share is too small to carry control) in medium- and small-sized corporations. The large number of portfolio investments in large- and medium-sized firms, held by provincial governments or their agents, is overwhelmingly an artifact of the Caisse's investment behavior. Caisse investments comprise 68 of the 97 mixed enterprises in the portfolio category. If the equity investments of the Caisse were excluded from this analysis the concentration of mixed enterprises toward the lower end of Canada's corporate hierarchy would be even more marked. The results of Stanbury and Elford's analysis are presented below.

Stanbury and Elford identify only four cases in which the state shareholder has effective control over a corporation with assets in excess of \$500 million. However, with the population of firms defined as the Financial Post 500 for 1982 (the 500th firm having sales of \$46.9 million) they find that 14 of the corporations in this group were mixed enterprises under the legal or effective control of either the federal or a provincial government, or a crown agent. This compared to 28 federal and provincial crown corporations in the Financial Post 500 for that year. Clearly then, mixed ownership firms under state control account for a not insignificant share of corporate activity in Canada. Indeed, Stanbury and Elford estimate that in 1981 state equity in mixed enterprises amounted to 7.5 per cent of total equity capital in Canada, and the assets of those mixed enterprises under the legal or effective control of governments in Canada comprised approximately 5 per cent of all assets of non-financial corporations in Canada for that year.³⁰

Internationally, some of the largest corporations in the non-communist world represent partnerships of state and private sector

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Direct Investment by the State: Mixed Enterprise
in Canada

University — Université

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Degree for which thesis was presented — Grade pour lequel cette thèse fut présentée

Ph.D.

Year this degree conferred — Année d'obtention de ce grade

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DIRECT INVESTMENT BY THE STATE:

MIXED ENTERPRISE IN CANADA

by

© STEPHEN BROOKS

Department of Political Science

A Thesis submitted in conformity with the requirements
for the Degree of Doctor of Philosophy at
Carleton University
1985

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ACKNOWLEDGEMENTS

A number of debts were incurred between the conception and completion of this thesis, and it is with pleasure that I acknowledge them. I should like to thank Maureen Appel Molot and Jean Kirk Laux for invaluable criticisms of successive incarnations of the thesis. Any merit which this study may have must be credited to their careful supervision.

I should also like to thank Allan Tupper, Bruce Doern and Michael Whittington for their extensive comments on the final version of the thesis.

Finally, I would like to thank Christine Brooks for her encouragement during the writing of this thesis.

ABSTRACT

In this study the partnership of public and private capital in the mixed ownership corporation is examined for what it reveals about the relationship between the state and business in Canada, and in order to determine the possibilities for and limits on state capital in the produce-for-profit economy. Three case studies have been selected for intensive analysis: Telesat Canada, the Canada Development Corporation, and the private sector investments of the Caisse de dépôt et placement du Québec. The analysis is structured around an examination of i) their respective origins, ii) corporate decision situations where the preferences of the state shareholder have conflicted with those of management and private capital, and iii) the performance of each organization in satisfying government's public policy expectations.

The propositions tested in this study are the following. First, that in each case government's deliberate selection of joint public/private ownership was based on an expectation of unobtrusive influence, i.e. the capacity to influence corporate decisions while not challenging the principle of private capital accumulation. Second, that the state's ability to influence decisions of the mixed enterprise is contingent upon private sector satisfaction that the commercial objectives of the corporation are not compromised by public policy expectations for the organization. And third, that the resolution of conflict between state preferences and those held by corporate management and/or private shareholders may mobilize a wider set of interested parties around an issue with higher stakes than those attendant upon the proximal cause of dispute.

Among the major findings to emerge from the analysis are the following:

- i) government's original expectations of unobtrusive influence have run up against organizational features of the mixed enterprise that involve a mobilization of bias in favour of business values;
- ii) the price of forced compliance (coercion) with the state's preferences is crisis in the relationship between the state and private capital in the mixed enterprise, while the price of induced compliance (suasion) is compensation; and
- iii) the social returns on the public's investment in these mixed enterprises varies across the three cases, according to the particular organizational characteristics and contextual circumstances of each.

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PART I
INTRODUCTION

CHAPTER ONE

MIXED ENTERPRISE: A FRAMEWORK FOR ANALYSIS

The growth in the dimensions of government, and the interpenetration of public and private sectors in contemporary capitalist societies, are characteristic features of the "mixed economy". Within this mixed economy the investment activities of the state comprise an important means of state intervention. This is evident from the fact that 9 of the 50 largest corporations in the non-communist world are either wholly or partly owned by governments or their agents,¹ and that even in the United States, the ideological bastion of free enterprise, the extent of state ownership is impressive. Annmarie Hauck Walsh has described the vast network of public authorities which operates in the U.S. economy, mainly providing infrastructural support on which private capital accumulation depends.² Less visible than public ownership is the array of investment guarantees to which the American state is committed. Theodore Lowi demonstrates that the value of investment guarantees, for the federal government alone, quintupled between 1962 and 1978, reaching approximately \$320 billion in 1978.³

In Canada the crown corporation has been the main vehicle for investment by the federal and provincial governments. While precise measurement of the size of Canada's state enterprise sector has proven elusive for governments and academic researchers alike, various indicators point to the significance of state investment in the Canadian economy. Of the fifty largest industrial corporations in Canada (1983), seven are crown corporations and another three have a state agency as controlling shareholder.⁴ Several of the remaining corporations in this group have Quebec's Caisse de dépôt et placement as an important though not controlling shareholder, and the federal government holds \$287 million of equity in Massey-Ferguson (ranked 45th by revenue) through the Canada

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Development Investment Corporation. Among the twenty largest financial institutions operating in Canada, four are state agencies which together account for approximately 9 per cent of the assets held by this group.⁵ With regard to investment in new productive capacity, thirteen of the top fifty capital spenders in 1983 were state-controlled corporations, and another three had the state as a major shareholder.⁶

Whereas the traditional channel for state investment has been through crown corporations, investment in the shares of public companies (i.e. corporations whose equity is traded on the public stock exchanges) and shared ownership with private sector partners in joint ventures more recently have emerged as important features of Canada's political economy. The controversy which surrounded the mixed ownership Canada Development Corporation in 1980-81, when management and the federal government (holding 43 per cent of the CDC's voting shares) were at loggerheads over the relationship of the CDC to public policy, and the public sector/private sector and intergovernmental disputes precipitated by certain private sector investments of the Caisse de dépôt et placement du Québec, focussed attention on the hitherto neglected phenomenon of the mixed ownership corporation in Canada. However, the issues raised by the partnership of private and public capital (most importantly, the reasons for state investment, the division of control, and the relationship of corporate behavior to public policy), and even the extent of mixed ownership in Canada are matters about which little is known.

This study examines the mixed ownership corporation as part of the broader relationship between the state and business in Canada, and in order to determine the possibilities for, and limits on, state capital in the produce-for-profit economy. Three case studies have been selected

for intensive analysis: the Canada Development Corporation, Telesat Canada, and the private sector investments of the Caisse de dépôt et placement du Québec. While the empirical focus of the work is on the mixed ownership corporation, the theoretical framework relies heavily on the political economy literature on state enterprise. There are of course obvious differences in terms of the accountability relationship to government and the legal status of a wholly state-owned corporation as against a public company in which the state holds equity. But they have in common the fact of state ownership of the means of production in a capitalist society. Thus, it is important to build upon the theoretical work on state enterprise in modern capitalist societies, and particularly in Canada, in order to understand the relationship between the state and private capital as it unfolds in the mixed ownership corporations.

State Investment in the Capitalist Economy: Canada

The phenomenon of state investment in a capitalist economy is not of recent origin. Both the theory and practice of state investment were well established during the Hamiltonian era of commercial capitalism in the United States,⁷ though the state's economic role underwent a temporary eclipse with the rise of an industrial bourgeoisie in the latter half of the 19th century. In Canada, state support for private capital accumulation developed along similar lines, taking the form of public investment in railways and canals, not to mention the host of transfers from the crown to private business interests (particularly land concessions to the railways, mining, and lumber interests). Unlike the United States, however, the practice of direct state investment in economic development never found expression in an articulate theory

of the state's relationship to business and, by extension, the public interest. Indeed, Canada's unsystematic tradition of state enterprise frequently has been adduced as evidence of cultural "pragmatism", a characterization which only serves to mystify the relationship between the state and business.⁸

If "pragmatism" is intended to signify a functional response to the particular conditions for economic development in Canada, this still implies a normative disposition towards the proper ends of state action. Early instances of state ownership in such sectors as transportation, hydro-electric power, and telecommunications, did not threaten private capital, but in fact supported the private sector through the provision of infrastructure, energy, and social order, respectively. This necessary supportive role of the state was explained by Harold Innis:

Government ownership in Canada is fundamentally a phenomenon peculiar to a new country, and an effective weapon by which the government has been able to bring together the retarded development, and the possession of vast natural resources, matured technique, and a market favourable to the purchasing of raw materials....Canada's development was essentially trans-continental. Private enterprise was not adequate to the task, although the success of government ownership has tended to obscure the paramount importance of its contributions during the early stages of capital development. 9

Similar views were expressed by Alexander Brady in an article in which he argued that Canadian history should be written in terms of the role of the state in the economic life of the country. Brady wrote:

In Canada public ownership is closely related to protection in that most of it was undertaken in connection with public utilities, such as railways and electric power, in order to quicken development in primary and secondary industry and to create an economy more integrated and diversified, able to stand on its own feet alongside the young, powerful economy of the neighbouring Republic....The unity of Canada has required (state-financed) railway lines no less than the Roman Empire required roads; they have been the main agency of colonization and industrial diversification. 10

The line of explanation developed by Innis and Brady is extended by C. B. Macpherson,¹¹ and in Hugh Aitken's work on the economic role of the Canadian state. Aitken uses the concept of defensive expansionism to explain the extensive involvement of the Canadian state in the economic development of the fledgling country. Following the staple thesis elaborated by Innis, and subsequently by Vernon Fowke,¹² Aitken argues that, "The role of the state in Canadian development has been that of facilitating the production and export of (successive) staple products".¹³ Federal government investment during the nation-building period of Confederation was primarily in railroads, intended to facilitate the development and export of western Canadian staples and, simultaneously, establish political sovereignty in the face of American economic expansionism. The intimate relationship between the political and business elites during this era, with cross-membership quite common, lends support to the argument that pioneering ventures in state enterprise, particularly the CNR federally and publicly-owned electricity generation provincially, amounted to public subsidization of private capital accumulation.

State ownership was extended in the 1930s to the new technologies of radio communication (Canadian Radio Broadcasting Commission, 1932) and air transportation (Trans-Canada Air Lines, 1937). In each case the original and sustaining reasons for state ownership had little to do with equity considerations (i.e. how the economic benefits of commercial activity would be distributed) but much to do with social cohesion.¹⁴ Development in each of these sectors has been duopolistic, characterized by regulated competition between the crown corporation and a major private sector competitor, with the latter having the superior record of commercial performance. Thus, in neither sector has state enterprise precluded

private capital accumulation. Indeed the fact that the government-owned corporation has assumed various costs attendant upon the discharge of its public policy mandate may be viewed as indirect support for the private sector (by freeing private corporations from at least part of the social costs of doing business in a sector in which property rights are public).

The period since WWII has been marked by the creation of a diverse range of state investments in sectors not characterized by natural monopoly, which appears to complicate the understanding of state investment developed in the classical political economy tradition. Cases such as Petro-Canada, the Canada Development Corporation, Potash Corporation of Saskatchewan, the Caisse de dépôt et placement du Québec, Siderurgie québécoise (SIDBEC), and the Alberta Energy Company, to mention only a few, demonstrate that the forms and purposes of state investment have changed in response to developments in the national and regional political economies. Indeed, a review of the origins and international operations of the CDC, PCS, and the Sydney Steel Corporation (SYSCO), leads Jeanne Kirk Laux to conclude that, "productive investment by the state in advanced capitalist societies is no longer out of the question", and that "(i)nstead of directly servicing monopoly interests, the state as producer may promote the interests of other fractions of capital or operate alongside dominant firms in order to fulfill particular socioeconomic objectives not met by them".¹⁵ This directly challenges both the liberal and Marxist functional explanations of state ownership, which are in agreement insofar as they both understand state investment as complementary to and supportive of private capital, though differing over whether state investment represents a voluntaristic approach to the correction

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of market imperfections or an inevitable response to systemic weaknesses in monopoly capitalism.

