his tenure was a day-long meeting with Premier Brownlee and several of his ministers to discuss a variety of issues. This demonstrates either the high importance placed by government in the university or the fact that the provincial government remained a smaller, less complex body to manage. Issues discussed included the university hiring of a government employee as a lecturer, an increase to the number of appointment of board members, and the co-ordination of university activity with agricultural schools. Another key issue dealt with in 1934-5 was the rumoured run in Edmonton West for the CCF of Professor Will Alexander. Academic freedom was debated on the floor of the Legislative Assembly and ultimately at the Board of Governors’ level. The Board passed a policy in January 1935 which barred faculty from “participating in partisan politics in the provincial field.”

In August 1935, William Aberhart and Social Credit swept to power. Macleod records the reaction:

William Aberhart’s Social Credit movement...was definitely not respectable politically, socially, or intellectually. The idea of an English engineer, Major C.H. Douglas, Social Credit had attracted some attention in radical circles in the 1920s, the poet Ezra Pound the best known convert....For the university community, this departure from mainstream Christianity made Social Credit even less respectable. Like the rest of the Alberta establishment, the university regarded the victory of Aberhart’s party in August of 1935 as a new disaster piled on to the trials of the Depression.

In 1936, the first internal candidate for President, Dr. W.A. R. Kerr, the Dean of Arts and Science took over from Wallace. Like modern day presidents, he had to deal with provincial funding cuts due to a precipitous decline of income in the primarily agricultural commodity-based province. Despite the obvious skepticism aimed at Social Credit theory and the social dividend, the new government assured the university early on in its term it had no aims to cut grants. Indeed, in its inaugural budget in March 1936, the University did receive a small increase a few weeks before the Province defaulted to bondholders. But money continued to be tight and the $3000 required to elevate the School of Education into a Faculty could not be found. Despite the ups and downs, by 1939, the full time teaching staff had grown to 109 from the four professors appointed by Tory in 1908. However,

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401 According to Wallace: “A university is an institution for all time. It can only build soundly if it has wide vision and a far-seeing penetration. It cannot permit itself to be too seriously affected by the difficulties of the moment, whether in its spirit or its material well being. For it has a carryover value, which is one of its greatest assets: and to maintain this value a continuity of purpose is essential.” [source](https://uofa.ualberta.ca/about/history) Accessed 9 December 2015.
402 *ibid*, p. 38.
403 Rod Macleod, p. 97.
404 Schoeck, 2006, pp. 246-247. (Emphasis added)
405 *ibid*, p. 111.
406 Asch, 1999, pp. 54-56.
the operating budget fell from $576 thousand in 1930 to $425 thousand in 1939. No new buildings were constructed during the period.\footnote{Schoeck, 2006, p. 228.}

In spite of a seemingly cordial relationship up to wartime, a confrontation emerged between Premier Aberhart and the University Senate over the conferring of an honorary doctorate- a common practice for \textit{sitting} premiers who had won two electoral mandates. While a sub-committee of the Senate including the President and Chairman of the Board of Governors recommended the award, the full Senate rejected the Premier’s degree in two close secret ballots. This humiliating outcome led to the resignation of President Kerr and in turn to legislative changes. A new \textit{University Act} was proclaimed in 1942 which removed the Senate’s powers over degree conferral except for the Honourary Doctorate of Laws.\footnote{Macdonald, pp. 50-51. Schoeck, pp. 311-312.} The size of the Senate was reduced significantly with a majority being statutory (i.e. government appointments). All academic regulations, including degree granting powers went to the General Faculties Council. The Senate became largely a symbolic body liaising between the university and general public. These changes followed a Survey Committee\footnote{More than 60 submissions were received by the Committee and hearings were held in Edmonton but not in Calgary due to “lack of interest.” Macleod, pp. 137-138.} created in the wake of the Aberhart degree affair that Macdonald felt was motivated by “party politics” and that “the University had always made a special point of being above suspicion.”\footnote{\textit{Ibid}, p. 49. Macleod terms the amusing episode of the University Senate offering Ralph Klein an honourary degree after being responsible for inflicting significant cuts on the university as “a remarkable lapse of institutional memory.” At page 307.} However the review process and recommendations suggest that the Committee process was fair and recommendations sound.\footnote{Key persons serving on the committee included the Chairman of the Board of Governors, Mr. Justice Parlee, businessman Francis Winspear and the Secretary of the Alberta Teachers’ Association John Barnett.}

An important ritual for a growing university is the conferring of honourary degrees. The list of conferees not only brings eminence to the individuals being awarded the degree but a certain prestige and publicity to the University. Among the early degree recipients included the Prince of Wales, Premier Rutherford, Arthur Sifton, Governor Generals Viscount Byng, the Earl of Bessborough, the Earl of Athlone, the Duke of Devonshire, Roland Michener, Ray Hnatshyn, and Alberta notables such as R.B. Bennett, John Brownlee, John Campbell Bowen, Francis Winspear, Horatio Ray Milner, George Hobson Steer, and Eric Harvie.\footnote{\textit{Ibid}, pp. 95-99. For a complete listing go to \url{http://www.senate.ualberta.ca/en/HonoraryDegrees/PastHonoraryDegreeRecipients.aspx}.} Degree recipients also have included many ex-politicians, university presidents,\footnote{It is a UofA tradition to award honorary doctorates to retiring presidents. Recent former board chairs and chancellors that have been honorary degree recipients include: Eric Newell, Lou Hyndman, Jim Edwards, Brian Heidecker, Lois Hole, and John Ferguson.} chancellors, board chairs, university academics, artists, and academics from other universities.

During the Second World War a Faculty Relations Committee was established to act as a liaison between the teaching faculty and the Board of Governors. The University was authorized to provide military training to students who wished to take it in lieu of one year of compulsory physical education. By the end of the war, the University had formerly established a Faculty of Education (1942) which would train all new teachers in the province.\footnote{This measure had been resisted by the provincial Department of Education for years which had responsibility for teacher training through its system of normal schools with Alberta becoming the first Faculty in Canada to take over teacher training. Macleod, p. 143. A key motivation was “to raise the prestige of the teaching profession.” Macdonald, p. 66.} With the influx of veterans in the early post-war period, a familiar problem faced students and faculty- housing- a problem that would repeat itself periodically over the next half century.\footnote{\textit{Ibid}, p. 149. Student housing is one of the first priorities identified by UofA’s 13\textsuperscript{th} President, David Turpin.} Beginning in 1947, a ten-
year building boom began on campus (Table 5.1). By the early 1950s, enrolment at the University was about 3,300 compared to 12,000 at the University of Toronto which UofA liked to compare itself to.417

For any large and growing university, capital construction and maintenance was (and is) a major undertaking. Quality infrastructure - classrooms, laboratories, residences, and libraries were, and are, keys to attracting students and faculty. In the post-war period, and with the discovery of oil in Leduc, new infrastructure bloomed on campus. The new Rutherford Library, a new agriculture and engineering building, sciences building, administration building were added as well as a Students' Union Building by 1960.418

Appointment of the president of the province’s only university raises questions about the independence of the university from the political party governing the province. In 1950, three candidates had been identified for the position being vacated by Robert Newton. Two external candidates were ranked higher by Newton than Andrew Stewart, the eventual successful candidate from the University. Newton wanted a strong president to press the government for increased funding. Stewart was seen as nice and respected but not forceful. Pressure mounted on the Premier in a new age of resource revenue abundance to bring UofA up to a level with McGill and UofT.419

Unfortunately, despite burgeoning government revenue, which quadrupled in a decade, the university’s operating budget was starved although infrastructure money was found to build new (and needed) facilities. H.R. Milner a prominent Edmonton businessman wrote Manning imploring that the university president’s salary be increased, noting that even the City of Edmonton Mayor, City Solicitor, two City Commissioners and the Power Plant supervisor earned more than Stewart.

Writing in 1958 on the 50th anniversary of the University’s founding, Professor Macdonald notes:

A comparison of the student of the nineteen-fifties with his predecessor of the thirties suggests that that curious reversal of the usual state of things has indeed taken place. A buoyant economy has pushed questions of security into the background. Radicalism of the sort indicated above (Depression era politics) the attitude of whatever, is wrong, or at least suspect - is not in evidence. The attitude is rather that of facing-and welcoming- a challenge to make good in the best of all possible worlds- at any rate in a very good country.420

By the late 1950s, the Ernest Manning government’s view on university funding had changed. Funding increased rapidly in fiscal years 1958-60 and the capital grant increased from $4 million in 1958-59 to $12 million the following year. What had changed? Macleod notes several factors including the Faculty of Medicine’s probationary status, the swelling enrolment of baby boomers, and a ten per cent drop in Social Credit’s popular vote in the 1955 general election.421

During the 1960s, as baby boomers began to enter the post-secondary system, enrolment swelled from about 9,000 to nearly 25,000 (1969). with academic staff over 1300.422 Walter Johns, an internal candidate appointed in 1959, presided over a huge capital projects boom with new campus buildings including the Administration Building, Physics and Chemistry, the Cameron Library, the H.M. Tory social sciences building, the Biological Sciences Building, Education Building, a new Students’ Union Building, and Lister Hall and Michener residential complexes. By the end of the 1970s the Building boom was nearly complete with Law, Central Academic Building, Humanities, Fine Arts, HUB, an addition to Rutherford Library, Mechanical Engineering, and

417 Macleod, p. 155.
418 Ibid, pp. 67-72.
419 Macleod, pp. 158-162.
420 Macdonald, p. 43. This was the environment that E. Peter Lougheed and his contemporaries grew up in.
early the early 1980s a new Business School building. According to Macleod: “the new buildings opened in recent years solved the university’s space problem but cost large sums of money to maintain.”