Laux identifies two additional explanations for state ownership of the means of production in a capitalist society. These are the class consolidation model, which has been used to explain the province-building activities of the Alberta and Quebec governments, and the social-democratic model wherein state ownership is used to displace private control over decision-making in socially crucial sectors of the economy, presumably increasing the state's capacity to direct economic development. This latter model has little application in Canada. At the provincial level, what appears, prima facie, to be evidence of the displacement of private sector economic power by the state (e.g. the state capitalism of the first-CCF government in Saskatchewan, or the nationalizations and growth of state enterprise under successive Quebec governments since the Lesage administration), is better understood as an attempt to reduce the dependence of the regional economy (and society) on an externally located bourgeoisie. State investment under such circumstances does not signify a challenge to the capitalist economy per se, but to a particular system of economic relations wherein the opportunities of the most dynamic regional class, and the governing "space" available to the sub-national state, are blocked by the domination of external political and economic interests.¹⁶

In its crudest expression the class consolidation model assigns the state a strictly instrumental role, so that, to paraphrase Albert Breton, state enterprise represents a form of public works for the new middle class.¹⁷ A more sophisticated and empirically accurate version of this model recognizes that the autonomy of the capitalist state,

a condition which varies in its particulars across political jurisdictions, must qualify the subordination of the state to capitalist forces.¹⁸ Applied to state investment in the economy, this second version of the class consolidation model suggests that the investment behavior of governments or their agents is not shaped solely by the interests of a regionally based class, or an indigenous bourgeoisie if the dependency relationship involves domination by foreign interests. The dynamic of state action in the economy may express a plurality of interests without diminishing the preeminence of private capital. To give a notable example that will be elaborated upon in chapter four, the creation of the Caisse de dépôt et placement by the Lesage government needs to be understood in the context of intergovernmental rivalry over levers of economic management and social policy (i.e. pensions).

At the national level, the federal government's purchase of Canadair and de Havilland in the mid-1970s was not prompted by the demonstrated importance of the aerospace sector for the Canadian economy (i.e., systemic necessity), in the way that steel or energy would be considered vital industries. Nor was it compelled solely by the number of Canadian jobs generated by the companies' production (much of their subcontracting work was, and still is, done in the United States). State investment in these corporations was taken based on the view that their purchase was warranted by the benefits expected to follow from successful development of this industry (export sales, technological spin-offs for other industries), the high-income jobs in engineering and skilled trades which would be lost if the industry was allowed to collapse, and some irreducible element of national prestige in an era when the governments of virtually all industrialized countries

provide some form of support for high technology industries with export potential. Thus, the explanation for state ownership of the means of production does not always lie in the subordinate position of the state to capitalist interests.

This points to a fundamental contradiction in the state's role as investor in a capitalist society. The dynamic of state action is not shaped exclusively by the interests of private capital. Consequently, there is room for conflict between the state and private capital over the disposition and objectives of state investment. In using state investment either to pursue political support, as an instrument in intergovernmental conflict over jurisdictional space, or to advance social or economic goals that are inefficient from the standpoint of providing a competitive return on invested capital (e.g. self-sufficiency in energy, regional economic development, the promotion of exports), the state is not simply responding to the needs of capital, nor merely expending into the gaps which the capitalist economy leaves unfilled. Indeed, the economic interpretation of state enterprise is untenable if one accepts that governments in advanced capitalist societies are able to act with a high degree of independence from all social forces in society.¹⁹ As Miliband recently has written, "the state's purposes and concerns far transcend the immediate--or even the longer term--interests of capital, and encompass whatever those in charge of state power deem to be necessary for the defence and stability of the social order".²⁰ Obviously, support for a depressed regional economy through a state-owned development corporation, or direct investment in currently unprofitable frontier energy exploration are plausibly understood as demonstrations of the state actors' capacity to determine for themselves

the requirements for social order. This does not mean that they will be inclined or able to treat the interests of capital with impunity. To cite Miliband once again:

...the people in charge of the state do not necessarily want to use the state in order to help capital, but want to help capital because they believe this to be required in order to strengthen the state, a purpose which may stem from many different ideological, political, religious, moral and other concerns. 21

Thus, there exists the possibility that public and private capital may come into conflict where powerful fractions of the latter hold the view that state investment threatens private capital accumulation. This conflict goes beyond the habitual private sector complaint that state enterprise, by virtue of its special relationship to government, constitutes unfair competition; or where state enterprise has a monopoly on production that its performance involves a drain on the economy's resources, and that the private sector could produce more efficiently (and at a profit). The critical response of the petroleum industry to Petro-Canada during its expansionist phase in the late 1970s, the demonstrated hostility of English Canadian capital and even much of Quebec's francophone bourgeoisie to the investment behavior of Quebec's Caisse de dépôt et placement over the last several years, and the suspicion which the Canadian business community has expressed regarding the recently created Canada Development Investment Corporation, represent three examples of this conflict. Theoretically, an understanding of these business/state confrontations requires that the state's autonomy from capitalist forces be recognized. The interesting question then becomes the conditions under which the state investor can successfully pursue objectives which are considered by powerful business inte-

rests to be inimical to private capital. It is difficult to imagine a better empirical test of the limits on the state's ability to intrude upon the traditional prerogatives of capital (i.e. control; the right to surplus value) than the case of decision-making conflict in a corporation in which ownership is divided between the public and private sectors. Thus, the study of mixed enterprise affords, among other things, an insight into the relationship between business and the state, and the limits on the state's entrepreneurial role. These limits should not be generalized to all forms of state intervention in the economy, based as they are upon the particular features of the business/state relationship as it unfolds through the mixed ownership firm.

Mixed Enterprise

1) DEFINITIONS

Mixed enterprise comprises a category within the broader universe of state enterprise. The Office of the Comptroller General of Canada employs the following definition of mixed enterprise corporations: "These are corporations with share capital owned jointly with other governments and/or other organizations to further common objectives."²² Currently, this category comprises 18 corporate undertakings, including joint ventures between the Department of Indian and Northern Affairs and various native peoples organizations, participation by either the Department of Finance or External Affairs in several international financing agencies, cooperative arrangements with the provinces of Newfoundland, New Brunswick and Quebec, respectively, in regional development corporations, and equity held by one or another department in a number of joint-stock companies. A rather different definition is provided by L. Musolf: "Mixed enterprise, then, has the participation--in the form of capital, or appointments to the board of directors, or both--of a nation's government and its private enterprise."²³

Neither definition is entirely appropriate for purposes of the

present study. The OCG criteria are both too inclusive, embracing such bodies as international and federal/provincial development corporations which have no private sector equity, and too normative. The assertion that these joint ventures are "to further common objectives" is fine as a statement of intent, but problematic at the level of actual corporate decision-making in the case of certain mixed enterprises.²⁴ Musolf's conceptualization has the advantage of going beyond the distribution of equity to include the right to make appointments to the board of directors, in the absence of share ownership, so that shared control (or at least representation, as expressed through membership on the board of directors) suffices to qualify a venture as mixed enterprise. In fact, shared control in the absence of equity on the part of the state is found in certain jurisdictions, notably France.²⁵ However, Musolf's mixed enterprise category is unduly restrictive in two respects: 1) it ignores the possibility of participation by sub-national governments in mixed enterprise ventures; and 2) it requires that both public and private participation be domestic, a stipulation which accurately describes most mixed enterprise undertakings, but excludes several important ones.²⁶

The definition of mixed enterprise which informs this study is, then, the following:

A commercial operation, generally taking the form of a joint-stock company, in which equity and/or representation on the board of directors is shared, in whatever ratio, between one or more private investors and the national and/or regional governments.

This describes the ownership structure of Telesat Canada and the CDC, as well as the private sector shareholdings of the Caisse.

11) THE UNIVERSE OF MIXED ENTERPRISE: DIMENSIONS AND SIGNIFICANCE

Measurement of the mixed enterprise presence in the Canadian economy presents some problems. The foremost difficulty involves identification

of the universe of firms with share capital divided in some ratio between the state and private sector investors. Two recent attempts to catalogue this population of jointly owned corporations offer hugely different estimates of the number of firms falling within this category. Boardman and his colleagues place the number of mixed enterprises in Canada at over 1,000, a figure which conveys a grossly inflated impression of the size of the mixed capital sector of the economy.²⁷ This formidable sum is arrived at by including not only corporations in which governments in Canada, directly or through their agents, hold some ownership share, but also the equity investments of these corporations. When one considers that corporations like Canadian Pacific, Macmillan Bloedel, and Dominion Textile, each of which accounts for a vast network of subsidiaries, are designated mixed enterprises by the Boardman group, it becomes evident that their operationalization is too inclusive to carry political significance.

Using a more restrictive definition of mixed enterprise, one which does not admit corporations that are several stages removed from equity ownership by the state, Stanbury and Elford place the number of mixed enterprise firms at 292 (1981).²⁸ Of this number almost a third are accounted for by investments of the Caisse de dépôt et placement du Québec, and another 48 are subsidiary corporations within the CDC's network of holdings.²⁹ Recognizing that identification is only the starting point for an assessment of the significance of mixed enterprise in the Canadian economy, Stanbury and Elford break down this population by 1) corporation size, and 2) the nature of the state's investment. Correlating these two factors they find that the vast majority of state investments is accounted for by portfolio investments (i.e. the ownership

share is too small to carry control) in medium- and small-sized corporations. The large number of portfolio investments in large- and medium-sized firms, held by provincial governments or their agents, is overwhelmingly an artifact of the Caisse's investment behavior. Caisse investments comprise 68 of the 97 mixed enterprises in the portfolio category. If the equity investments of the Caisse were excluded from this analysis the concentration of mixed enterprises toward the lower end of Canada's corporate hierarchy would be even more marked. The results of Stanbury and Elford's analysis are presented below.

Stanbury and Elford identify only four cases in which the state shareholder has effective control over a corporation with assets in excess of \$500 million. However, with the population of firms defined as the Financial Post 500 for 1982 (the 500th firm having sales of \$46.9 million) they find that 14 of the corporations in this group were mixed enterprises under the legal or effective control of either the federal or a provincial government, or a crown agent. This compared to 28 federal and provincial crown corporations in the Financial Post 500 for that year. Clearly then, mixed ownership firms under state control account for a not insignificant share of corporate activity in Canada. Indeed, Stanbury and Elford estimate that in 1981 state equity in mixed enterprises amounted to 7.5 per cent of total equity capital in Canada, and the assets of those mixed enterprises under the legal or effective control of governments in Canada comprised approximately 5 per cent of all assets of non-financial corporations in Canada for that year.³⁰

Internationally, some of the largest corporations in the non-communist world represent partnerships of state and private sector

TABLE 1.1: MIXED ENTERPRISES^a --CORPORATE SIZE (REVENUE)
BY THE NATURE OF THE STATE'S INVESTMENT

Size of Firm ^b 1981	Nature of the Investment				Total
	Portfolio	Effective Control	50:50 Partnership	Legal Control	
A) Federal government investments					
Large (\$500m+)	1	2	0	0	3
Medium (\$50-500m)	5	0	2	2	9
Small (under \$50m)	36	2	17	9	64
Total	42	4	19	11	76
B) Provincial government					
Large (\$500m+)	47	2	0	0	49
Medium (\$50-500m)	24	2	0	4	30
Small (under \$50m)	26	6	14	17	63
Total	97	10	14	21	142

^a The discrepancy between the total of 292 firms which Stanbury and Elford place in the mixed enterprise category, and the 218 firms included in this table, is explained by the fact that what they call "second order mixed enterprises" (i.e. the subsidiaries of corporations in which the state holds shares directly, or indirectly through a crown agent) are excluded.

^b With assets substituted for revenue as a measure of corporate size, the distribution is basically the same. See Table 4 at page 28 in the Stanbury and Elford paper.

^c Stanbury and Elford recognize that the characterization of the state's investments is often a matter of judgement. The 50:50 partnership and legal control (i.e. 51% of voting shares) situations pose no problem, but the difference between a portfolio investment and effective control is not always clear. Cases where the state investor is the largest minority shareholder, and where the state's ownership share is large enough that effective control is at least conceivable (e.g. the Caisse's 16% share of Dominion Textile, and the CDIC's 48% stake in the CDC) have been judged on the basis of their particular circumstances.

Source: Adapted from Tables 3 and 4, pp. 27-28, in/C. Elford and W. Stanbury, "Mixed Enterprises in Canada", paper presented to the Seminar on Crown Corporations, Royal Commission on the Economic Union and Development Prospects for Canada, Ottawa, June 1, 1984. With permission of the authors.

capital.³¹ Among the most prominent cases are British Petroleum (ranked 8th by sales, 1982), West Germany's VEBA (26th: involved in the production of coal, gas, chemicals, and electricity), Compagnie Française de Pétroles (31st), Elf-Aquitaine (42nd), Volkswagenwerk (44th), and Renault (50th).³² Below the level of these world giants, many of western Europe's largest firms are mixed enterprises. The list includes la Compagnie Générale d'Electricité (France: 30th by sales among western European corporations in 1982), Montedison (Italy: 38th, a holding company involved in the production of chemicals and pharmaceuticals), ENPETROL (Spain: 67th, oil refining), Cockerill Sambre (Belgium: 96th, iron and steel), Norsk Hydro (Norway: 98th, nitrogen and magnesium products, and plastic production), Enso-Gutzeit (Finland: 234th, wood and paper products), and SEAT (Spain: 275th, automobile manufacturing).