Table 5.1   University of Alberta Construction: 1911-2016

<table>
<thead>
<tr>
<th>Buildings</th>
<th>Year Completed</th>
<th>Buildings</th>
<th>Year Completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Athabasca Hall</td>
<td>1911</td>
<td>Central Academic Building</td>
<td>1970</td>
</tr>
<tr>
<td>Arts Building</td>
<td>1912</td>
<td>Humanities Centre</td>
<td>1972</td>
</tr>
<tr>
<td>Assinaboia Hall</td>
<td>1912</td>
<td>HUB International</td>
<td>1972</td>
</tr>
<tr>
<td>Pembina Hall</td>
<td>1914</td>
<td>Law Centre</td>
<td>1972</td>
</tr>
<tr>
<td>Triffo Hall</td>
<td>1915</td>
<td>Fine Arts Building</td>
<td>1973</td>
</tr>
<tr>
<td>North Power Plant</td>
<td>1915</td>
<td>Mechanical Engineering Building</td>
<td>1973</td>
</tr>
<tr>
<td>Dentistry-Pharmacy Building</td>
<td>1921</td>
<td>Rutherford Library North</td>
<td>1973</td>
</tr>
<tr>
<td>University Hall</td>
<td>1951</td>
<td>Education North</td>
<td>1974</td>
</tr>
<tr>
<td>Rutherford Library- South</td>
<td>1951</td>
<td>Agriculture-Forestry Centre</td>
<td>1981</td>
</tr>
<tr>
<td>Biological/ Earth Sciences Building</td>
<td>1954</td>
<td>Universiade Pavillon</td>
<td>1983</td>
</tr>
<tr>
<td>Administration Building</td>
<td>1957</td>
<td>Walter C. McKenzie Health Sciences Centre</td>
<td>1983-6</td>
</tr>
<tr>
<td>Gunning/Lemieux Chemistry</td>
<td>1960/1973</td>
<td>School of Business Building</td>
<td>1984</td>
</tr>
<tr>
<td>Kelsey Hall</td>
<td>1962</td>
<td>Timms Centre for the Arts</td>
<td>1995</td>
</tr>
<tr>
<td>Henday Hall</td>
<td>1962</td>
<td>Electrical and Computer Engineering Research Facility</td>
<td>2001</td>
</tr>
<tr>
<td>Education Centre South</td>
<td>1962</td>
<td>TELUS Centre</td>
<td>2002</td>
</tr>
<tr>
<td>Cameron Library</td>
<td>1963</td>
<td>Schaffer Hall</td>
<td>2003</td>
</tr>
<tr>
<td>Faculty Club</td>
<td>1964</td>
<td>National Institute for Nanotechnology</td>
<td>2006</td>
</tr>
<tr>
<td>Van Vliet Centre</td>
<td>1966</td>
<td>Enterprise Square</td>
<td>2007</td>
</tr>
<tr>
<td>Students Union Building</td>
<td>1967</td>
<td>Centennial Centre for Interdisciplinary Sciences</td>
<td>2010</td>
</tr>
<tr>
<td>General Services Building</td>
<td>1968</td>
<td>La Ka Shing Institute of Virology</td>
<td>2010</td>
</tr>
<tr>
<td>Mackenzie Hall</td>
<td>1968</td>
<td>Edmonton Clinic Health Academy</td>
<td>2011</td>
</tr>
<tr>
<td>Biological Sciences Building</td>
<td>1969</td>
<td>Donadeo Innovation Centre for Engineering</td>
<td>2015</td>
</tr>
<tr>
<td>Saint Joseph’s College Women’s Residence</td>
<td>2016</td>
<td>Peter Lougheed College</td>
<td>2016</td>
</tr>
</tbody>
</table>

Sources: Campus maps, Google search, University of Alberta Maps, Schoeck, 2014

423 Macleod, p. 216. Macleod wryly notes “With new buildings opening almost every month in the early 1970s, President Wyman found it impossible to overcome the perception that the university was rolling in money. The maintenance costs of those new buildings ate up operating money.” At page 222. Moreover: “How to recover from thirty years of deferred maintenance is one of the most pressing issues facing the administration. It is also the least likely to receive attention from government.” At page 310.
A key element of the UofA’s history is the monopoly that it enjoyed over the training of Alberta’s youth until the Board of Governors in 1965 recommended that Calgary be split off into a separate stand-alone university. In 1966 the Banff Centre, Lethbridge and Calgary campuses were separately incorporated. An Act respecting Provincial Universities was given Royal Assent. The Act permitted the establishment of other universities. Thus, up until this time, UofA had educated and graduated all provincially-trained physicians, lawyers, engineers, social scientists and teachers. The presidents still were appointed by the provincial cabinet and their remuneration and tenure.

In 1971, the Progressive Conservatives overturned 36 years of Social Credit rule. Peter Lougheed, a UofA graduate and many in his cabinet were university graduates whereas the previous government had fewer urban, university-educated members. The Progressive Conservatives replaced a remarkably stable government party whose administrative approach was managerial in nature but highly strategic in its spending. A rurally based government led by a stolid farmer was displaced by an urban group of professionals who promised “change”. That year, a report on universities commissioned by the former government reported and its recommendations were accepted by the new government. The transition between the managerialism of Manning and Strom and Lougheed appeared seamless. Up until 1969, the UofA President was an Order in Council appointment, unusual by Canadian university standards.

In the 1970s one of the main challenges was inflation eating into the university’s budget. One controversy that took place during the early Lougheed years concerned the imposition of a $500 differential in tuition for foreign students. The board rejected the request reflecting near unanimous opinion of the university. The Chancellor and the Chairman of the Board of Governors, “two prominent Tory members,” spoke in favour of the change. Eventually the government won and imposed the fee which according to Macleod pandered to “anti-foreign attitudes”. Tuition policy would continue to be a burning issue in government-university relations over the next four decades.

In the 1970s, the provincial government was concerned with “province-building” with the Heritage Savings Trust Fund its policy centerpiece. The initial investment policy was “home biased” which meant its investments in provincial Crown corporations like Alberta Mortgage and Housing Corporation and capital projects like the mammoth Mackenzie Health Sciences Building magnified the capital boom. With the National Energy Program viewed as an attack on Alberta and western separatism growing, Lougheed announced bold new spending in 1982-83 and financed it in part by taking all investment income out of the Heritage Fund and into general revenue. In 1982, the government permitted universities to increase tuition without permission and tuition immediately went up by 20 per cent. Despite this, a conflict developed over quotas being imposed placing the government appointed members of the Board in a difficult position. “Were they there to present the government’s view to the university or to argue the university’s case in the backrooms of the Conservative Party?”

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426 Well known alumni include Peter Lougheed, Joe Clark, Preston Manning, Roland Michener, Rachel Notley, Richard Taylor, and Tony Fields.
427 Ibid., section 20.
428 He was also a star football player and former President of the Students’ Union.
429 An Act to Amend the Universities Act, Statutes of Alberta, 1969, Chapter 88. In 1970, full independence was given to boards by removing the requirement for approval by the Universities Commission, created by the 1966 amendments. Chapter 111, Statutes of Alberta, 1970.
430 Macleod, p. 235.
431 See Ascah, 2013, pp. 163-169.
432 Macleod, p. 256.
433 Ibid, p. 256.
Unfortunately increased tuition revenue, increased government grants, and other ancillary income from parking fees did not seem to keep up with inflation and the costs of maintaining infrastructure and paying rising salaries as the professoriate aged and moved into full professorship status. The Lougheed and Getty governments “were mildly interested in university that was excellent in certain fields, notably medicine, engineering and perhaps Business, but there were strict limits even in these areas. Politics demanded that Edmonton be given no more than Calgary.”

Commenting on the challenges facing the University in 1979, newly inducted President Myer Horowitz enumerated, with prescience, a number of issues facing administrators and faculty over the coming decades:

- The danger of over-emphasis of the University as a setting for vocational and professional preparation to the disadvantage of the University’s other responsibilities;
- The impact of the declining value of the Canadian dollar on purchases of equipment, books and hiring faculty;
- Financial difficulties faced by many students;
- The small number of first nations’ students;
- Limited accessibility to certain faculties due to quotas;
- “The image of the University held by important elements in society, including government;
- The aging of the professoriate; and
- The small number of international students.