Problems of inadequate information and cross-national differences in financial practices render impossible a precise measurement of the dimensions of the mixed enterprise sector. However, one estimate suggests that the state holds equity in 40 per cent of the corporations in a population which comprises the ten largest industrial firms (by revenue) in each of Britain, France, Italy, and West Germany, and the five leading corporations in each of the twelve other countries of western Europe (N = 100). When the sixteen cases of wholly state-owned enterprises are excluded, just under a quarter of the corporations in this population are characterized by shared public/private ownership, ranging from a small fraction of equity held by the state to legal control.³³

But despite this evidence that mixed enterprise corporations occupy an important place in the economies of several western countries, inclu-

ding Canada, the full significance of this partnership of public and private capital is not conveyed by quantitative measures alone. From a conceptual/theoretical standpoint the central issue is that the state is participating directly in the produce-for-profit economy, as opposed to playing a merely supportive or regulatory role. This qualitative dimension of state investment participation in a predominantly capitalist economy calls for examination of the particular forms of this intervention and the consequences it carries for relations between business and the state.

111) THEORIZING ABOUT MIXED ENTERPRISE

The theoretical literature on mixed enterprise is slender, and focuses mainly on decision-making within such firms. Neither the origins nor the functions of mixed ownership corporations have been examined in a systematic way, though scattered insights appear in case studies and the less frequent one-country studies which together comprise the major part of the literature. The case in support of a more thoroughgoing theoretical analysis is premised upon the expectation that the partnership of public and private capital in the mixed enterprise will provide some insight into the limits on the state's entrepreneurial role.

During the first decades of this century mixed enterprise was not uncommon throughout continental Europe, particularly at the local level in the field of public utilities. Indeed, the 1929 meeting of l'Union Internationale des Villes (Barcelona), was the occasion for a discussion of local government involvement in public utilities through the device of the mixed enterprise. In an article inspired by the conference proceedings, Marshall Dimock suggested that mixed enterprise represented a possible alternative to administratively cumbersome regula-

tion of utilities. Dimock identified three advantages to the former in comparison to regulation: i) it allows a direct means for the capture of economic rent (i.e. monopoly profits); ii) the joint stock company organizational form, with the participation of private sector investment, ensures that the corporation will be run as a market-responsive commercial operation; and iii) regulation, with its attendant administrative and arbitral difficulties is obviated by virtue of the state's day-to-day participation in the management of the enterprise.³⁴ On the level of ideology, Dimock considered mixed enterprise an effective compromise between laissez-faire economics and socialism.

Within the literature on mixed enterprise in Anglo-American jurisdictions, Dimock's early article (1931) is one of only two contributions which place mixed enterprise within the framework of a choice between alternative instruments of economic policy. The other work is T. C. Daintith's, "The Mixed Enterprise in the United Kingdom",³⁵ in which the author follows Dimock in arguing that direct ownership participation by the state along with private capital represents an alternative to such traditional modes of intervention as regulation. The balance of this thin literature approaches mixed enterprise from a jurisprudential point of view, focusing upon such questions as political accountability and the anomalous legal status of such organizations.³⁶

The case of Canada is no exception. The Report of the Royal Commission on Financial Accountability and Management (the Lambert Report, 1979) devotes a chapter to the discussion of joint public/private ventures.³⁷ Describing shared enterprises as "crown agencies in which the federal government has taken a direct equity position in common with other participants for the purposes of implementing a public policy

or satisfying a public need", the Lambert Report recommends that organizations which meet this definition be identified "and brought under an appropriate accountability regime".³⁸ The Report insists that a shared enterprise "is a Crown agency with a public purpose rather than a private corporation"⁴⁰ (even though both the CDC Act and the Telesat Act expressly state that the corporation is not an agent of the Crown within the meaning of the Financial Administration Act). However, it goes on to suggest that the rights of the state shareholder will depend in part upon how and when it acquired equity in the corporation.⁴¹

The sole book-length treatment of mixed enterprise comme sujet, as distinguished from studies of particular cases, remains L. Musolf's, Mixed Enterprise: A Developmental Perspective (1971). Musolf's comparative study places mixed enterprise within the larger context of modernization and strategies for economic development. He suggests that mixed enterprise tends to be most common in the case of developing economies, and that this organizational form will decline in importance as an economy approaches maturity. Leaving aside the fact that this thesis is refuted by the continued vitality of mixed enterprise in several countries of western Europe, the developmental understanding of mixed enterprise represents a major component of the literature on this governing instrument. Studies of the role of mixed enterprise in such newly industrialized countries as Mexico, Singapore and South Korea fall squarely within this stream, the general thesis of which sees the entrepreneurial activities of the state as simultaneously facilitative (i.e. involving the use of public resources to supplement and support private accumulation) and nationalistic (i.e. promoting the development or consolidation of a national bourgeoisie).⁴¹

The developmental perspective also has been applied in the case of 19th century North America. Both Louis Hartz' Economic Policy and Democratic Thought (1948), and Hugh Aitken's The Welland Canal Company (1954), describe early instances of involvement by the state (Pennsylvania and Upper Canada, respectively) in financing the infrastructure requirements of commercial economies. Interestingly, mixed enterprise experienced a dramatic eclipse in the United States during the 1840s and has never resurfaced as an instrument of public policy.⁴² In Canada, the staggering financial failure represented by the Welland Canal Company, the first and last instance in British North America of private/public cooperation within the framework of a joint stock company, contributed to the subsequent avoidance of mixed enterprise in preference for the crown corporation. Not until the 1960s did this organizational form reemerge as a deliberate policy instrument.⁴³

As noted, the focus of recent treatments of the mixed ownership corporation has tended to be the decision-making process and the assumed tension between the mixed enterprise as a commercial operation in competition with other firms in both the sales and capital markets, and the corporation as an instrument of public policy. Although they offer no empirical evidence of the phenomenon, Eckel and Vining suggest that managers of mixed enterprises which are assigned both public policy and profitability goals experience a form of "organizational cognitive dissonance": an unresolved psychological tension in respect of their own role and the purposes to which the organization is to be put.⁴⁴ This impression is corroborated by Mazzolini in his sweeping study of decision-making in European state enterprises.⁴⁵ He observes that this role dilemma typically is resolved by placing a lower priority

on the profitability objective, even though the public policy signals coming from government are frequently vague and ambiguous. This trade-off between business and political orientations has been conceptualized as the crucial strategic variable bearing upon managerial behavior in the state-owned enterprise.⁴⁶

In this vein Claude Viallet develops a model of the corporate decision-making process which he then applies to a plant location decision of a French mixed ownership corporation.⁴⁷ Viallet assumes two exclusive sets of shareholders possessed of different utility functions, and argues that this conflict in preferences can be resolved through a subsidies system, with the appropriate level of compensation determined by his model. The methodology is microeconomic, and the central difficulty involves the quantitative assessment of the state shareholder's utility function. By ascribing market weights to all the values which might be present in such a decision (employment, regional development, expected industrial benefits in other sectors, or in the long-term), Viallet arrives at the conclusion that the managers of a mixed ownership corporation should make all decisions as though the firm was privately owned. Departures from this pattern should be treated as recompensable costs, the amount of subsidy being the change in input or output prices resulting from accommodation of the state shareholder's politically-determined preferences.

While the notions of organizational cognitive dissonance and, more particularly, a strategic trade-off between business and political orientations describe an important tension to which mixed enterprise may be subject, the conflict between goals can be overstated. Eckel and Vining use two-dimensional space, with business orientation/pro-

profitability plotted on one axis and political orientation/social output plotted along the other, to demonstrate graphically the trade-off between what are posited as mutually exclusive goal categories. But in fact the trade-off is not always so neat as an indifference curve would suggest, based as it is upon an opposition between goal categories. This is an accurate enough characterization in many cases (for example: when the government pressures a mixed enterprise to invest in a failing firm for reasons of job maintenance and/or support for an economically depressed region⁴⁸), but involves a distortion in others (for example: where the government, under a tax regime which favours domestically-owned corporations, encourages a mixed enterprise to bid on a commercially viable firm which would otherwise be taken over by a foreign buyer).

Inseparable from consideration of the decision-making process is the question of whether the mixed enterprise is structurally unstable. Reviewing the case of TéléSAT, J. A. R. Brothers advances the thesis that asymmetry in the balance of influence in a mixed ownership venture is inevitable, and that the tension between the public authority and private interests will be resolved in favour of the latter.⁴⁹ Commenting on the Italian experience, the invariability of private capital's dominance in corporate decision-making is explained by Duccio Cavalieri as "owing to the fact that whenever the prospects of a return on the capital invested appear too uncertain, private investors are reluctant to continue investing".⁵⁰ Eckel and Vining reach an identical conclusion based upon the correlation between investment community perception⁵¹ of increased state intervention in the affairs of a mixed enterprise and the market value of the corporation's stock (the relationship is inverse: an increase in the former is associated with a decrease in

the latter). However, this relationship is neither universal nor directly causal. Between the perception of state intervention and investment community reaction falls an intervening variable which can be described loosely as political culture. More precisely, this involves the system of norms which circumscribe the legitimate boundaries and forms of economic intervention by the state.

By way of illustration, in Singapore state investment in a corporation generally does not result in a decrease in the market value of the mixed enterprise's stock. This can be attributed to the expectation, based upon past practice, that the state will privatize its investment when its equity support is no longer required. As the largest single source of investment in the Singapore economy, the state is expected to assume an entrepreneurial role in support of economic development, while not threatening the primacy of private capital accumulation.⁵² Similarly in Japan, where business community reaction to direct investment by the state is not determined by an expectation that government intervention means inevitable bureaucratization and inefficiency, and a consequent deterioration in the business orientation of a corporation.⁵³ Moreover, what Chalmers Johnson describes as the control ideology, viz., an interventionist view shared by state personnel and business leaders, reinforced by cross-penetration of elites and such corporatist institutions as government advisory councils, contributes to the acceptance of forms of intervention and inter-sectoral cooperation which are considered anomalous in many western political economies.⁵⁴ Overall, it is fair to say that the relationship between state recourse to and business community acceptance of mixed enterprise as a governing instrument and, on the other hand, political culture remains unexamined.⁵⁵

iv) MIXED ENTERPRISE IN WESTERN EUROPE: THREE NATIONAL CASES

As a framework for understanding the origins and operations of contemporary mixed enterprise in Canada, the experience of western European nations is germane. Three national cases will illustrate how direct investment by the state, in partnership with private capital, represents a policy response to the problems encountered in an advanced capitalist society. Moreover, these cases will show that the state's ability to influence decisions of the mixed ownership corporations, without alienating private capital, is limited by the profit principle.

Among western industrialized nations, the case of Italy is most closely associated with the mixed enterprise organizational form. Indeed, for purposes of political control and financial accountability, the mixed enterprise is not distinguished from wholly state-owned enterprise, both of which are administered through the instrument of the state holding company. Although Italy was not the first western European country to co-mingle private and public capital within a single business enterprise,⁵⁶ the Italian mixed enterprise sector reached an unparalleled stage of development during the 1950s and 1960s. At its apogee in the 1960s, the Italian system of state investment through tentacular holding companies was the object of deliberate study by several western governments (including Canada), and conscious emulation to a greater or lesser degree by France (Institut pour le Développement Industriel, 1970), Sweden (Statsföretag, 1969), and Belgium (Société Nationale d'Investissement, founded in 1962 and extended in 1971 and 1976).⁵⁷ Thus, the rise and more recent decline of mixed enterprise in Italy warrants first consideration.

Detailed English language accounts of the Italian system of state

holdings have been available since the publication of Andrew Shonfield's Modern Capitalism (1965), Posner and Woolf's, Italian Public Enterprise (1967), and Stuart Holland's, The State as Entrepreneur (1972). Originating in the banking collapse of the 1930s (when Istituto per la Ricostruzione Industriale was established), Italy's network of state investments underwent a period of close state control during the wartime mobilization. This was followed by a period of expansion during the 1950s and 1960s, which saw the creation of the Ente Nazionale Idrocarburi (1954), a state holding company in the area of hydrocarbons; ENEL (1962), a state holding company in the field of electricity supply; and the Ministry for State Holdings (1956), with responsibility for controlling the leviathan of state enterprise. The final phase, continuing at present, is characterized by monumental indebtedness on the part of the giant state holding companies, privatization of the state's interest in many corporations, and the decline of the joint public/private dimension in Italy's system of state holdings.

Whether the deterioration in the financial situation of Italy's system of state shareholdings can be considered independent of the more general economic malaise which has beset the economy since the late 1960s is doubtful. In a recent appraisal Domenico Antonio Fausto concludes that, "the crisis of the Italian public enterprises (including the mixed enterprise sector) is therefore, a specific case of a very much more general crisis of the large business enterprise which is encountering difficulties in all industrialized economies".⁵⁸ A contrary view is argued by Alberto Martinelli, who suggests that partisan and special interest considerations have corrupted investment decision-making, leading to what he describes as the state enterprise compromise

of the last decade: "Public (investments) would act as private enterprises in the industrialized north and as public spending agencies in the south".⁵⁹ Under the weight of pressure from the left to protect jobs in uncompetitive enterprises,⁶⁰ pressure from private industry keen on having the state take over money-losing businesses,⁶¹ and given the failure of systematic economic planning/industrial policy to insulate state investment decision-making from these pressures, private capital has grown reluctant to participate in corporations in which the state is a controlling shareholder.

Turning to the experience of Britain and France, one finds state equity participation in some of the western world's largest corporations. A case in point is the British government's investment in British Petroleum, dating from 1914, when it became part owner of the Anglo-Persian Oil Company. Originally motivated by a desire to secure a supply of foreign oil for military purposes, while avoiding reliance upon non-British petroleum companies, successive British governments have been content to maintain a hands-off policy in relation to the corporation's affairs (notwithstanding that, until the late 1960s, the state held a majority of the voting shares in BP). Expressing the common judgement on the relationship between BP and the government, William Robson writes:

It is obvious that BP operates in the same way as any other oil company with worldwide interests. It is impossible to discover an instance in which non-commercial aims have been pursued as a result of government pressure. On the contrary, there have been two or three occasions when BP appears to have acted in a manner inconsistent with government policy, for example, the alleged sale of oil to Italy when Mussolini invaded Abyssinia, the raising of petrol prices in 1929 and an increase in the interim dividend in 1955 despite the Chancellor's appeal for dividend restraint. 60

This insensitivity to the interests of the state shareholder again

was demonstrated when during the 1973-74 oil embargo BP refused the Conservative government's request that it divert deliveries from foreign customers.⁶³

Somewhat analogous to the British government's ownership participation in the petroleum industry is the involvement of the French government in this sector. The extent and intricacy of this involvement has been described elsewhere.⁶⁴ Currently, the government holds a majority (67 per cent) interest in Société Nationale Elf-Aquitaine (SNEA) and an approximately 45 per cent interest in Compagnie Française de Pétroles (CFP), the remaining equity being held by private interests in each case. As in the case of BP, the congruence between corporate behavior and public policy has been imperfect. In 1974 a parliamentary commission inquired into the relationship between the French government and both CFP and Elf-ERAP.⁶⁵ The commission's report observed that both companies employed tax avoidance strategies; both provided false information on the price of oil acquired abroad; and both participated in illegal cartel arrangements.⁶⁶ In short, both corporations behaved in the manner of privately owned corporations, displaying an insensitivity to the interests of the state shareholder, notwithstanding the French state's major ownership stake in each firm.⁶⁷ And as in the case of BP, the fact that the state was the dominant shareholder in each of these oil companies did not provide France with security of supply during the oil embargo. Robert Stobaugh writes:

The CFP allocated its supplies along the same pattern as the majors. When disagreement arose between the government and CFP, the CFP won the dispute and delivered the oil (to the non-French customers). ELP-ERAP also continued to deliver oil to its non-French customers, although the amounts were smaller because France had always comprised most of ELP-ERAP's market. ⁶⁸

The foregoing cases provide some insight into the relationship of public policy to the corporate behavior of the mixed enterprise. Briefly, that relationship is tenuous, at least in the British and French cases surveyed. Without inferring too much from these selected cases of mixed ownership, it is evident that the dynamic of private capital accumulation is not automatically diluted as a result of state ownership participation.⁶⁹ In the relationship between public and private capital that one observes in the mixed ownership corporation, the profit principle operated to limit the influence of the state.

Where the political pressures acting through the state are powerful enough to compromise managerial autonomy and profit maximization, as most observers argue has occurred in Italy's system of state shareholdings, the withdrawal of private capital leaves the corporation increasingly dependent upon either retained earnings (which are unlikely to exist if the very reason for the flight of private investors is unprofitable corporate behavior) or, more likely, transfers from the state. Thus, the demands placed upon the state's financial resources may be increased as a result of the state shareholder's determination to use the mixed ownership corporation as an instrument of public policy. The other side of this coin is that the fiscal crisis of the state has led certain European governments, including Britain and Italy, to see in the sale of state investments to the private sector a relatively quick and ready means of raising money and reducing the state's future obligations. More will be said regarding this recent trend in the concluding chapter.

v) THE MIXED ENTERPRISE AS AN INSTRUMENT OF PUBLIC POLICY

The theoretical literature and selected western European cases

reviewed in the preceding pages suggest a paradox which would seem to prejudice the viability of the joint-stock company as a policy instrument: viz. the likelihood of the state playing an active role in the affairs of the mixed ownership corporation will not necessarily increase with an increase in the size of its equity holding. In other words, where the state possesses a controlling interest in a public company it may forego the assertion of control in order not to alienate private capital. Obviously, if future recourse to the private equity market is of little or no concern to a government with dirigiste designs, this paradoxical separation of ownership from power will not exist.

In Canada, the range of factors contributing to the choice of the mixed enterprise policy instrument has been diverse. The most common class of joint public private ownership includes subsidiary companies in which commercially oriented crown corporations like Air Canada or Canadian National hold equity. Excluding this category on the grounds that this does not involve deliberate selection by the state of direct investment in order to further a public policy end rather, the considerations usually will be identical to those which inform an investment decision taken by a private sector corporation. Five main policy rationales can be identified. These cover the major instances of mixed enterprise in Canada. The first four categories apply equally well to the more inclusive category of state enterprise, while the fifth category represents a use which is peculiar to mixed enterprise.

Mixed Enterprise: A Functional Classification

PRIMARY OBJECTIVE	EXAMPLES
1. Economic development/ Economic provincialism	Caisse de dépôt et placement (major equity investments held by this holding company: Quebec); Société générale de financement du Québec (industrial investment company: Quebec); Alberta Energy Company
2. Job Maintenance	Massey-Perguson (non-voting preferred shares, held by the federal government through the CDIC)*
3. Regulation Controlled Development	Telesat satellite communications: Canada)
4. Inadequacies in Domestic Private Equity Markets	Canada Development Corporation
5. Privatisation	British Columbia Resources Investment Corporation, Pacific Western Airlines

*This category includes the variety of corporations in which the federal (and provincial government take what is intended to be a short-term equity position, in order to maintain struggling companies and the jobs which would otherwise be lost.

Clearly, the list of examples provided above is not exhaustive. The intention is simply to suggest the flexibility of the mixed enterprise organizational form through identification of the range of objectives which existing high profile mixed enterprises have been designed to accomplish. However, the privatisation category involves a reduction in the positive state, and the job maintenance category is, for the most part, theoretically uninteresting. Government bail-outs of ailing corporations, through either loans and loan guarantees or equity purchase, is reactive and seldom characterized by choice between a number of policy instruments. Moreover, investment motivated by job maintenance considerations has tended to be unsystematic, without the direction which would be provided by an administratively coherent system of state

holdings.

With the job maintenance and privatisation categories excluded, three functional categories remain for the analysis of mixed enterprise: i) economic development; ii) regulation; and iii) structural shortcomings in financial markets. In each case the public policy objective identified by the state could be pursued through alternative policy instruments and, in fact, the simultaneous use of a number of instruments is typical of most policy areas. In view of this, the decision to pursue the mixed enterprise option is a matter which requires review of the circumstances surrounding particular cases.

Mixed Enterprises: Origins, Decision-Making, and Performance

Three concerns emerge as central to the study of the mixed ownership corporation. The first is focused on why mixed enterprises are established, or why the state acquires equity in an existing firm. This consideration of the mixed enterprise's origins connotes an initial convergence in the interests of the state and private capital, and constitutes the bench-mark for subsequent analysis of change in government's goals and conflict over the behavior of the corporation. Secondly, decision-making under conditions of mixed ownership emerges as a central concern of recent theoretical work on mixed enterprise. A third major concern involves the relationship of the mixed ownership firm to public policy and the limits on state investment in a capitalist society.

These three considerations, origins, decision-making within the mixed enterprise, and instrumental effectiveness, guide the subsequent analysis of the Canada Development Corporation, Telesat, and the Caisse de dépôt et placement. The selection of these three cases is not arbi-

trary. Each corresponds to a particular functional category identified from review of the Canadian literature on state enterprise, and from the slender literature on mixed enterprise in Canada and abroad. Expressed diagrammatically, the analysis is structured in the following way.

DIAGRAM 1.1

Analytic Categories

Functional Categories	ORIGINS	DECISION- MAKING	INSTRUMENT EFFECTIVENESS
STRUCTURAL SHORTCOMINGS IN FINANCIAL MARKETS (CDC)			
REGULATION (TELESAT)			
ECONOMIC DEVELOPMENT (CAISSE)			

The selection of particular cases implies certain limits on the choice of hypotheses which guide this study. Moreover, certain unstated hypotheses are in fact contained in the justifications for both i) the cases selected, and ii) the themes which order the analysis (i.e. origins, decision-making, and instrument effectiveness). Specifically, and at the most obvious level, this study inquires into the creation, operation, and public policy effectiveness of the mixed enterprise organizational form in one country (Canada) during a period comprising approximately the past two decades. Within these parameters there

are three principal variable factors: i) political jurisdiction (Canada in the case of both the CDC and Telesat, and Quebec with the Caisse); ii) functional role (structural shortcomings in financial markets, CDC; regulation, Telesat; community development, Caisse); and iii) the relevant set of private sector actors (management recruited from and supported by the private sector, CDC; other corporations, both public and private, in the telecommunications sector, Telesat; corporations targeted for investment, Caisse). Thus, the scope of the inquiry is established with some precision at the outset.

With the limits of the study established, the more specific propositions tested under each of the separate headings of origins, decision-making, and performance share the assumption, based on the literature reviewed earlier, that the interests of the public and private sectors will be divergent under certain conditions. Conflict will surface when the state and its private sector partners have different expectations regarding such crucial corporate decisions as the level, location and type of production/investment. In other words, there is a structural tension between strictly commercial objectives and the mixed enterprise's role as a policy instrument. This tension is explored through examination of the origins, decision-making, and performance of the CDC, Telesat, and the Caisse.

The propositions tested in this study can be summarized as follows:

- 1) The mixed enterprise organizational form is expected to allow for direct influence by the state on corporate behavior, while not challenging the principle of private capital accumulation;
- 2) The state's ability to influence decisions of a mixed enterprise is contingent upon private sector satisfaction that the commercial objectives of the corporation are not compromised by the state's

public policy expectations for the organization (chapter six on decision-making⁷⁰); and

- 3) Conflict between the state and private capital over the corporate behavior of the mixed enterprise mobilizes a wider set of interested parties around an issue with higher stakes than those attendant upon the proximal cause of dispute (chapter seven on decision-making). While no proposition is tested in chapter eight's analysis of the performance of these mixed ownership firms in relation to the state investor's policy expectations, this analysis assesses the social return on the state's invested capital.

In chapters two, three and four on the origins of mixed enterprises, the analysis centres around the functional role(s) which each of the three cases examined was established to serve. The CDC, Telesat, and the Caisse have in common the fact that in each instance the initiative in the establishment of the mixed enterprise form came from the state. The choice of this policy instrument was not narrowly reactive, i.e. determined by the demands of relevant private sector actors. Rather, the selection was in each case deliberate, and made in preference to alternative possible policy instruments which might have been chosen to fulfill the same purpose. Given this relative latitude, the interesting questions are 1) which factors contributed to the choice of the mixed enterprise organizational form, and 2) what are the policy objectives that the mixed enterprise is intended to further.

As stated previously, the selection of the mixed enterprise organizational form is expected to allow for direct influence by the state on corporate behavior while not challenging the principle of private capital accumulation. At the same time, the ability of the

state to control the activities of the corporation will be circumscribed in consequence of 1) the existence of private sector partners exercising ownership prerogatives, and 2) the constraints upon state intervention imposed by the need to attract (as in the case of the CDC) or retain (as in the investments of the Caisse) and, to a much lesser degree, the case of Telesat) the support of private equity. Thus it will be argued that the origins of mixed enterprise (at least in the three cases examined) must be understood in the context of state support for private capital accumulation (i.e. what Marsha Chandler calls the facilitative role of the state).⁷¹ This is true even in the case of Quebec's Caisse de dépôt et placement: while representing a challenge to the dominance of English finance capital in the province, the Caisse was intended to facilitate the autonomous development of the Quebec economy and the growth of the francophone bourgeoisie.

Investment by the state along with private capital involves an acceptance by the public authority of a lesser degree of control than that exercised over a wholly state-owned enterprise. However, as chapter six will argue, the degree of convergence/divergence in the business-state relationship, as manifested in actual decision-making, will be a function of both the state's public policy designs for the corporation and the particular set of private sector partners with which the state must deal. As indicated earlier, this last factor varies between the three mixed enterprises under examination. Notwithstanding variation in the set of relevant private sector partners, each case will demonstrate that state participation in the management of the mixed enterprise

is contingent upon private sector satisfaction that the commercial objectives of the corporation are not compromised by the imposition of public policy goals. Where this convergence of interests breaks down, decision-making will be characterized by the conflictual resolution of business and state expectations.

In order to test these propositions a number of specific decisions, characterized by divergence in the expectations of the state and its private sector partners in the mixed enterprise, have been selected for examination. The choice of conflictual decision situations, their bases and resolution, is judged most likely to provide insight into the relationship between the state and private capital, and into the capacity (comprising both willingness and ability) of the former to act on its own preferences in shaping economic activity. In addition there are problems in studying "non-events". However, it must be acknowledged that the focus on conflict may predispose this study to different conclusions about the relationship between public and private capital than would emerge from an examination of coincidence in the preferences of the state and private investors.