With oil prices falling to ten dollars a barrel in the mid-1980s, the government of Premier Don Getty was faced with an extremely expensive government left by Lougheed and significantly diminished revenue. Funding for capital was cut significantly and operating grants cut in absolute terms. But more severe cuts were to come as resource revenue fell and stayed low until the resurgence of gas and oil prices in the late 1990s.

Myer Horowitz was succeeded by Paul Davenport in in 1989. One of the key measures undertaken by Davenport was the establishment of the position of Vice-President, External Relations. This role encompassed government relations and fund raising. As Schoeck recounts, Davenport had a tough road to hoe with significant cuts to spending as oil and natural gas prices remained subdued.

The role of the chairman of the Board of Governors at UofA is unique in that the individual is chosen by the Government and not elected by the Board members. John Schlosser was board chair from 1978 to 1991 and was perceived as favourable to the government’s point of view by the end of his term. Schlosser was succeeded by Stan Milner the well-known founder of Chieftain Development. His appointment with few evident connections to the University left little doubt whose side his judgement would favour. Budget cutting continued driven by the inexorable combination of flat or declining government grants, inflation, rising maintenance and steadily growing salary costs. Conflict emerged between President Paul Davenport and the board chair over the need for radical change at the university which was perceived as coddled, unmanageable and unsustainable by the news magazine Alberta Report. Davenport left in 1994 after a messy and public dispute aired in the media and served three terms as president of University of Western Ontario.

Rod Macleod, commenting on the relationship between the government and the University, noted: “After the failure of the attempt to control the university directly through the board of governors, the government fell

434 Ibid, p. 263.
435 Parker, p. 109.
back on a more arms-length approach. Some of the measures adopted were more about ideology than about substance.”

With the election of Ralph Klein on a platform of cuts to government programs, the University endured a period of very difficult budgetary reductions. Davenport was present during the first wave of cuts and had to fight off interference from the board over particulars, rather than principles, relative to programs under review. Under the leadership of Rod Fraser, an economist and former Vice-Principal at Queen’s University, the University struggled to downsize. Early retirement programs were offered while 1,174 new hires were accomplished during his ten-year term of office. After the first two years of his first term, Fraser commenced an ambitious series of international travel signing a significant number of international agreements signed. With the international travel, the role of Provost, as a Chief Operating Officer, grew. The lack of funding lead to the departure of many promising faculty members in part due to salary budgets being cut, frozen and eaten away by increases in the grid. However, towards the end of his tenure, the purse strings were becoming loose with over two dozen construction projects completed or underway worth $502 million. By 2005, faculty per student was 24 versus 19.2 in the early nineties. Prestige was hurt when the first Maclean’s survey accorded UofA a number 10 ranking in the country.

With a government funding shortage, the University shifted into an aggressive fund-raising and research fund raising mode. In 1998, $22.3 million was raised in donations and had jumped to $30.4 million in 2004 but only represented a very small amount of the University’s revenue. Donations rose to $149.2 million by fiscal 2015. More significant for the University was the investment income derived from the Endowments built up by the University. In 1998 the Endowment stood at $261.3 million, increasing to $538.5 million in 2004 and growing to $1.18 billion by the end of March 2015.

Capital building also remained a preoccupation while the historical infrastructure suffered in the late 1990s and early 2000s. The Timms Centre for the Performing Arts (1995), TELUS Centre (2002), Li Ka Shing Institute of Virology (2010), Maier Learning Centre in the Engineering Teaching and Learning Complex (2002), and the Katz Group-Rexall Building (2010) were examples of private money contributing to new capital infrastructure with matched grants from government. The recent controversy at the University of Calgary with respect to contributions by Enbridge and at Carleton University where Clayton Riddell funded a school for politicians, illustrate the conflicts between the interests of donors and university administration and faculty.

Beginning in the early 2000s with government revenue on the mend, hiring began again but of the 133 hires on campus in 2001, 45 were in medical sciences and 45 in science, engineering and agriculture.

A persistent tension that exists between the university, government and the general public is with respect to the tenured status of faculty and accountability for performance. To some business-minded governors, academics have the luxury of researching whatever they want, teach maybe 1 or 2 courses a term and have the summer off. The truth is much more complex with the ability of young doctoral students finding tenure track positions and then actually achieving tenure. Given the demands for publishing in respected journals and teaching while government funding remains flat in real terms has meant universities have looked to the private sector to fund both research and teaching and research positions. Another challenge for department chairs with tight budgets was the use of sessional lecturers. These individuals, many with Ph.Ds or “all but dissertations” often did

440 Schoeck, 2006, p. 626.
441 Ibid.
442 Ibid.
443 Includes “Gifts included in externally restricted endowment principal.”
the heavy load of teaching introductory courses with large classes and significant marking loads. Many sessional
lecturers labored for years or decades with great uncertainty about whether their contracts would be renewed.
Recently some universities have attempted to address the problem of long-term teachers without tenure by
introducing tenure track positions only involving teaching responsibilities.446

In 2005, the Board of Governors hired Indira Samarasekera, an engineering professor, who was the Vice-
President, Research at the University of British Columbia. Samarasekera was sought, despite her relative
inexperience as a university administrator, because of her strong track record at UBC in raising research funds.447
She introduced an annual President’s State of the University address and set out a bold vision (“Dare to Discover”)
of UofA becoming one of the world’s top 20 universities. Fundraising and the celebration of the University’s 100th
birthday were significant events. In May 2008, Dr. Samarasekera began serving on the Board of Directors of the
Bank of Nova Scotia.

At about this time, with the provincial debt being recently retired, and with a close affiliation between the
new Board Chair Brian Heidecker and Deputy Premier Shirley McClellan, over $1 billion in capital infrastructure
was being constructed on campus and at the University of Alberta Hospitals (Edmonton Clinic). David Lynch, the
Dean of Engineering, was especially successful in attracting money to his faculty for research and capital as oil
sands development burgeoned in the early 2000s. Another early coup for the new President was the
announcement of the re-development of Enterprise Square, another bricks and mortar development in downtown
Edmonton on the site of the abandoned landmark Hudson Bay store. Another win for the University was the
establishment of the National Research Centre’s National Institute for Nanotechnology on campus.448
Towards the time her five year contract was up for renewal, controversy erupted when it was learned that
the Board of Governors in 2009 had purchased Samarasekera’s Glenora house for $930,000.449 Looming funding
cuts and her total salary of $936,000 made for a period of difficult public relations. With rising tuition and student
debt, the President’s salary, as the highest paid in Canada, raised questions about the judgment of the University’s
Board as overseers of the University’s budget. In 2010, Samarasekera was appointed for a second term. In 2012,
Doug Goss was appointed by the Redford government as Board Chair. Goss had been Chair of the Board of
Governors of the Northern Alberta Institute of Technology and was instrumental in a successful fund raising effort
there. After the Redford government’s first budget, which reduced university budgets significantly, Goss
complained publicly against the measures.450 There was some fear that the government was considering
centralizing Alberta universities as they did with Alberta Health Care Services. That August, Goss appeared to
defend cuts to certain programs although the university did receive permission to run a $45 million deficit in order
to buy more time to implement reductions. Another key development in 2013-2014 was the move to increase
tuition for professional schools such as law, business and medicine.

As the Chart below shows, the University struggled with materially increasing faculty positions. On the plus
side, the UofA was doing well on the research funding side claiming it ranked [fourth] after the University of
Toronto, the University of British Columbia, and McGill. The number of Canada Research Chairs funded at the
University was also a sign of UofA’s progress.451 From 2005 to 2010 progress was made in faculty hires with full-

446 Simona Chose, “University labour strife underscores cost of tenured academics,” The Globe and Mail,
4 March 2015.
448 This was also a big win for Anne McLellan who was the sole Liberal M.P. in Edmonton (and Alberta) and a senior cabinet
minister in the Chretien and Martin cabinets.
449 Erin Millar, “The Million Dollar President,” Macleans, 6 August 2010,
time faculty members rising to 1714 from 1549 in 2005. But by 2015 the faculty was down to 1621. 452 Meanwhile Administrative Professional Officers grew from 384 to 522 from 2005 to 2015. Another common refrain among faculty were the increases in the number of senior administrative positions. From 1996 to 2014, post-doctoral fellows rose from 258 to 546 (FTE- full-time) while professional librarians held steady around 60.

![Chart 5.1 - University of Alberta: Evolution of Faculty and Staff Positions: 1996-2014](chart.png)

**Source:** University of Alberta Data Book.

In 2014, President Samarasekera joined the board of Magna International. In November 2014 the Board of Governors announced after an international search that Samarasekera was to be succeeded by Dr. David Turpin. Turpin had served as President of the University of Victoria for a decade and was the Dean of Arts and Science at Queen’s University. Turpin inherited a presidential legacy with high expectations that had not been achieved. 453 Turpin came to Edmonton in the aftermath of controversy swirling around the actions of Board Chair Doug Goss who, with a group of other Alberta businessmen, warned Albertans to reconsider voting for the surging New Democratic Party. Some University faculty members were outraged by the actions of Goss and his associates to influence the outcome of the general election. 454 After the NDP won the provincial election Goss resigned in August. 455 Goss resigned for “personal reasons” and had no contact with the new government prior to informing

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452 University of Alberta, Staff Headcount Contract teaching staff (sessional lecturers) grew from 848 to 922 from 2006-07 to 2014-15.