Nevertheless, there is an important question which analysis of non-conflictual decision-making cannot answer. It is well established that the positive state in contemporary capitalist society possesses significant regulative, distributive and, to varying and lesser degrees, redistributive capacities. However, as Nordlinger observes: "(It) is one thing to think about state strength in terms of capacities and quite another to equate or connect them with autono-

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my".⁷² If one is concerned with determining what the decision process in the mixed ownership corporation reveals about state power, and especially about the circumstances in which the state is prepared to use its investment leverage to challenge the economic power of private capital (and to successfully impose its own preferences), then cases of manifest divergence in the expectations of the state and private sector actors for the mixed enterprise are most illuminating.

The selection of particular decisions was based upon a review of the operating history of each of the mixed enterprise case studies. An attempt was made to isolate those decision situations which have been most crucial in determining the relationship of the state investor to the decision-making of the corporation. Briefly listed, these decisions include the following:

Telesat: i) the initial choice of satellite for the telecommunications system, and subsequent satellite procurement decisions;

ii) the decision of Telesat to join the TransCanada Telephone System (TCTS), opposed by CN/CP Telecommunications and rejected by the CRTC, but ultimately authorized by a cabinet variance of the Commission's ruling.

CDC: i) the investment crisis of 1980 (regarding investment by the CDC in financially-ailing Massey-Ferguson Ltd.); and

ii) the control conflict of 1981 (when the federal government's attempt to replace the CDC chairman with its own nominee was defeated by the opposition of CDC management and director).

Caisse: i) the 1981 takeover of Domtar by the Caisse and the Société générale de financement acting jointly; and

ii) Canadian Pacific management's refusal of the Caisse's

request for representation on the corporation's board of directors, a conflict which precipitated the broader controversy over Bill S-31 (the Corporate Shareholders Limitation Act).

The third central concern of this study, addressed in chapter eight, involves the performance of the mixed ownership firm as a policy instrument. In addition to the obvious practical importance of assessing the possibilities and limitations of the mixed enterprise as an instrument of state intervention in the economy, the measurement of performance taps the theoretically important issue of the balance of economic power between the state and business in Canada. The extent to which the state is able to share in the traditionally exclusive prerogatives of private capital at the level of the firm is the central theoretical issue raised by the state's equity participation in partnership with private capital.

The criteria used in measuring performance can be stated with some precision. Does corporate performance match: 1) original state expectations regarding the public policy role(s) of the mixed enterprise; and 2) revised state expectations regarding the public policy roles of the mixed enterprise. This latter criterion recognizes that the state's expectations do not necessarily remain constant over time. Prima facie, the evolution of the Caisse and its relationship to the economic policy of successive Quebec governments provides a ready example of how expectations can change over time. The factors underlying such revision can include a change in government, altered circumstances in the sector in which the mixed enterprise operates, the "learning" which the state experiences based upon the operation (more or less

satisfactory from the state's point of view) of the corporation(s) in which it holds equity, and development in the broader pattern of public policy and the state's interventionist role.

While the issue of performance, or instrumental effectiveness, is addressed implicitly in chapters six and seven on the limits of state influence in corporate decision-making, chapter eight measures more directly the performance of Telesat, the CDC, and the Caisse's equity investment behavior against the state shareholder's public policy expectations. In the measurement of effectiveness as an instrument of public policy there are two related dimensions. The first is subjective and involves the expectations of state actors (representatives on the board of directors, and senior government officials and ministers with responsibilities in the particular policy area) and the degree of compatibility/confrontation in business-state relations as reflected in the decision-making process. This will be measured using a variety of evidence, including the views of business and state principals as reported in the press and other media, statements and exchanges in "official" settings,⁷³ and from interviews with business and state participants in the mixed enterprise. In addition, survey data is available on the perceptions of the CDC held by the corporation's first wave of shareholders (1976), and on the views of Quebec businessmen toward the investment activity of the Caisse de dépôt et placement (1983).

The second dimension of public policy effectiveness is objective, and requires that the performance of the mixed enterprise be compared against the broader pattern of state policy. Referring to this as the objective dimension of performance is not meant to suggest that

there is no room for interpretation in assessing observable actions against the goals ascribed to state investment. The important point is that this dimension involves measurable corporate behavior, whereas the subjective dimension entails perceptions of legitimate spheres of involvement.

The overall conclusion of this study is that government's original expectations of influence on corporate behavior have been blocked by organizational features of the mixed enterprise which involve a mobilization of bias in favour of business values. More specifically, no evidence is found to support the view that managers of a mixed ownership corporation experience role ambivalence as a result of the occasionally divergent expectations of the state investor and private capital. Managers appear to treat the public policy expectations of the state as unwarranted intrusions upon corporate autonomy, to be resisted as far as possible. Analysis of conflictual decision situations demonstrates that the price of forced compliance with the state's preferences is crisis in the relationship between the state and private capital in the mixed enterprise, while the price of induced compliance is compensation. The state's ability to influence corporate decisions is further complicated by an observed tendency for conflict to spread beyond the bounds of the firm, such that state intervention is perceived to challenge a broader set of business interests than the corporate autonomy and profitability of the mixed enterprise. Finally, the apparent limits on the state's ability to influence decisions of the mixed ownership firm raise the question of whether state investment involves more than public support for private accumulation either nationally (the CDC), provincially (the Caisse), or sectorally (Telesat). Based on a review

of the performance of each case, this study concludes that the social return on the public's invested capital has varied from the relative success of Telesat in promoting the growth of a domestic manufacturing capacity in satellites, through the supportive relationship of the Caisse to Quebec's francophone bourgeoisie, to the nebulous social returns on the Canadian public's investment in the CDC.

The Methodology of this Study

Through an analysis of the mixed ownership corporation in Canada, this study seeks to generate insight into the relationship between the state and private capital in the Canadian economy. This undertaking is situated within the theoretical understanding of state investment elaborated in the political economy tradition of, *inter alia*, Harold Ianis and Hugh Aitken, also building upon the work on economic statism in Canada. Without falling into the economistic reductionism which characterizes some of the literature on economic nationalism and province-building (a reductionism caused by the failure to attribute to the state something more than a relative autonomy from the class which most directly benefits from the nationalist or provincialist project), the model of economic nationalism developed by Albert Breton is found useful in understanding the origins of the Caisse de dépôt et placement.

Among the alternative research strategies that could be employed in the study of mixed enterprise in Canada, the case study approach, with a special emphasis upon how the business/state relationship has unfolded in the actual decision-making of the cases examined, was selected as most likely to provide insight into both the broad question of the limits on the state's direct participation in the economy and the narrower question of the tractability of the mixed ownership corpor-

ation as an instrument of public policy. This approach attempts to describe the political economy of the decision process; in other words, the configuration of political and economic interests that mobilizes around certain decisions of the mixed enterprise, and which determines the choice made.

Open-ended personal interviews with state and management actors provide much of the information on which chapters six and seven are

based. In focussing upon the significance of the state's ownership participation for corporate decision-making it was found useful to concentrate on particular instances of reported conflict between the state investor and management of the mixed ownership corporation. This strategy reflects the study's central preoccupation with the possibilities for, and limits on, state capital in the produce-for-profit economy. As an object of analysis the decision-making process therefore is significant to the extent that it affords insight into the broader business/state relationship.

Footnotes

- 1 The Times 1000 (London: 1983-84), p. 7.
- 2 Annmarie Hauck Walsh, The Public's Business: The Politics and Practices of Government Corporations (Cambridge, Mass.: MIT Press, 1978).
- 3 Theodore Lowi, "Europeanization of America: From United States to United State", in T. Lowi and A. Stone (eds.), Nationalizing Government: Public Policies in America (Beverly Hills, California: Sage, 1978), p. 24.
- 4 The seven crown corporations include (in order of sales: the Canadian Wheat Board, Canadian National Railway, PetroCanada, Ontario Hydro, Hydro Quebec, Air Canada, and the Canada Post Corporation. The three firms in which the state holds a controlling ownership stake are Provigo (Quebec), Domtar (Quebec), and the Canada Development Corporation (federal government). The Financial Post 500 (Toronto: Summer, 1984), pp. 70-71.
- 5 These financial institutions are the Caisse de dépôt et placement du Québec (6th), the Canada Mortgage and Housing Corporation (10th), the Export Development Corporation (13th), and the Parx Credit Corporation (17th). See The Financial Post 500 (Summer, 1984), pp. 146-147.
- 6 Ibid., p. 128.
- 7 A classic statement of the state's role in promoting capital accumulation is Alexander Hamilton's, Report on Manufactures, in Henry Cabot Lodge (ed.), The Works of Alexander Hamilton, vol. 4 (New York: G. P. Putnam's Sons, 1904), pp. 70-198. See also Louis Hartz, Economic Policy and Democratic Thought: Pennsylvania 1776-1860 (Cambridge, Mass.: Harvard University Press, 1948).
- 8 Exponents of the cultural pragmatism explanation of state enterprise include Hershel Hardin, A Nation Unaware (Vancouver: J. J. Douglas, 1974), and Anthony King, "Ideas, Institutions and the Politics of Governments: A Comparative Analysis", British Journal of Political Science 3 (July, 1973).
- 9 Harold Innis, Problems of Staple Production in Canada (Toronto: Ryerson, 1933), pp. 80-81.
- 10 Alexander Brady, "The State and Economic Life in Canada", in K. Rea and J. McLeod (eds.), Business and Government in Canada, 2nd edition (Toronto: Methuen, 1976), pp. 29-30.
- 11 Macpherson writes:
 "This embrace of private enterprise and government is not at all unusual in new countries. In Canada it is the direct result of the fact that the natural resources, abundant but scattered, have always afforded the prospect of highly profitable exploitation

and could most rapidly be made profitable by concentrating on the production of a few staples for export....This required a heavy import of capital and heavy government expenditure in railways, power developments, irrigation, land settlement, and so on. To support such investment, governments have been driven to all sorts of further encouragement of various industries and regions, notably by way of protective tariffs....

All this flows directly from the demand of private enterprise, the economy as a whole remains fundamentally a private-enterprise system, but the pattern of prices, markets, and profits is perennially complicated by the manifold involvement of governments and by the pressures on governments which their involvement invites. Just as the Canadian economy is in an exposed position due to its dependence on world prices for staples, so the political system has from the beginning been exposed, to an unusual extent, to the pressures of economic interest groups."

Quoted in L. Paritch, ed., The Canadian State (Toronto: University of Toronto Press, 1977), p. 15.

12 See Vernon Powke, "The National Policy--Old and New", Canadian Journal of Economics and Political Science, vol. 18, no. 3 (August 1952), pp. 271-286.

13 Hugh Aitken (ed.), The State and Economic Growth (New York: Social Science Research Council, 1959), p. 113.

14 On the origins of the CBC, see Frank Peck, The Politics of Canadian Broadcasting, 1920-1951 (Toronto: University of Toronto Press, 1969). For the history of Trans-Canada Air Lines, see C. A. Ashley, The First Twenty-Five Years: A Study of Trans-Canada Air Lines (Toronto: Macmillan, 1963).

15 Jeanne Kirk Laux, "Expanding the State: The International Relations of State-Owned Enterprises in Canada", Polity, vol. XV, no. 3 (Spring, 1983), p. 349.

16 This thesis is developed in I. Pratt and T. Richards, Prairie Capitalism: Power and Influence in the New West (Toronto: McClelland and Stewart, 1979).

17 See Albert Breton, "The Economics of Nationalism", Journal of Political Economy, vol. 72, no. 4 (August, 1964), pp. 376-386.

18 See Miliband's recent Weberian interpretation of the dynamic of state action in, "State Power and Capitalist Democracy", a paper presented to the Department of Political Science, Carleton University, Ottawa, July, 1984.

19 The state autonomy argument is advanced by Theda Skocpol, "Political Response to Capitalist Crisis: Neo-Marxist Theories of the State and the Case of the New Deal", Politics and Society, 10:2 (1980), pp. 155-201.

20 Miliband, op. cit., p. 7.

21 Ibid., p. 7.

22 Office of the Comptroller General of Canada (Policy Development Branch), Government of Canada Corporations in which the Government has an Interest (Ottawa: November 1981), p. 12.

23 L. Musolf, Mixed Enterprise: A Developmental Perspective (Lexington, Mass.: Lexington, 1972), p. 3.

24 The recent experience of the Canada Development Corporation is testimony to the disharmony which may characterize the public private relationship within the decision-making councils of a mixed enterprise. The federal government intends to divest itself of its 48 per cent equity in the CDC, which is one purpose though far from the most important of the recently created Canada Development Investment Corporation.

25 Government representation in the absence of equity is found even in the United States, in the case of what are described as "COMSAT-type" corporations. The reference is to the Communications Satellite Corporation (1962), to which the President appoints, with Senate confirmation, three of the 15 members of the board of directors. For a brief account of COMSAT and other organizations inhabiting some corner of the gray zone separating the public and private spheres in the U.S., see Harold Seidman, Politics, Position, and Power: The Dynamics of Federal Organization (New York: Oxford University Press, 1975), pp. 279-286.

26 Syncrude, representing a partnership between the federal government, the provincial governments of Alberta and Ontario, respectively, and American-based petroleum multinationals, is an important Canadian case in point.

27 See A. Boardman et al., "An Overview of Mixed Enterprises in Canada" University of B.C., Faculty of Commerce and Business Administration, mimeo, 1983, cited in W. Stanbury and E. C. Elford, "Mixed Enterprises in Canada", paper presented to the Seminar on Crown Corporations, Royal Commission on the Economic Union and Development Prospects for Canada, Ottawa, June 1, 1984.

28 Stanbury and Elford, op. cit., pp. 17-24.

29 See ibid., Table 2, p. 24.

30 Ibid., p. 37.

31 The following rankings are taken from The Times 1000 (London, 1983).

32 In the case of Renault, the private sector ownership share is held exclusively by the corporation's employees.

33 See I. Carson and I. Losco, "Who are the Capitalists now in Europe?" Vision (Dublin), no. 66 May, 1976, pp. 71-75.

34 Marshall E. Dimock, "Les Enterprises Mixtes", National Municipal Review (November, 1931), pp. 639-641.

35 T. C. Dainteth, "The Mixed Enterprise in the United Kingdom", in W. Friedmann and J. Garner, Government Enterprise: A Comparative Study (London: Steven, 1970).

36 See: Sir W. Hart, "Mixed Undertakings", Public Administration (April, 1932), pp. 138-156; W. Robson, "Mixed Enterprise", National Westminster Quarterly Review (August, 1972), pp. 22-34; and Alec Samuels, "Government Participation in Private Industry", Journal of Business Law (1968), pp. 296-302.

37 Canada. Royal Commission on Financial Management and Accountability. Final Report. (Ottawa, 1979), chapter 20.

38 Lambert Report, p. 359. The Report observes that mixed ownership ventures entered into by crown corporations represent a means of circumventing the restrictions on business activities imposed by a corporation's enabling statute.

39 Ibid., p. 361.

40 "There is a clear difference between the Government openly taking certain responsibilities and rights to itself at the outset, as with the CDC, so that all other potential participants are aware of these rights before they purchase an equity share, and the Government later attempting to assume special privileges with respect to the enterprise". Ibid., p. 361.

41 See Douglas Bennett and Kenneth Sharpe, "The State as Banker and Entrepreneur: The Last-Resort character of the Mexican State's economic Intervention, 1917-76", Comparative Politics (January, 1980), pp. 165-189; Chwee Huat Tan, "The Public Enterprise as a Development Strategy: The Case of Singapore", Annals of Public and Co-operative Economy (Jan. Mar., 1975), pp. 61-85; and Leroy P. Jones, Public Enterprise and Economic Development: The Korean Case (Cambridge, Mass.: Council on East Asian Studies, Harvard University, 1980). The terms "facilitative" and "nationalistic" are borrowed from Marsha Chandler's study entitled, "State Enterprise and Partisanship in Provincial Politics", Canadian Journal of Political Science (December, 1982), pp. 711-740.

42 For a contemporary analysis of government-owned business in the United States, see Annmarie Hauck Walsh's outstanding study, op. cit.

43 Prior to the creation of Telesat (1969) and the Canada Development Corporation (1971), each of which represented a deliberate choice of the mixed enterprise governing instrument, the federal government was in fact involved in a network of mixed enterprise through the subsidiary investments of certain commercially-oriented crown corporations like Air Canada and Canadian National.

44 Catherine Eckel and Aidan Vining, "Toward a Positive Theory of

Joint Enterprise", in W. Stanbury and P. Thompson (eds.), Managing Public Enterprises (New York: Praeger, 1982), p. 215.

45 R. Mazzolini, Government Controlled Enterprises: International Strategic and Policy Decisions (Toronto: John Wiley & Sons, 1979).

46 J. Zif, "Managerial Strategic Behavior in State-Owned Enterprises: Business and Political Orientations", Management Science (November, 1981), pp. 1326-1339.

47 Claude Viallet, "Resolution of conflicts of interest in the ownership of a firm: the case of mixed firms", Annals of Public and Co-operative Economy (September, 1983), pp. 255-269.

48 This scenario is typical in Italy. See, Franco A. Prassini, "The Italian Enterprises: The Political Constraints", in Vernon and Aharoni (eds.), State-Owned Enterprise in the Western Economies (London: Croom Helm, 1981), pp. 70-84.

49 See James Brothers, "Telesat Canada: Pegasus or Trojan Horse?", M.A. thesis, Carleton University, School of Public Administration, 1979.

50 D. Cavalieri, "The Crisis in the System of State Share Holdings in Italy", Annals of Public and Co-operative Economy (Oct.-Dec./1977), p. 435.

51 This is registered faithfully in the pages of the business press.

52 Chwee Huat Tan, "The Public Enterprise as a Development Strategy: The Case of Singapore", Annals of Public and Co-operative Economy (Jan.-Mar., 1975), pp. 61-85.

53 The expectation that government control means inevitable bureaucratization and inefficiency, with at least some decisions taken according to "unbusinesslike" criteria, is common in western business cultures. This predisposes such an analysis as Eckel and Vining's "Toward a Positive Joint Enterprise" to particular negative conclusions in respect of state participation in business activity. That this view typically has been shared by the political elite is evident from two major documents on state enterprise: the Nora Report (Rapport au Comité Interministeriel des Entreprises Publiques: Paris, 1967) and the Report of the Special Committee on Nationalized Industries (U.K., 1967).

54 See chapter three in Chalmers Johnson, Japan's Public Policy Companies (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1978).

55 Suggestive insights are provided in Andrew Shonfield's classic study, Modern Capitalism (London: Oxford University Press, 1965). Shonfield attempts to understand contemporary forms of state intervention in the context of national traditions which pre-date modern capitalism.

56 Precedents included the British government's purchase in 1914

of a 51 per cent ownership share in the Anglo-Persian Oil Company (the predecessor of BP); the French government's investments in the oil and chemicals sectors during the 1920s, notably in la Compagnie française des pétroles; and extensive mixed ownership of public utilities in Germany.

57 See Stuart Holland's chapter on IRI and its emulators in S. Holland (ed.), The State as Entrepreneur (London: Wiedenfeld and Nicolson, 1972).

58 Domenicantonio Fausto, "The Finance of Italian Public Enterprises", Annals of Public and Cooperative Economy (March, 1982), p. 22.

59 Alberto Martinelli, "The Italian Experience: A Historical Perspective", in R. Vernon and Y. Aharoni (eds), State-Owned Enterprises in the Western Economies (London: Croom Helm, 1981), p. 96.

60 See, Franco Grassini, "The Italian Enterprises: The Political Constraints", ibid., pp. 70-84.

61 See, Alberto Martinelli, "The Italian Experience: A Historical Perspective", ibid., pp. 85-98.

62 W. Robson, "Mixed Enterprise", National Westminster Quarterly Review (August, 1972), pp. 27-28.

63 See Anthony Sampson, The Seven Sisters (London: Coronet Books, 1975), p. 276.

64 For a brief review, from a comparative perspective, see Oystein Noreng, "State-Owned Oil Companies: Western Europe", in Vernon and Aharoni (eds.), op. cit., pp. 133-144.

65 In a 1976 reorganization, the French government merged Elf-ERAP with SNPA(Aquitaine) to form SNEA.

66 Rapport de la commission d'enquete parlementaire, Sur les sociétés pétrolières opérant en France (Paris, 1975), p. 181.

67 Such incidents are legion, and by no means peculiar to mixed enterprise. Numerous instances can be cited of wholly state-owned corporations which have taken decisions which, while consistent with private sector practice, constituted violations of the public interest. In the case of Canada, the participation of Atomic Energy of Canada Limited in an international uranium cartel and kickbacks paid to foreign agents for services rendered in concluding the sale of CANDU nuclear reactors, were two of the more spectacular of such incidents to come to light during the 1970s.

68 Robert Stobaugh, "The Oil Companies in the Crisis", Daedalus 104, no. 4 (Fall, 1975), p. 190.

69 See the discussion of France's nationalized banks in Harvey Peigensbaum, "Public Enterprise in Comparative Perspective", Comparative Politics, vol. 15, no. 1, October 1982, pp. 117-118.

70 Chapter five considers how organizational features of the mixed enterprises, and corporate actors (i.e. management and the board of directors) have operated as limits on state influence in corporate decision-making, and thus is preliminary to the decision-making propositions tested in chapters six and seven.

71 Marsha Chandler, op. cit., p. 730.

72 Eric Nordlinger, On the Autonomy of the Democratic State (New Haven, Connecticut: Yale University Press, 1981), p. 21.

73 Testimony before the Senate Committee which considered Bill S-31 is a particularly rich record of the mutual perceptions of the Caisse and the Quebec government, anglophone capital, Quebec-centred francophone capital, and the federal government.

PART II,

ORIGINS AND GOVERNMENT EXPECTATIONS

In this part of the study the origins of Telesat, the CDC, and the Caisse are examined for what they reveal about the relationship between the state and private capital in the particular sectors of state investment. The partnership of public and private capital appears to provide a middle way between government ownership and some less direct means of state influence over economic activity. Ideally a convergence of state and private sector expectations for the jointly owned corporation will allow for mutual participation in corporate decision-making, specifically through the board of directors. The practical limits on shared control will be examined in Part III on decision-making in the mixed enterprise. For now, the idealized conception of business/state co-operation within a single corporation may be expressed in the proposition stated in chapter one:

The mixed enterprise organizational form is expected to allow for direct influence by the state on corporate behavior, while not challenging the principle of private capital accumulation.

The decision to create a mixed ownership corporation (Telesat, CDC), or to assign a significant equity investment capacity to a newly established state investment agency (the Caisse), was in each case unconventional. No precedents existed, either federally or provincially, for the union of state and private capital embodied in Telesat and the CDC, and anticipated for the Caisse in its investment behavior. Granted that the mixed ownership experience of other countries was available to learn from, the Canadian tradition of direct state investment in the economy found its exemplar in the crown corporation. Thus, while the co-existence of state and private capital within particular

sectors of the economy was well established (indeed, public/private duopoly has been characteristic of Canada's air transportation, railway, and television broadcasting sectors), shared ownership of a single business firm was quite novel. The next three chapters will examine the origins of Telesat, the CDC, and the Caisse, in order to demonstrate that governments expected to be able to influence decisions of the mixed ownership corporation.

over the domestic satellite system.

Comparison with COMSAT provides insight into the factors which determined the choice of the mixed ownership organizational structure for Telesat Canada. In each case the dominant carriers considered that satellite technology could undermine the existing pattern of controlled competition. For this reason the industry, in both Canada and the United States, attempted early on to acquire exclusive control over the development of satellite communications. In December of 1960, American Telephone and Telegraph (AT&T) proposed to Congress that it be designated the "chosen instrument" of the United States in satellite communications.²⁵ This attempt at monopoly control was rejected. The corporate structure which ultimately was supported by the Kennedy administration and passed by Congress involved a very unequal compromise between complete government ownership, as proposed by certain liberal senators,²⁶ and the industry's demand for regulated private monopoly. The description "compromise" must be applied advisedly because of the fact that the government would hold no equity in the corporation, but would have the right to appoint three of the fifteen members of the board of directors. This appointment provision formed the basis for regular references to COMSAT as occupying some middle ground between the public and private sectors.²⁷

The circumstances surrounding the creation of Telesat were substantially similar. In the spring of 1967 the TCTS, in which Bell Canada was the dominant party, and CNCP Telecommunications jointly proposed to the Minister of Transport that the carriers be assigned control over the development and operation of a domestic satellite system. From a political standpoint this was unacceptable, and support for

Two conditions have been primarily responsible for the extent of state intervention in Canada: the inability or reluctance of private enterprise to take business risks....and the willingness of influential groups of Canadians to use the power of the dominant government in the search for national security....

Margaret Prang, "The Origins of Public Broadcasting in Canada", Canadian Historical Review, vol. 46, no. 1 (March, 1965), p. 1.

The development of communications satellites raises, as a major public issue, the perennial problem of introducing a new technology into an existing industry.

Herman Schwartz, "Comsat, the Carriers, and the Earth Stations: Some Problems with Melding Variegated Interests", Yale Law Journal, vol. 76, no. 3 (January, 1967), p. 441.

The importance of a nationally controlled broadcasting system from the standpoint of political integration, reaching all parts of the population and every territory over which sovereignty is claimed, had been recognized by Canadian governments since the Report of the Royal Commission on Broadcasting (the Aird Report, 1929), which first proposed a publicly owned system of radio broadcasting. But only with satellite communications technology did this policy objective, i.e. full integration of remote regions of the country into the national communications network, become realizable. The question of a domestic satellite system for Canada made clear the inseparability of telecommunications content (the message) from the mode of transmission (the medium). Thus, while the federal government was proceeding principally along other fronts--those of Canadian content requirements and the development of a bi-national CBC--there was, nonetheless, a recognition that the apparently technological question of broadcasting via satellite had implications for political sovereignty. The separation of the medium and the message (or carriage and content, in the terminology of the

telecommunications industry), a dichotomy which traditionally had informed government regulation in the telecommunications sector, broke down when confronted with the expanded possibilities for both domestic and international communications which satellite communications could provide.