Board Appointments and Executive Compensation: A Survey of Four Alberta Provincial Agencies
6/26/2016 6:37 PM DRAFT
the Minister he would resign. He believed faculty association criticism of his partisan comments were unfounded. The Government decided to launch an open competition for the position. Richard Wilson filled in as acting Chair. In February 2016, the new board Chair was announced. Michael Phair, a former Edmonton City councilor, was named after an open competition.

4.2 Board Appointments

5.2.1 Board Appointment Process

The Mandate and Roles document that was signed at the end of 2014 sets out the respective duties of the Minister and the Board of Governors of the University of Alberta. The Board is responsible for managing and operating the university under the Post-Secondary Learning Act. Under the Mandate document, the Board “agrees to support” the goals of an “accessible, affordable, quality and sustainable post-secondary education system.” The document also spells out the “recruitment process” is “competency based and led by the Department in consultation with the Board.” The Department and the Board develop a “competency matrix” for the board as a whole and for individual members. When vacancies occur, the Board determines the competencies that need to be replaced and applications are screened. The Board Chair reviews the screening report and forwards a recommendation to the Minister “as appropriate.” A public posting must be placed by the Department of Human Resources. Recruitment is based on competencies approved by the Minister. A screening of conflicts of interest must also be undertaken. In short, the Minister and Cabinet have the ultimate say on appointments to Alberta’s largest university. Also noteworthy in this document is the role of the Chair. He or she is responsible for managing the relationship between the Board (and university) and the government.

Table 5.2 shows the 47 members of the Board of Governors from 1994 to the present, their profession, principal organizational affiliation, and their political affiliation, if any. As noted above key policy issues that the Board deals with at the university include: academic freedom and the question of tenure; tuition fees; raising money from corporations and individuals; responding to societal and economic needs in the community; approving an operating and capital budget; and the construction and maintenance of buildings on campus. All these items require a delicate management of relations with the Government of Alberta as the largest funder of the University’s budget.

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456 Signed by Chair Douglas O. Goss on October 24 October 2014 and Donald Scott, Minister of Innovation and Advanced Education on 24 November 2014.
457 Mandate and Roles document, pp. 7-8.
458 Ibid., p. 6.
### Table 5.2 University of Alberta Public Appointments

<table>
<thead>
<tr>
<th>Names</th>
<th>Years</th>
<th>Primary Affiliation</th>
<th>Profession/Occupation</th>
<th>Government Affiliation</th>
<th>Partisanship -</th>
<th>MLA or MP</th>
</tr>
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<tbody>
<tr>
<td>John Ferguson (Chair, Chancellor)</td>
<td>1994-1997, 2000-2004</td>
<td>Princeton Developments</td>
<td>Accountant</td>
<td>AIMCo</td>
<td>PC-2</td>
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<tr>
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<td>David Foy</td>
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<td>EPCOR</td>
<td>Engineer</td>
<td>UAPP, ERAA</td>
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<td>Fred Barth</td>
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<td>Oryssia Lennie</td>
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<td>Federal and Provincial Deputy Minister</td>
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<td>2000-2006, 2006-2011</td>
<td>Drylander Ranch</td>
<td>Farmer</td>
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<td>Economist</td>
<td>AEN, AER, AITF, SAIT</td>
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<td>Bruce Saville</td>
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<td>Don Sieben</td>
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<td>Yvonne Myrehaug</td>
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<td>Robert H. Teskey</td>
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<td>Linda Hughes (Chancellor)</td>
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<td>Edmonton Journal</td>
<td>Media</td>
<td>PCAPA</td>
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<td>Ove Minsos</td>
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<td>Jerry Naqvi</td>
<td>2010-13</td>
<td>Cameron Developments</td>
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<td>Shenaz Jeraj (Vice-Chair)</td>
<td>2010-16</td>
<td>Jaffer Inc.</td>
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<td>Doug Goss (Chair)- Resigned July 2015</td>
<td>2012-2015</td>
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<td>Lawyer</td>
<td>FMC, CHA, ASCSAC, PCAPA</td>
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Table 5.2
(cont’d) Names

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<td>Steven LePoole</td>
<td>2013-2016</td>
<td>Potosi B.V</td>
<td>Investor</td>
<td>NC</td>
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<tr>
<td>Michael H. Ross</td>
<td>2014-17</td>
<td>Conroy Ross Partners</td>
<td>Human Resources</td>
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<td>Ray Muzyka</td>
<td>2014-17</td>
<td>Bioware/Threshold Impact</td>
<td>Investor</td>
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<td>LeRoy Johnson</td>
<td>2014-17</td>
<td>Former MLA</td>
<td>Politician</td>
<td>AADC, ASRA</td>
<td>PC1, 2, 3</td>
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<td>Michael Phair</td>
<td>2016-2019</td>
<td>City of Edmonton</td>
<td>Politician</td>
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<td>Douglas Stollery</td>
<td>2016-2020</td>
<td>Reynolds Mirth</td>
<td>Lawyer</td>
<td>GMU</td>
<td>TPA</td>
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Sources: University of Alberta, Orders in Council, Alberta Elections.

5.2.2 Profession/Occupation

There have been seven accountants, nine lawyers and seven engineers on the Board during this period. Four individuals come from the real estate business sector. There have been four ex-politicians, one nurse, and two former senior public servants who have served (are serving) on the Board.\(^{459}\) In addition there are six individuals that are or were owners of their own businesses (Saville, Roozen, J.D. Hole, Heidecker, LePoole, Muzyka). The late Lois Hole might be the only person on the board who could be considered having any Arts background as the author of gardening books. Thus the publicly appointed board is, and was, heavily weighted with business people perhaps as an offset to other board members representing faculty and students. Certainly, Linda Hughes a former publisher with the *Edmonton Journal* and Michael Ross, a human resources consultant, add a slightly different perspective to board discussions.

In terms of industry, the real estate and construction sectors have always had a strong representation on the board. Firms represented from this sector include Princeton Developments, Melcor Developments, MacLab Enterprises, Cathton Holdings, Jaffer Inc., Cameron Developments, PCL Construction, Lockerbie & Hole, and EBA Engineering. The energy sector also has had significant representation from Encana, TransCanada Corporation, Syncrude, Cenovus, and Petro-Canada. Curiously, financial services have not had representation even though major investment banking operations are located in Calgary. Notably absent from the board’s public membership are individuals from the fields of arts and sciences, the aboriginal community, agricultural sciences, and medicine.

5.2.3 Political Affiliation

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\(^{459}\) Lou Hyndman was also included in the lawyer category.
As Table 5.2 shows, a remarkable 35 of 49 Order in Council governors gave money or companies they were senior officers or directors of, or both, to the PCAA between 1994 and 2015. Indeed, excluding contributions to leadership campaigns, the total amount given to the governing party was nearly $830,000! It should be noted that some of the larger corporations like PCL, Cenovus, Encana, Petro-Canada also gave money to the Alberta Liberal Party but the amounts given to the PCAA dwarf such donations.\(^6\) We did not find any donations from these individuals, other than through firms, to other parties. Thus it is fair to conclude that a very strong majority of the public governors of Alberta’s largest university have an affiliation with the political party that had been in power over 40 years. This affiliation certainly can be a two-edged sword as we saw in the conflict in the Redford interregnum between Board Chair Doug Goss (a frequent financial contributor to the PCAA) and Advanced Education Minister, Thomas Lukasuk. Yet being close to government can also “smooth things” as well such as the approval of the market adjustment to tuition fees for professional faculties such as Law, Pharmacy, and Business.\(^7\) According to the Government of Alberta’s announcement “tuition increases in 25 programs (are) to enhance program quality and correct tuition anomalies between programs in Alberta and across Canada.”\(^8\) The “market modifier” discussion, a euphemism for limiting equality of opportunity, revealed a split between the publicly appointed board members and students and faculty. It also shows the importance attached by university administrators to the concept of maximizing revenue in whatever fashion is possible.\(^9\) The Table below also reveals that the newest member, Board Chair Michael Phair contributed to the NDP election campaigns in 2004 and 2008.

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\(^6\) For example from 2004 to 2013 Encana gave $55,600 to the Alberta Liberals, $223,000 to the PCAA and $116,800 to the Wildrose Alliance. Suncor gave the Liberals $71,699 between 2004 and 2013. Smaller firms like Princeton and MacLab Enterprises have only given to the PCAA and PCAA leadership candidates. Marc de la Bruyere of MacLab is well known as a fundraiser for the federal Liberal Party.