The traditional pattern of state intervention in telecommunications has involved both regulation of monopoly and direct participation through a number of federal and provincial crown corporations. Constitutionally, authority to control telecommunications activities remains divided between the two levels of government, with provincial regulatory agencies controlling the activities of provincially-incorporated telephone companies which operate within the boundaries of a single province, while the Canadian Radio-Television and Telecommunications Commission (formerly the Board of Broadcast Governors) is responsible for controlling the conditions of competition for nationally-incorporated telecommunications companies (including Bell Canada, British Columbia Telephone Company, and CNCP Telecommunications). Radio and television broadcasting (both via the airwaves and by cable) come within the purview of the CRTC, an authority which was confirmed early by the Judicial Committee of the Privy Council in Re Regulation and Control of Radio Communications in Canada (1932) and has been reinforced since that time.¹ Interprovincial telephone traffic is regulated by Telecom Canada (formerly the Trans-Canada Telephone System), formed in 1931, an association of all the telephone companies which itself is not regulated. These are the main lines of telecommunications regulation in Canada, though further complications exist and rapid technological change exerts an unsettling effect upon the whole structure of regulation.²

During the period before the creation of Telesat, the federal government was a direct participant in the telecommunications sector through four principal interventions. These were the radio and television broadcasting activities of the CBC, the telegraph activities of Canadian National, Canadian participation in the International Satellite Communications Consortium (INTELSAT, created in 1964), and international communication through the Canadian Overseas Telecommunications Corporation.³ But while the federal government's involvement in telecommunications was both extensive and longstanding, integrative structures for the more coherent administration of federal policy were lacking.

The emergence of communications satellite technology in the 1960s, a development which was expected to revolutionize domestic and international communications networks, was a central factor in triggering a reassessment of telecommunications policy in Canada. Indeed, the decision to create Telesat must be understood in a context which includes the reorganization of federal structures for administering communications policy (the Department of Communications was created in 1969) and the deliberate promotion of a domestic scientific capability in high technology communications. Of critical importance is the fact that these major organizational and policy decisions were being taken under a "veil of ignorance,"⁴ as the government had to determine whether future expansion of telecommunications was likely to proceed through terrestrial facilities or via a satellite system. Aside from the demonstrated problems of forecasting and planning in an area of rapid technological change, this determination was made even more difficult by the self-interested representations made by the telecommunication carriers, with their major investment stake in the terrestrial system.

Several studies produced in the 1960s, both governmental and private, addressed the issue of a domestic system of satellite communications. Among the most significant in terms of contributing to the ultimate decision to establish Telesat as the chosen instrument of state policy, were the Science Council's, A Space Program for Canada 1967,⁵ the Department of Industry's, White Paper on a Domestic Satellite Communication System for Canada 1968,⁶ and a confidential study commissioned by the PCO and circulated to cabinet as a discussion paper before the drafting of the Telesat Act. Together, these studies identify the main considerations upon which the positions of the government and the scientific community were based, considerations which were only partially expressed in the organizational structure and statutory mandate of Telesat.

From its inception in 1960 the Science Council of Canada had been a consistent advocate of centralized planning in state support for high technology industry, arguing that space projects should be assigned high priority.⁸ Then as now the SCC advanced a nationalist critique of dependence upon external sources of research and technological development. In its 1967 report entitled, A Space Program for Canada the first report produced by the Science Council, the Council recommended the establishment of a national space agency, organized as a crown corporation, which would accord preference to Canadian suppliers though no Canadian-based corporation had a record of performance in satellite technology at the time. The SCC argued that conflicts of interest, of the sort which the Science Council suggested were experienced by the Communications Satellite Corporation COMSAT in the United States, be avoided through vesting ownership and control in a single authority.

viz. the federal government. In view of the small size and organizational weakness of the Canadian scientific community, it is not surprising that the Council's preference for a wholly state-owned satellite corporation with both an operational and research role in telecommunications was rejected in favour of a commercially oriented domestic satellite system with ownership divided between the state and the commercial carriers.

Many of the Nationalistic arguments advanced by the Science Council subsequently found expression in the 1966 White Paper on a Domestic Satellite Communications System, a document developed by the Department of Industry. At the most general level, the White Paper expressed the government's view that, "a domestic satellite communications system is of vital importance for the growth, prosperity, and unity of Canada, and should be established as a matter of priority". This position involved two fundamental choices: "a satellite system should provide some unspecified portion of Canada's domestic communications requirements and its control over the development and operation of the satellite system should rest in Canada". There was a broad consensus on these conditions, though considerable disagreement existed regarding both the organizational structure of a domestic satellite company and the scope of its activities.

Several arguments were put forward by the White Paper, in support of the case for a Canadian-owned domestic satellite system. Among these were the following:

1. the alleged "ripple effects" which would result from the development of satellite technology in Canada. "The complex technology of satellite systems, involving advanced techniques, new planning methods, and higher

standards of industrial performance will, in a few years, become the technology of many industries."

2 the political and cultural integration of remote regions into the mainstream of the Canadian communications network. "A domestic satellite system would solve economically the unique problems created by certain physical and social characteristics of the Canadian territory."

3 the desirability of competition between different modes of telecommunications, an objective which represented something of a departure from the government's usual policy of regulated monopoly in telecommunications reflecting the high expectations held for the emerging satellite technology by the scientific community and the government, an optimism which for obvious reasons was not shared by representatives of the existing telecommunications industry.

4 the inability of an expanded system of terrestrial telecommunications to satisfy all of the regularly increasing demand in long distance East-West communications. "A satellite system is the only means to provide the 'jump' in the capacity needed to ensure the rapid expansion in the services now contemplated".

5 the competitive ground which would be lost as a result of delay in implementing a satellite system. "The development of communications satellites is proceeding rapidly in Europe and the United States, and these will soon be laying down signals over parts of southern and eastern Canada". White Paper, 36. "Insofar as the possibility of Canada industrial participation in developing and producing satellite communication equipment is concerned...as foreign competition develops the prospects for later entry into the market diminishes rapidly with time".¹⁴ On this fifth point, the need for government action was underlined by

the carriers' position that they would not purchase satellites before 1975, preferring instead to develop terrestrially-based technology.¹⁵

Taken together, the arguments advanced in the White Paper extended the line of reasoning developed in Dr. J. H. Chapman's 1967 Task Force Report on satellite communications.¹⁶ Based upon a cost-benefit analysis which took into account infrastructural requirements, satellites and earth stations, interconnection between satellite and terrestrial systems, and estimates of the economic and social benefits expected to flow from a domestic satellite system, the Chapman Task Force determined that a commitment to the new technology was justified on economic grounds alone. A more meaningful analysis and one better able to counter the carriers' argument that satellite communications could only serve as a complement to the terrestrial system, would have compared the cost-benefit assessment of the satellite mode to terrestrial alternatives (primarily microwave technology). This comparison was not made and, in any case, the whole idea of reliable cost-benefit analyses in a field characterized by rapid technological change carries an air of unreality. Indeed, it was this very fact which underpinned the demands of the carriers, with their massive investment in terrestrial infrastructure already amortized over future years in the rate base levied against subscribers, and the federal government and its agencies (particularly the CBC, the Board of Broadcast Governors, and the Canadian Overseas Telecommunications Corporation) for direct participation in the ownership and decision-making structure of any domestic satellite corporation.

Two additional factors were at work in shaping the federal government's resolve to proceed with dispatch in the implementation of a domestic satellite system. The first involved the inter-governmental

division of authority in the field of telecommunications, and the opportunity which the federal government perceived for expanding its ability to control developments in this sector.¹⁷ Given the fragmented pattern of telecommunications regulation in Canada, as described earlier, one consequence of a shift from terrestrial to satellite communications would be an increase in the proportion of activity coming within the regulatory purview of the federal government. In other words, the federal government considered that the development of a domestic satellite system, operating in the East West communications market, would constitute a major step toward the centralization of planning and regulatory authority in this sector.¹⁸ Of perhaps some additional significance in explaining the federal government's alacrity in establishing Telesat was the fact that the government of Quebec was in the process of negotiating to receive programming via the Franco-German Symphonie satellite system. One must recall that the political rivalry between Ottawa and Quebec in the late 1960s was sufficiently intense that the symbolic matter of which government would be first to deliver domestic communications via the new technology could well have contributed to the federal government's resolve and timing.¹⁹

The second factor involved the status of Canada's northern territory. In economic terms, the federal government argued that a vastly improved communications system, linking northern regions with the south of Canada, was a prerequisite for economic development in the north. The Minister of Indian Affairs and Northern Development, Jean Chretien, expressed the government's view in suggesting that a satellite communications network represented an infrastructural support for industrial projects in remote areas.²⁰ The other dimension of service to the north, not

unconnected with the government's economic goals, related to political sovereignty. Integration of the north, and particularly the Arctic islands, into the Canadian communications system involved the simultaneous assertion of political authority over this territory. Given the efforts of the United States administration to get a diplomatic agreement that would recognize the Arctic Ocean as international waters in the same class as other ocean bodies, the assertion of Canadian sovereignty involved realpolitik, in the genuine sense of the word. In this context the federal government's expressed goal of integrating the thinly-populated north into the mainstream of the Canadian communications network an objective which, for technical reasons, could only be accomplished through satellite technology²¹ proceeded from the same impulse, viz. defensive expansionism, as the unilateral decision to extend Canadian territorial waters in the wake of the northern passage of the S. S. Manhattan in 1969.²² Control over future economic development in the north required an effective assertion of Canada's jurisdictional claim.

While there was no opposition to the idea of a domestic satellite corporation, there was considerable disagreement over the organizational form which it should assume. The two extremes were represented by the Trans-Canada Telephone System (TCTS) position that the carriers should be the sole owners of the domestic satellite system, and the crown corporation option supported by the CBC, the state-dependent scientific community, and the New Democratic Party.²³ Another alternative, proposed by the Canadian Overseas Telecommunications Corporation (COTC), would have seen the telecommunications mandate of the COTC amended to include domestic communications, with domestic service sup-

plied through leased channels of INTELSAT satellites. However, by the time of the 1968 White Paper it was clear that the government was determined that the domestic satellite corporation would have an organization separate from existing telecommunication carriers, and that the state would participate directly in the control of the new corporation. The precise nature of this participation was not determined until cabinet consideration of the MacIntosh Report,²⁴ a document whose recommendations regarding the ownership and capital structure of Telesat were accepted without significant revision.

Although the restrictive Freedom of Information legislation forbids access to the Report, its recommendations regarding ownership and capital structure are readily discernible from Dr. MacIntosh's testimony before the House of Commons committee which considered the Telesat Bill and from conversations with persons involved in its development. Basically the Report suggested that the principles of shared industry/state control and public share ownership, established in the case of COMSAT in the United States, be applied in Canada with some important adaptations. Given that the government had determined that the new technology warranted the creation of a new organization to develop and administer the domestic satellite system (notwithstanding that the function of this new corporation, i.e. communication between locations in Canada, would be identical to that performed by the existing carriers), the major question to be resolved was the degree of "public-ness" of the organization. COMSAT, though an international rather than domestic satellite corporation, represented the sole organizational precedent, and the adoption of the mixed enterprise principle offered a means of accommodating the demands of both the government and the industry for control

over the domestic satellite system.

Comparison with COMSAT provides insight into the factors which determined the choice of the mixed ownership organizational structure for Telesat Canada. In each case the dominant carriers considered that satellite technology could undermine the existing pattern of controlled competition. For this reason the industry, in both Canada and the United States, attempted early on to acquire exclusive control over the development of satellite communications. In December of 1960, American Telephone and Telegraph (AT&T) proposed to Congress that it be designated the "chosen instrument" of the United States in satellite communications.²⁵ This attempt at monopoly control was rejected. The corporate structure which ultimately was supported by the Kennedy administration and passed by Congress involved a very unequal compromise between complete government ownership, as proposed by certain liberal senators,²⁶ and the industry's demand for regulated private monopoly. The description "compromise" must be applied advisedly because of the fact that the government would hold no equity in the corporation, but would have the right to appoint three of the fifteen members of the board of directors. This appointment provision formed the basis for regular references to COMSAT as occupying some middle ground between the public and private sectors.²⁷

The circumstances surrounding the creation of Telesat were substantially similar. In the spring of 1967 the TCTS, in which Bell Canada was the dominant party, and CNCP Telecommunications jointly proposed to the Minister of Transport that the carriers be assigned control over the development and operation of a domestic satellite system. From a political standpoint this was unacceptable, and support for

the diametrically opposed option of complete state control was expressed by, inter alia, the SCC, the NDP and, at one point, the CBC. The compromise structure which ultimately was proposed by the government in Bill C-184 accepted the principle of joint public private control which had been established in the case of COMSAT. However, following the recommendations of the MacIntosh Report the government went further than the American model in regard to the extent of state participation in the satellite corporation. This is demonstrated by the following comparison.