\(^7\) See Michael Brown, “Market modifier proposals approved-New and increased modifiers will allow five UAlberta programs to maintain and enhance quality, competitiveness,” 22 December 2014. [https://uofa.ualberta.ca/news-and-events/newsarticles/2014/december/market-modifier-proposals-approved](https://uofa.ualberta.ca/news-and-events/newsarticles/2014/december/market-modifier-proposals-approved) Jumps included from $10,221 to $15,995 in Law; $11,000 to $34,712 for an MBA; and a $1,400 increase to Pharmacy’s Doctor of Pharmacy program.

\(^8\) Government of Alberta News Release, “25 Campus Alberta market modifiers approved,” 22 December 2014. Over 13,000 students would be affected by the move. Engineering students who pay about $25,000 a year were spared. One of the tough discussions at the public meeting of the UofA board was on the Economics program market modifier that was passed by a vote of 12 to 9.

\(^9\) An interesting comment from board member Nizar Somji who said he was “not opposed to market modifiers, but questioned how the money generated would be spent.” Richard Catangay-Liew, “Board of Governors approves all five market modifier proposals, narrowly approves Econ market modifier,” *The Gateway*, 14 March 2015, [https://thegatewayonline.ca/2015/03/board-of-governors-approves-all-five-market-modifier-proposals-narrowly-approves-econ-market-modifier/](https://thegatewayonline.ca/2015/03/board-of-governors-approves-all-five-market-modifier-proposals-narrowly-approves-econ-market-modifier/)
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<th>Leadership Campaigns</th>
<th>Affiliated Company ($)</th>
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<td>Elmer Brooker</td>
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<td>$5000 TO $30,000 (Dinning), $10,000+ (Hancock), $20,000 (Redford-MacLab)</td>
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<td>Gordon Clanachan</td>
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<td>Judy Cosco</td>
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5.2.4 Provincial Boards

In the group of governors that have served on other provincial agency boards, we note that the provincial public sector pension boards are represented, unlike that seen in the other three boards reviewed. UofA governors have served on the boards of MEPP, LAPP, and UAPP. The Alberta Agricultural Financial Services Corporation and its predecessor AADC, had three governors serve on the board and the Alberta Premier’s Council on Alberta’s Promise Committee (6) were other committees UofA governors served on. Two board chairs (Goss and Heidecker) served on the Financial Management Commission and two governors served on the board of ATB Financial (Surkan and Heidecker). Another committee where there was overlap was the Provincial audit committee where members served (Young, Ruste). Overlap occurred also between Tom Shields and Brian Heidecker- both of whom served on the ASC board at different times. Grieve and Ferguson also are serving on AIMCo’s board. Not surprisingly what unites them are being contributors to the PCAA (with the exception of Surkan). As might be expected, five governors have also served on other post-secondary institutions including Grant MacEwan, NAIT, Red Deer College, SAIT, and the Alberta College of Art and Design.

5.2.5 Conclusion

As with the AIMCo and ATB boards, we see near unity in political affiliation. There remains a preponderance of business people on the board at UofA with interests in real estate, construction, engineering, and law where economic interests have a tendency to intersect and where the university has a large budget. Haidt’s typology of shared, social conservative values would place preserving the institution and its ongoing relationship with the provincial government (authority, hierarchy) as key values. This relationship should not be considered formulistic as we have seen where conflict has occurred between key party members as Board Chair and provincial ministers. Governors owe a duty to the institution first and where a clear and present danger presents itself from the government, partisans must speak out. But where the interests of the government and university administration coincide (tuition policy, new buildings), critical debate from a diverse board representing various educational priorities is muted.
5.3 Executive Compensation

5.3.1 President Pay Ratios

As the chart below shows the salary of UoFA’s President relative to average salaries, including non-Faculty staff, have increased over the past two decades. As we have observed this trend is not unique to the UofA but can be observed at other provincial agencies and is, in fact, reflective of broader socio-economic trends. In the case of the UofA, we see two periods of rapid growth in pay: the first between 2000 and 2004 coinciding with the relaxation of the environment of constraint in the late 90s as the province attempted to drive the cost structure of government in general down. The second phase commenced in 2008 to 2012 coincident with exceptionally high oil prices and significant in-migration to the province.\(^464\)

The relationship of salaries to that of other positions (deputy minister and Premier) also follows the general trend though not as pronounced since the salaries of the other positions are higher than the average wage at UofA. With the exception of the ratio between senior administrators and the president which has fluctuated over time, but held steady for two decades, the other ratios (Premier and Deputy) have doubled in two decades. Has the work of a university president become much more complex over the past two decades? It is not obvious that the challenges of a university president are meaningfully more daunting than that of a provincial premier or provincial deputy minister. To be sure, the boom-bust nature of Alberta’s economy and, unfortunately, the boom-bust nature of Alberta’s fiscal planning, have certainly caused university budgets to fluctuate more widely than in neighbouring jurisdictions.

\(^{464}\) A recent study by Turpin, De Decker and Boyd, ( “Historical changes in the Canadian university presidency: An empirical analysis of changes in length of service and experience since 1840.” Canadian Public Administration, Volume 57, Number 4, pp.573-588) shows the average years of experience of Canadian university presidents had fallen noticeably between 2004 and 2010. At page 583. During this period there were a number of early board terminations and a large increase in the number of inexperienced presidents. Maclean’s University presidents’ are under pressure to ensure their institutions progress in the rankings. The authors refer to a U.S. study identifying themes for “presidential failure:” - ethical lapses; poor interpersonal skills; inability to lead key constituencies; difficulty to adapting to institutional culture; failure to meet business objectives, and board shortcomings. At page 585.
5.3.2 Comparison with other University Presidents

The next chart examines the UofA president’s salary with other university presidents’ salaries. What the chart shows is that beginning in the early 2000s, salaries at Alberta’s largest two universities began to accelerate. The chart shows, unequivocally, that Alberta’s two biggest universities were national leaders when it came to pay in the past decade. It should not be surprising that in an economy driven by markets (i.e. oil prices) and with a high level of pressure and expectations to exceed market benchmarks, paying up for superior performance would be attractive to some members of the UofA’s board. Another justification for high salaries in Alberta is that the oil

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In 2008-09, there was a restatement for the salary of the UofC President because it had not reflected the actuarial liability of 22 years of past service from his previous employer effective September 1, 2001, the first day he served as President of the University. “In follow up to commitments made in fiscal 2002 during the recruitment process of the President, the University’s Board of Governors ratified the President’s Supplemental Pension Benefits in fiscal 2007.” This agreement was only signed on January 25, 2007, six years after Weingarten’s hiring. If the salary was smoothed in the graph, the U of C President would likely be the highest paid in the comparison. University of Calgary, Annual Report, 2008-09, p. 54, Note 16 to audited financial statements.

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Sources: University of Alberta financial statements, Data book. 2015 average salary based on estimate of FTE (9400).
and gas industry competes for senior leaders. This argument assumes that the position of an oil and gas CEO and a university president are similar in the range of functions, complexity, and governance.\textsuperscript{466} It is probably fair to say that a university president’s job is more demanding in terms of complexity and governance than an oil industry CEO. However, the pressures on the latter to perform financially and operationally, the close scrutiny by industry analysts, and the focus on profitability results in a pressure cooker far different than university presidents face. Moreover, the peer group is entirely different and so are the pay grades. Oversight by corporate board members, who have higher levels of legal liability and mandated ownership requirements (which unpaid university governors do not have), is entirely different\textsuperscript{467}. Finally, the majority of funds that universities spend are public dollars either via tuition, government grants, and research grants from funding agencies.

When comparing the salaries of UofA presidents with other institutions, it is important to note the relative size of these institutions. The University of British Columbia hosts 58,000 students and has a budget of $2.5 billion with a faculty of over 5,100 and 15,000 employees.\textsuperscript{468} The University of Toronto hosts nearly 85,000 graduate and undergraduate students with faculty of 13,239 and total staff of over 20,000. UofT’s operating budget is $2 billion.\textsuperscript{469} The University of Alberta too is a very large institution with a $1.8 billion capital and operating budget and over 1600 faculty and approximately 12,000 staff and about 37,000 students.\textsuperscript{470} Judging from these broad parameters, it is not clear how the Board of Governors at UofA and UofC arrived at salary levels that are significantly higher than those paid by much larger institutions.

\textsuperscript{466} See Allan Tupper’s review of two important books on Canadian universities and university presidents. “Higher Education: Leadership, Structure and Power,” \textit{Canadian Public Administration}, Volume 56, Number 2, pp. 350-360. The review article highlights \textit{inter alia} the tension between quality undergraduate teaching and the incentives for faculty members to devote more energy on research. Another significant development is the shift from solely internal preoccupations to “government relations, fundraising and alumni networks.” At page 353.

\textsuperscript{467} Governors must act in the best interests of the University. This is not the standard or duty of care found in most corporate statutes. \textit{Post-secondary Learning Act}, section 16(5). Chapter P-19.5, 2003.

\textsuperscript{468} \url{http://www.ubc.ca/about/facts.html}

\textsuperscript{469} \url{https://www.utoronto.ca/about-uoft/quickfacts} The definition of a faculty member does vary by university.

\textsuperscript{470} \url{https://idw-bi.ualberta.ca/t/Production/views/StudentPublicDataBook/UofAStudentFallHeadcount?embed=y&:showShareOptions=true&:display_count=no}
Sources: Government of Ontario, Ministry of Finance, Annual Financial Statements of Alberta universities. For Queen’s and UofT calendar year; for UBC fiscal year ending March. ⁴⁷¹

⁴⁷¹ In 2008-09, the UofC president’s salary includes value of supplementary retirement pension as actuarially determined.
5.3.3. Other compensation

For CEOs and executives with AIMCo, ATB and the ASC sitting on another board of directors is unusual. Often these individuals will serve on non-for-profit boards. Boards generally have rules about allowing their presidents to devote large amounts of time to earn additional remuneration. Controversy recently attached to the President of the University of Calgary’s perceived conflict in handling an academic matter involving a corporation that was directly affiliated with a donor.\textsuperscript{472} Cannon resigned from the private board on which she had served for over 12 years. During that period, Cannon received hundreds of thousands of dollars in remuneration in addition to her university salary. Similarly, Samasekera over the course of her presidency has received over $1.6 million director pay from Scotiabank and Magna International, excluding the value of equity ownership held at those companies\textsuperscript{473}. This raises significant issues for boards who must ensure that their most senior executives are devoting all their energies to benefit their organization.

\textsuperscript{473} Proxy Circulars, The Bank of Nova Scotia- 2008-2015 and Magna International 2013-2015. SEDAR. She held $172,000 in share based awards at Magna and $1,597,123 in equity ownership at BNS.
5.4 Conclusion

In the foregoing analysis the following stands out. First, the public members selected for the board have a fairly narrow range of skill sets: law, accounting and engineering dominate. This is not to say these men and women may individually value the importance of the arts, pure science, and community service. Rather the experience they bring to their role as governors is limited by their professional contacts and the industry they operate in. As shown, the industry group represented on the board is highly limited and, until recently, experience in technology has not been represented on the board. Diversity of thought of course may be provided by Senate and Faculty nominated members and by students but the voting majority is narrowly controlled by the government (11 to 9 which includes alumni and Senate representatives). In addition, the public board members are remarkably homogeneous in political orientation (100 per cent PCAA) and this contributes to the perception that the university and administration is beholden to the government. Haidt’s typology then would suggest that hierarchy and authority are the main values followed by these individuals. This is not to say that on all issues, at all times, public governors would tow the party line, but that there is a confraternity of interests represented on the board that precludes a fuller debate on issues critical to the future of Alberta’s preeminent university.

With respect to executive compensation, we have seen that pay levels for the president relative to average staff, the Premier and deputy minister increased significantly beginning in 2003-04. There may be some catch-up involved as the Klein era wage roll-backs came off and employees sought to recapture losses endured in the 1994-2000 period. It is also plausible that the publication of salaries and the role of external headhunters and internationalization of search have contributed to salary escalation particularly in high wage Alberta. Also, as Turpin et al have observed in the early 2000s the dismissal of Canadian university presidents has probably contributed to applicants seeking higher wages and severance pay-outs because of the perceived higher risk of taking such a position. That said, the significantly higher levels of pay at UofA and UofC, relative to their larger Canadian comparators, would suggest that expectations for superior performance were created by the appointing boards. The current government would be advised to think carefully about the desired outcomes for the UofA and compensation parameters when it begins appointing public members.474

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474 The appointment of Michael Phair as Chair of the Board in February 2016, who was a city councillor in Edmonton and a leading member of Edmonton’s gay community is a dramatic shift towards board diversity. “Former city councillor Michael Phair named chairman of University of Alberta board of governors,” Mariam Ibrabim, Edmonton Journal, 25 February 2016.
6 Conclusions and Recommendations

6.1 Appointments process

6.1.1- Background to (Trying to) Understand these Complex Processes

When assessing the results of this survey, it is useful to consider the anthropology and sociology behind how committees or boards are formed to oversee organizations. The recent study by Fukuyama is one possible starting point. We draw from his observations liberally below to provide a conventional, but perhaps controversial, explanation of socio-economic-political behavior. One way of understanding the process of appointments is to consider its anthropological underpinnings. Humans are “social animals” who are related through kinship and friendship. “Reciprocal altruism” is a mechanism that involves an exchange of favours for mutual benefit. To govern a complex organization, such as the Alberta public sector, has historically been the role of political parties. Ab initio these parties seek to attract members and choose candidates while articulating a message to persuade a plurality of voters to support the party’s candidates. Individuals, including corporations, contribute their personal time and money, in support of a party they hope will win the election and form the government. Individual partisans striving for electoral victory inevitably form friendships in a concatenation of acts of reciprocal altruism.

All modern societies began with what Max Weber called patrimonial states, governments that were staffed with friends and family of the ruler, or those of elites who dominated the society. These states limit access to political power and economic opportunity to individuals favored by the ruler; there was little effort to treat citizens impersonally (and equitably), on the basis of universally applied rules. Modern government - that is, a state bureaucracy that is impersonal and universal, developed only over time, and in many cases failed to develop at all.

Patrimonial states can be highly stable. They are constructed using the basic building blocks of human sociability, that is, the biological inclination of people to favor family and friends with whom they have exchanged reciprocal favors. Elites build power through the management of patronage chains by which clients follow patrons in pursuit of individual rewards. All this is reinforced by ritual, religion, and ideas legitimizing a particular form of (elite) rule. These elites are much better organized than others in the society. As the scale of society increases, informal patronage networks are converted into more formally organized clientelistic hierarchies. But the basic organizing principle of politics - reciprocal altruism - remains the same. Once they achieve power, the elites running this type of system can be displaced by other, better organized elite groups but seldom by non-elites below them. These types of pre-modern states have succeeded in enduring for centuries and continue to exist around the world at the present moment.

Finally, liberal democracy is almost universally associated with a market economy, which tends to produce winners and losers... This type of economic inequality is not in itself a bad thing, insofar as it stimulates innovation and growth, and when it occurs under conditions of equal access to the economic system. It becomes highly problematic politically, however, when economic winners seek to convert their wealth into unequal political influence.

In Alberta, there has been an extraordinary period of stable, one party government. In 1971, the Progressive Conservatives under Peter Lougheed replaced an administration that was managerial in nature but highly strategic in its spending. A rurallly based government led by stolid farmer was displaced by an urban group of professionals

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475 Francis Fukuyama, Political Order and Political Decay, p. 8.
476 Ibid., pp. 198-199. (Emphasis added)
477 Ibid., p. 466.
who promised “change”. Since an institution is nothing more than a rule that persists over time, human beings therefore have a natural tendency to institutionalize their behavior. 478

John Porter’s classic, The Vertical Mosaic, is another perspective on the sociology of elites interacting. Written over fifty years ago, Porter analyzes the intricate patterns of education, wealth, ethnicity, and parentage and their effects on elite structures of the Canadian bureaucracy, business, higher education, and clergy. 479 In this study we have examined the select characteristics of a very small group of individuals who make vital decisions concerning the hiring and firing of key personnel in key areas of the Alberta economy, finance, and higher education. These individuals are responsible for allocating credit, investing pension funds and taxpayers’ dollars, regulating financial markets and deciding who to hire and fire. These individuals, formalized as a collective board, have a material impact on the lives of many Albertans. These boards also allocate resources to capital and maintenance expenditures (for example ATB’s Core project) which, in turn, impact the trajectory of the organization, and the Alberta economy, going forward.

Porter’s analysis suggested that while merit was probably a factor in how some people arrived at the pinnacle of authority, other factors were at work. The high incidence of private schools in the backgrounds of business and other leaders is one example of institutions that advance the familial interests of parents who can afford to send their children to these schools. In Alberta, the prevalence of these private elite institutions is relatively weak. Other institutions that Porter identified include private clubs where key business people meet to discuss issues in common and to socialize with friends and family. In Alberta, the Ranchmans, Royal Mayfair Club, and Calgary Petroleum Clubs represent a style of doing business that is slowing changing. That these clubs were relatively open to newcomers speaks to the value that ideas, knowledge, and not the size of wallet, are key to gaining access. Still these clubs do represent exclusivity, money, access, and power. They are not moribund institutions as they are adapting to broader societal change, for example, the inclusion of women as members. Yet, as a “tribal society” when boards are looking for new members, they have a tendency to go to persons they know or know of. “Friends of the party,” common board members, club members, or members of professional associations are the connections they rely upon. This may cause a self-replication or self-selection of boards that stands in the way of encouraging diverse opinion (assuming diverse opinion is sought or seen as desirable).

We have paid considerable attention to the history of these key Alberta institutions because each institution has a very distinct social, financial, and economic to play under a legislated mandate. The challenges now faced by these institutions today also reflect of the structure of Alberta’s economy and society but also the value choices of individuals in positions of authority currently, but also in the past. While Albertans’ value sets are not homogeneous or static, the homogeneity of value sets on provincial boards should be a matter of public concern. Given that over the past two decades about one of every two voters did not support the Progressive Conservative Party, this study has adduced virtually no public evidence that the political values of the “other half” had a voice at the decision-making tables. 480 The recent study by Krahn, Harrison and Hancock illustrates that Alberta is not a “monochromatic political culture but rather there are a wide range of values held by Albertans along with a lowering of party identification.” 481

Current literature on organizational behavior suggests that corporate boards function more effectively if there is more, rather than less, diversity. 482 The diversity debate has centred primarily on the absence of women on boards. The recent appointments of cabinets in Alberta and federally speak to this issue directly. While this study

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478 Ibid., p.9.
479 Porter, 1965 and his students Wallace Clement on the corporate elite (1975) and Dennis Olsen on the state elite (1980).
481 Krahn, Harrison, and Hancock, 2015.
482 Aaron A Dhir, Challenging Boardroom Homogeneity: Corporate Law, Governance, and Diversity, 2015.

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Board Appointments and Executive Compensation: 
A Survey of Four Alberta Provincial Agencies

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has not devoted specific attention to the gender imbalance, the evidence indicates that the Alberta government in the past decade has modestly improved its record. That said, if women selected come only from a limited backgrounds (law, business, engineering, accountancy), there remains a question of whether the diversity achieved will significantly improve the range of perspectives around a board table. The most startling example we have found is the AIMCo board qualifications that virtually require membership in Canada’s corporate elite.

The anthropological lens is suggestive of a tendency in Alberta for those seeking “offices” to utilize networks in the PCAA as an avenue for advancement. Donations to the PCAA before and after O.C. appointments are not uncommon and do matter, including attendance at the Premier’s annual dinner. Such donations, directly or through corporations controlled by these actors, may lead to the impression that appointments are made not merely on the basis of merit nor fit with the skill set identified. The degree of partisanship of course varies, and further empirical research might be able to identify with more precision connections between ministers and actors who serve on one or more boards, including not-for-profit boards. The number of donations to the former premier’s by-election in October 2014 is also suggestive that key players wish to be noticed as supporters in that specific political contest.

6. Executive Compensation and Performance

True Story: Word of Honor: Joseph Heller, an important and funny writer now dead, and I were at a party given by a billionaire on Shelter Island. I said “Joe, how does it make you feel to know that our host only yesterday may have made more money than your novel Catch-22 has earned in its entire history?” And Joe said, “I’ve got something he can never have.” And I said, “What on earth could that be, Joe?” And Joe said, “The knowledge that I’ve got enough.”

Kurt Vonegut

The disclosure on compensation systems for the provincial agencies examined is seriously lacking in granularity when compared with executives of publicly traded organizations. Organizations such as Cameco, which won an award for its Compensation Discussion and Analysis from the New York Stock Exchange, spent 51 pages of detail divulging its compensation practices, philosophy, and structure for its executive officers. Obviously without stock options and deferred share units, etc. disclosure does not need to be as lengthy. AIMCo has the most detailed disclosure of its compensation system (13 pages) but more is required to bring it to a standard required under the provincial Securities Act and Form 51-102F6 of national policy instrument 51-102 on continuous disclosure. It is ironic that more compensation information is available about privately owned, but public traded corporations, than public institutions managing billions of dollars for the benefit of Albertans and Alberta pensioners.

6.2.1 Commercial enterprises

With respect to AIMCo, its investment performance has not been sterling to date when compared with its peers and with the predecessor organization. However, the salaries of executives have increased dramatically and so have the costs borne by the pensioners of the major funds managed by AIMCo. Economists call this phenomenon “rent-seeking” behavior. The critical variable in the compensation formula is “what are the targets set by the board and what is the definition of acceptable risk?” Also important is the role of the responsible minister in assessing the value added by the corporation since it was established in 2008. As a companion survey

484 2016 Management Proxy Circular, On Track, pp. 39-90. Bank disclosures are of similar length.
found, it is troubling that the Government of the day did not choose to establish at AIMCO’s birth a clear process, with clear benchmarks, to review whether corporatization has achieved its stated goals.

With respect to ATB, salary escalation and rising ratios of CEO to average pay are evident over the period studied. Our analysis suggests that executives at both AIMCo and ATB have benefitted disproportionately from the elimination of controls by politicians over their salaries. This would be understandable in the private sector as shareholders have the option of selling shares when they disapprove of the performance of the corporation or may vote against “say on pay.” But governments can’t sell their shares easily and there are more factors to consider when divesting than with publicly traded shares (i.e., employment effects, control over investment and lending decisions).

We have also compared the performance of both AIMCo and ATB with relevant Canadian and western Canadian comparators. Compensation levels in these organizations appear to be at the high end when performance is taken into account. ATB’s return on assets, in spite of key benefits enjoyed by the Crown agent, remains below that of CWB and roughly on par with Alberta’s largest credit union. The review of compensation levels in the wake of the ABCP crisis and the Achievement Notes at ATBIS revealed an incoherence of variable pay and long-term incentive payments. However there was a reduction in ATB CEO’s 2011-12 salary reflecting the CORE project difficulties and negative impact on customer satisfaction. The decision to outsource information technology processing early in the board’s existence, while conventional, has arguably stripped ATB of its own internal talent to manage innovation and evolution in this rapidly changing environment, leaving it dependent on multinational organizations for advice and operations.

Compensation at organizations like AIMCo and ATB that do not need to compete for capital, suggest that compensation policies of executive officers must be different than those of publicly traded companies. ATB has a public policy mandate to provide “Albertans access to financial services and enhance competition in the financial service marketplace in Alberta” while earning a return that is “fair” in the mind of the minister responsible. Thus an appropriate peer group would include Export Development, Business Development Bank, the Canada Mortgage and Housing Corporation, and the Bank of Canada, as well as smaller financial institutions in Alberta including Bank West, SERVUS, Peace Hills Trust, and AMA. Members of the Legislative Assembly, ultimately responsible for monitoring the activities of provincial agencies, still do not know which peers ATB directors use in their determination of executive salary ranges. This is not to say that the CEO and Executives should be paid at the median level given the size and complexity and importance of the institutions, but given the public mandate, the regulatory privileges enjoyed, the current salary levels appear elevated.

At AIMCo, investment managers are essentially salaried trustees for pensioners and Alberta taxpayers. The role of overseeing portfolio managers is a complex one but, unlike mutual fund complexes, the CEO is not soliciting funds as AIMCo already has a monopoly. This monopoly does provide the benefit of being longer term in focus and not requiring constant promotion, marketing, advertising, and recruiting “star” managers to the fold. In short, the job is less stressful than the pressure cooker of quarterly demands of selling mutual funds. In a related study, we have shown that the performance of AIMCo has not been significantly better than its predecessor organization and costs have increased to the funds managed, in some cases quite significantly. Again, the suitable peer group would be both public sector CEOs like the EDC and BDC presidents, the BC Investment Management Corporation, or fund managers at Adroit or Mawer.

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485 *Edmonton Journal*, “Edmonton’s highest paid execs: 33 earn $1 million or more,” *Edmonton Journal*, 30 May 2015. Of the top 10 earners, two were from AIMCo, two from ATB, and one from EPCOR- all government owned enterprises.

486 In the October 2015 budget, Treasury Board President and Minister of Finance Joe Ceci gave direction to ATB and AIMCo to stimulate lending to small and medium sized businesses and to invest in Alberta growth companies.

487 These salaries are not public but likely significantly higher than federal Crown agency CEOs.
6.2.2 Alberta Securities Commission

There is virtually no disclosure at all about how the “independent” commission members arrive at the salary provided to the Chair. The board is not in an ideal position to decide remuneration for the Chair as they depend on the Chair for a call to sit on hearings for which they receive part-time pay. The ASC chair should not be paid more than the OSC Chair and it is arguable that the OSC chair should be paid considerably more than the Superintendent of Financial Institutions or the Governor of the Bank of Canada, who also perform significant regulatory functions. A more appropriate salary scale would be Court of Queen’s Bench justices, or the Chief Justice of the Court of Appeal, given the quasi-judicial functions they oversee with some recognition of an administrative burden. However it should be recognized that some of the administrative burden is placed on the Executive Director and two Vice-Chairs.

6.2.3 University of Alberta

The Board of Governors of UofA came under criticism with respect to the high levels of salaries of the President and executive officers. Other than the controversy about the outside employment of the President of the University of Calgary, there has been little comment about the outside boards the former UofA President served on. The obvious problem is the amount of time it takes to read the board and committee briefing materials, attend the meetings, and otherwise engage in other conversation with board members and executive management of these large corporations. Another concern has to do with any conflicts of interest that may arise between the corporation and the university as seen with the Enbridge-UofC episode. Higher than market salaries at the executive level also may lead to salary escalation overall as senior administrators at Alberta’s universities and colleges come to expect being the highest paid in the country. This concern, as we have seen, exists in two of Alberta’s largest commercial enterprise and at an important regulatory commission. University Presidents historically have come from the ranks of the professoriate and return to the classroom and laboratory. The position of President is highly prestigious and historically pay was not significantly higher than long-serving professors.

6.2.4 Inequality

Thomas Piketty’s volume *Capital in the Twenty-first Century* raises fundamental questions about the nature of wealth and income disparities. In an affluent society like Alberta where wealth has been generated from property rights over land and mineral leases in a frontier community, there is a sense that upward mobility is open to all. The Klein revolution, where the role of government was degraded, led to a perspective that society functions better where government “gets out of the way” and allows markets to work.488 This view, in part, was a reaction to the perception that some businesses had preferred access to politicians and could therefore distort the allocation of public funds to their benefit. The move to privatization is consistent with the idea that competition will produce the best outcomes for society and the economy. The privatization of liquor distribution could be viewed as an attack on the rents collected by a unionized work force. In the case of the four agencies we have reviewed, salaries of executives grew at a rate that was significantly higher than the average staff member. However, the reasons for these spectacular gains are unclear. Those with authority (e.g. directors, executive officers) set salaries for their subordinates (or recommend salaries) and sometimes colleagues who sit on the same boards. These individuals are almost universally intelligent, well-meaning, and public spirited, and respond to the signals they receive from both the economic and political marketplace. While business owners needn’t care about pay differentials,
governments do. Pay differentials that bear no resemblance to performance or recognize the collective inheritance the executives have enjoyed, are inimical to the public interest. Governments that allow boards *carte blanche* to determine salaries over public institutions must decide how best to promote meritocracy, performance, and competence within a framework of fairness.
7.0 Recommendations and Areas for further study

7.1 Board appointments

There is an emerging consensus that diversity is a desirable quality for a board. Securities commissions and the Institute of Corporate Directors have been supportive of the thrust to increase the number of women on corporate boards. The Government of Alberta should therefore consider the existing composition of the board before appointing new board members, with emphasis on gender and profession. The Public Agencies Secretariat should develop a database that includes profession/occupation, industry sector, gender, known and demonstrated competencies, ethnicity, and political affiliation (if any) of persons willing to serve on provincial ABCs. The Secretariat should identify, in conjunction with the ABC’s board, the desirable skill sets taking into account the desirability for a breadth of relevant experience. Positions to become vacant must be properly advertised. The Government should ensure that the Secretariat have relevant expertise and staff resources and the time necessary to develop a board governance plan that reflects the needs of the board, the agency, and the government representing the public interest. Officials from the Secretariat and agencies involved would be asked to attend committee meetings to answer questions.

Names that are identified by the Secretariat using publicly available screening methods should be reviewed by the relevant Minister. A special committee of the Legislative Assembly should have the authority to veto appointments. The legislative committee should, like the public accounts committee, be chaired by an opposition MLA. The committee should have sufficient time, sufficient information, and staff resources to effectively review the appointments. The goal of this vetting is to ensure that appointments of hyper-partisan, ill qualified persons, do not proceed. This intermediate process is not a panacea for the spoils of patronage, but rather a check against egregious abuses of power by the governing party.

It is suggested that a significant number of appointments to smaller ABCs not be put through the legislative committee for two reasons. First, the government is currently reviewing the 301 ABCs and perhaps, a large number will be eliminated as they serve no public purpose. Secondly, the impact of the work of ABCs varies dramatically from the significant work of the four agencies examined here. The Government should review and recommend what key boards should attract legislative scrutiny. A final check is the need to enforce, as outlined in the PAGA, term limits of board members. In the case of ATB there have been 3 directors that have served over ten years and a recent appointment at the ASC has extended the Vice-Chair’s appointment to a possible 18 years. Consideration should also be given to limiting an individuals’ appointment to only one provincial agency to ensure a maximum opportunity for qualified Albertans willing to serve on key provincial boards. To further facilitate more diversity on boards, turnover of board members should be increased. Consideration should be given of a maximum term of 6-9 years for boards, and ten for quasi-judicial boards.

With respect to AIMCo’s board, qualified representatives from the LAPP, MEPP, PSPP, and Special Forces Pension Plan should sit on the board. This model is followed in British Columbia and will help ensure that AIMCo’s governance structure is sensitive to the cost of managing the beneficiaries’ and members’ funds. Consideration should also be given to allowing the pension funds to contract with other investment managers if they so wish.

489 There is a lobby group called Catalyst Canada led by Pamela Jeffreys who started Women’s Executive Network and Canadian Board Diversity Council that advocates for changes in corporate governance policies and government legislation. See the March/April 2015 issue of Director Journal on diversity. See articles by Matthew Fortier and Virginia Galt. See: Good for Business A Plan to Promote the Participation of More Women on Canadian Boards Report by the Government of Canada’s Advisory Council for Promoting Women on Boards to the Honourable Dr. K. Kellie Leitch, P.C., O.Ont., M.P. Minister of Labour and Minister of Status of Women, June 2014.

490 In its 14 April 2016, the NDP Government eliminated about a dozen agencies and merged another 8.
with an appropriate transition period. This should ensure that investment performance and cost factors are the central considerations for the AIMCo’s board.

7.2 Executive Compensation

As the Auditor General has recommended previously, compensation disclosure should be at, or above, the level of disclosure for that of publicly traded companies. Changes should include a discussion on the philosophy of compensation for executives, the basis on which bonuses if any, are determined and paid. The annual report should include a discussion of the nature of the discretion that the board has to make extraordinary payments. There should be full disclosure about the nature of the contract between the human resources consultant, if any, and the board or committee of the board and any relationship, if any, between the consultant and management. Severance payments should be included in financial reporting as well as the payment of any sums related to the termination or retirement of an employee (Achievement Notes) as well as future payments under the contract of a retiring executive. Payments for housing and a car allowance should be disclosed where taxable benefits accrue to the individual. In addition, the board should describe the peer group that is used in determining compensation and support its conclusions based on a comprehensive understanding of the organization’s history and public policy mandate. Boards of directors should also adopt clear policies prohibiting services on for-profit boards where the earn directors’ fees. This will prevent conflicts of interest and ensure the interests of the public agency are served first.
Appendix 1
Summary of Key Recommendations:
At the Crossroads and the Provincial Agencies Governance Act

At the Crossroads

Recommendation 2- The Government of Alberta should establish a more rigorous process for the establishment of agencies, boards and commissions.

Recommendation 5- The Government of Alberta should ensure that the mandates, roles and responsibilities of the government and its agencies are clearly understood.

Recommendation 6- The Government of Alberta should not appoint elected or senior government officials to the governing boards of agencies.

Recommendation 7- The Government of Alberta should use a transparent, non-partisan and competence-based appointment process for the appointment of directors to agencies.

Recommendation 8- The appointment to agencies process should recognize the diversity of Alberta’s population and as a priority undertake active recruitment to this end.

Recommendation 9- Agencies should have fixed terms of office for their directors which may be renewed based on performance to a maximum of ten consecutive years.

Recommendation 12- In addition to overall agency evaluation, all agencies should carry out evaluations related to board and director performance.

Recommendation 15- The Government of Alberta should establish an Agency Governance Secretariat within Executive Council to provide coordination and operational support, and to promote continuous improvement in good governance.

Provincial Agencies Governance Act

Section 3- Every public agency must have a Mandate and Roles document developed jointly by responsible Minister and the agency that must address inter alia: the agency’s mandate; roles and responsibilities of minister, CEO, and board members; accountability relationship; code of conduct; committee structure; reporting requirements; and mutual expectations on communications, collaboration and consultation.

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Section 18(3)- If a person is both a member and CEO, the agency shall establish a process, to the satisfaction of the responsible Minister, to ensure the CEO’s performance is overseen by other board members.

Section 19- The mandate and operations of every public agency must be reviewed every seven years.

Proclaimed 12 June 2013
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### 9.0 List of Abbreviations Used

<table>
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<td>Alberta Utilities Commission</td>
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**Post-secondary Institutions**

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<td>Banff Centre</td>
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<td>Mount Royal University</td>
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<td>NC</td>
<td>NorQuest College</td>
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Appendix 1
Summary of Key Recommendations:
At the Crossroads and the Provincial Agencies Governance Act

At the Crossroads

Recommendation 2- The Government of Alberta should establish a more rigorous process for the establishment of agencies, boards and commissions.

Recommendation 5- The Government of Alberta should ensure that the mandates, roles and responsibilities of the government and its agencies are clearly understood.

Recommendation 6- The Government of Alberta should not appoint elected or senior government officials to the governing boards of agencies.

Recommendation 7- The Government of Alberta should use a transparent, non-partisan and competence-based appointment process for the appointment of directors to agencies.

Recommendation 8- The appointment to agencies process should recognize the diversity of Alberta’s population and as a priority undertake active recruitment to this end.

Recommendation 9- Agencies should have fixed terms of office for their directors which may be renewed based on performance to a maximum of ten consecutive years.

Recommendation 12- In addition to overall agency evaluation, all agencies should carry out evaluations related to board and director performance.

Recommendation 15- The Government of Alberta should establish an Agency Governance Secretariat within Executive Council to provide coordination and operational support, and to promote continuous improvement in good governance.

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