<u>DIMENSION OF STATE PARTICIPATION*</u>	<u>COMSAT</u>	<u>TELESAT</u>
1. Public cost: the extent of public subsidization of i) capital costs, and ii) operating costs	None; with the possible exception of foregone revenue	An initial provision of \$10 million for operating costs, \$30 million share subscription by the government; \$25 million in loans (repaid by Telesat)
2. Public control over the corporation's policies	PCC regulation	CRTC regulation; Canadian content provisions of the Act (s.8); restrictions on share trading (s.20)
3. Public ownership of the corporation	No equity held by the government	50 per cent of Telesat equity held by the government
4. Public management of the corporation's operations	3 presidentially appointed directors	Election of members to the board of directors; cabinet must annually approve the election of Telesat's president (s.14)

*The dimensions of state participation are adapted from William G. Shepherd's concept of publicness, in "Public Enterprise in Western Europe and the United States", p. 291; in H. W. de Jong (ed.), The Structure of European Industry (The Hague: Martinus Nijhoff Publishers, 1981), pp. 322.

The COMSAT principle of state participation in corporate management through appointments to the board of directors was followed and expanded

upon in the case of Telesat. In practice the presidentially-appointed directors to COMSAT have never operated as an effective lever of state influence over the satellite corporation. This has been due to the provisions of the Communications Satellite Act,²⁸ whereby all directors are assigned the usual fiduciary responsibility on behalf of the corporation's shareholders s.8.03, and no distinction is made, except in the method of selection, between directors appointed by the President and those elected by the shareholders, and also because of the fact that appointments have been made on a political rather than a telecommunications expertise basis.²⁹ While the government directors on the board of Telesat have a similar fiduciary responsibility to the shareholders, the agency relationship differs from the case of COMSAT in two respects: 1) the federal government holds 50 per cent of the corporation's equity; and 11) the two public service appointees on the board (from DOC and Finance) provide the government with a direct representational presence.

The principle of mixed enterprise was observed symbolically but not operationally in the case of COMSAT, while in Canada the federal government was able to effectively determine the conditions of the carriers' participation in satellite communications. During the period under review, the political economy of telecommunications in each country involved domination by a major private carrier (AT&T in the United States, and Bell Canada in Canada), within a system of regulated monopoly. The difference in organizational response to the advent of satellite communications can be ascribed to a number of variable factors, the most important of which were differences between Canada and the United States and in the tradition of state involvement in telecommuni-

cations, and in the political structures through which competing economic and social interests find expression in authoritative state decisions.

The more frequent recourse to state-owned enterprise in Canada, as compared to the United States, has been attributed to differences in political culture, varying historical requirements and capabilities for economic development, and dissimilar class configurations.³⁰ Whatever the explanation the fact that the state in Canada, both federal and provincial, had a major ownership stake in the infrastructural sectors of the economy (including telecommunications), made credible the idea of government ownership of the new satellite communications system. Not even the carriers, some of whom were crown corporations of either the federal or provincial governments, could argue against state ownership on the grounds that this represented an illegitimate displacement of private sector decision-making in the economy. The tradition of government in business has developed along very different lines in the United States. The extensive network of public authorities which has long existed at the state level, and to a much lesser degree at the national level (TVA is the most prominent case), has been aptly characterized by Annmarie Hauck Walsh as, "public ownership without public policy".³¹ With financing requirements met primarily through some combination of operating revenue and debt capital (i.e. money raised from private investors on the tax-exempt bond market), public authorities have been able to preserve their autonomy from government. American counterparts to CN, the CBC, and Air Canada have not existed.³² In the particular field of telecommunications the American model has involved government regulation of privately owned corporations. The fact that complete government ownership of COMSAT was an option with

little political support and no chance of success was consistent with this traditional separation of business management and public policy.³³ The advocates of a state-owned satellite system were unable to invoke precedent.

A second major factor which explains the greater success of the Canadian government in resisting industry pressure for exclusive carrier ownership of a new satellite corporation was the institutional structure within which the ownership question was resolved. One of the central differences between the American congressional system and Canadian parliamentary government involves the pattern of interest group behavior under the respective regimes. The power of congressional committees and committee chairmen make them a primary target of interest group representations. In the particular case of the COMSAT legislation, the administration found itself negotiating with a single senator, Robert S. Kerr, the chairman of the Senate Aeronautical and Space Committee, over the ownership and control structure of the proposed satellite corporation.³⁴ The administration had to pilot the Act through a congressional committee system which it could seek to influence but could not effectively control through the assertion of party discipline, a situation which finds no parallel in Canada. Faced with the government's resolve that complete ownership of the domestic satellite monopoly would not be assigned to the carriers, the industry in Canada had no point at which to gain effective access to the policy-making system, other than cabinet. Party discipline and a majority government situation rendered the legislature an ineffectual option. Moreover, widespread suspicion of the oligopolistic industry excluded the possibility of generating popular support for the carrier's position. Given

cabinet's determination that the industry could not be assigned exclusive control over the development of what, at the time, was perceived to be a technology with revolutionary implications for communications, the carriers might have been expected to seek support from provincial governments. And indeed three provinces had state-owned telephone monopolies which, as members of the TCTS, supported the industry's demand for ownership. However, the federal government's judicially confirmed claim to jurisdiction over atmospheric communications reduced the effectiveness of provincial governments as allies of the industry.

Whereas divided power in the United States congressional system enabled the communications carriers, particularly AT&T, to control a necessary stage in the legislative process (through a sympathetic Senate committee, headed by one of the Senate's most influential members), the concentration of power in the Canadian executive placed the Canadian carriers, represented by the TCTS, in a position where they could not effectively gain access to the policy-making system except at the cabinet level. Under these circumstances of weak institutional support for the carriers' demands, a wholly state-owned satellite system was a real option for the government. That cabinet decided in favour of joint ownership with the carriers and private investors must be ascribed to factors other than the carriers' political influence. The fact that the mixed enterprise option had been chosen in the only precedent (i.e. COMSAT), in addition to the obvious requirement for interconnection with the terrestrial network if satellites were to be used for more than television broadcasting, together argued for direct participation by the carriers. At the same time the better bargaining position of the government vis-à-vis the carriers, as compared to the American

case, enabled the federal government to go beyond the symbols of state participation to achieve what appeared to be levers of de facto power in the corporation's management.

Several of the government's expressed reasons for direct state participation argued logically for complete government ownership of the satellite system. For example: i) the CBC was expected to be one of the major users of the system, particularly in its early stages of operation; ii) necessary negotiations with foreign governments and within trans-national organizations regarding technical questions of radio frequencies and orbital positioning could only be carried out under the authority of the federal government; and iii) the development of both a research and industrial capacity in satellite technology was considered a national priority, and the government already had a heavy investment in the development of the Isis and Alouette satellites and therefore had a well-founded claim to direct returns (and not simply corporation tax) from the satellite system. While the government chose to follow the MacIntosh Report recommendation of a tripartite ownership structure, the Telesat Act included a number of provisions which, at least by the letter of the law, established the government as primus inter pares in the corporation's decision-making.

Briefly described, these control provisions include:

- 1) Section 8, whereby all procurement and construction proposals are subject to review by the Minister of Communications (though the Act is silent about what happens in the event that the Minister does not issue written approval within the specified period);
- 2) Section 9, whereby all negotiations with foreign states or their agents, and participation within trans-national organizations, must

be carried out under the authority of the Minister of Communications.

3. Section 14(1), whereby the federal government is assigned a veto power in the annual election of Telesat's president.

4. Section 20(2) (3), whereby the transfer of common shares and therefore any change in Telesat's ownership structure requires cabinet approval; and

5. Section 33, whereby a change in the objects of the corporation requires government approval through letters patent.

In summary, passage of the Telesat Canada Act represented both a continuation of a longstanding tradition of direct involvement by the federal government in the telecommunications sector, and a novel departure in terms of the organizational form of intervention. From a review of the circumstances which culminated in the decision to create a mixed enterprise domestic satellite communications monopoly, with ownership shared between the federal government, several telecommunications common carriers, and the investing public,³⁵ two central themes of Canada's political economy emerge. The first is defensive expansionism (i.e., "the State or the United States"),³⁶ involving state intervention based upon the perception that a loss of control and/or advantages (whether economic or political) will follow from government inaction. The second theme involves a desire, on the part of both the state and the telecommunications companies, to control the development of a technology which challenged the conventional wisdom on natural monopoly in telecommunications, and threatened the terrestrial system with obsolescence.

Thus, the decision to create Telesat can be situated within a tradition of state intervention which received earlier expression in

the communications sector through the CNR project and the creation of the CBR. At the same time, the particular organizational structure of the new satellite corporation was a product of both random circumstances, i.e., the precedent of the COMSAT model and a mutually acceptable compromise between, on the one hand, the federal government's regulation and nationalism objectives and, on the other, the telecommunication corporation's interest in protecting their market shares against the inroads of a new technology.

Footnotes

1 Federal jurisdiction over radio-wave broadcasting was given unequivocal confirmation in Re C.F.R.B. (1973 3 O.R. 819, 822).

2 See Richard Schultz, "Partners in a game without masters: reconstructing the telecommunications regulatory system", in Telecommunications Regulation and the Constitution (Institute for Research on Public Policy, Ottawa: 1982).

3 The COTC was renamed Teleglobe Canada in 1976.

4 The term "veil of ignorance" is used by John Rawls in his treatment of choice under conditions of uncertainty (see A Theory of Justice). As a characterization of policy-making in the protean field of telecommunications, the term is particularly apt.

5 Science Council of Canada, A Space Program for Canada (Ottawa: Queen's Printer, 1967).

6 Canada, Department of Industry, White Paper on a Domestic Satellite Communication System for Canada (Ottawa: Queen's Printer, 1968).

7 In the summer of 1968 Dr. R. M. MacIntosh, at the time General Manager of the Bank of Nova Scotia, submitted a report and recommendations on the financing and ownership structure of the proposed satellite corporation to the Privy Council Office. Because the document was circulated to cabinet as a discussion paper it will not be publicly accessible until 1988.

8 See Science Council of Canada, op. cit., and SCC, Towards a National Science Policy in Canada (Oct., 1968), 56 p.

9 Canada, Department of Industry, op. cit., p.8.

10 Ibid., p. 52.

11 Ibid., p. 32.

12 Ibid., p. 46.

13 Ibid., p. 36.

14 Ibid., p. 36.

15 Testifying before the parliamentary committee considering the Telesat legislation, Mr. A. G. Lester, Executive Vice President of Bell Canada, remarked: "I do not really think that the long term future of telephone facilities is via satellite. I think this lies more in some of these other directions of wave-guides and lasers". Minutes of Proceedings and Evidence Respecting Bill C-184, Before the Standing Committee on Broadcasting, Films and Assistance to the Arts, 28th Parliament, 1st Session, at 1879 (hereinafter cited as Committee Proceedings).

16 The findings of the Task Force were made public on March 28, 1966, in the Ministry of Industry White Paper on a Domestic Satellite Communication System for Canada.

17 This observation is based upon conversations with a number of state bureaucracy and industry principals who were involved in the formation of Telesat.

18 The idea that a satellite system could displace terrestrial communications in the East West market was not at all fanciful. Before it became clear that the carriers would not be allowed exclusive control of the satellite system, the TCTS had suggested that 25 per cent of the annual increase in East West requirements be assigned to satellites. With the introduction of Bill C-184 the carriers reversed themselves and took the position that satellites were not competitive with the terrestrial network, and that future expansion would occur through expansion of the microwave system (see the remarks of the TCTS chairman, Mr. E. H. Krupski, in Committee Proceedings, 1677, 1879, 1912). Considerable evidence had been amassed in the United States which purported to demonstrate the lower cost of satellite communication as compared to cable technology (see chapter four in Michael Kingsley, Outer Space and Inner Sanctum: Government, Business, and Satellite Communication (New York: John Wiley & Sons, 1976)).

19 This issue was raised during committee hearings on the Telesat legislation (Committee Proceedings, 1525, 1526, 2152), and in the House by NDP spokesman Max Saltzman. Confirmation that this was a peripheral concern of the federal government was given in an interview with a former bureaucrat who was intimately involved in Telesat's creation and subsequent operation.

20 Canada, Parliament, House of Commons, Debates, 1969, 7509.

21 Microwave technology was incapable of passing over large bodies of water.

22 Territorial waters were extended to 12 miles from the coast, and the jurisdictional limit for pollution control in the arctic was set at 100 miles from any island claimed by Canada.

23 See Charles Dalfen, "The Telesat Canada Domestic Communications Satellite System", Canadian Communications Law Review, vol. 1 (December, 1969), pp. 184-185.

24 See footnote 7, supra.

25 See, Hearings on the Establishment, Ownership, Operation and Regulation of a Commercial Communications System Before the House Committee on Interstate and Foreign Commerce, 87th Congress, 1st Session, pt. I, at 102 (1961).

26 Senators Estes Kefauver and Wayne Morris were the main advocates of government ownership.

27 See page 353 in Herman Schwartz, "Governmentally Appointed Directors in a Private Corporation--The Communications Satellite Act of 1962", Harvard Law Review, vol. 79, no. 2 (December, 1965), pp. 350-364.

28 76 Stat. 419 (1962), 47 U.S.C., sections 701-44 (1964).

29 President Johnson established the pattern with his original appointment of P. G. Donner, President of General Motors, George Meany, President of the AFL-CIO, and Clark Kerr, President of the University of California.

30 For representative expressions of these respective explanations, see Herschel Hardin, A Nation Unaware (Vancouver: J. J. Douglas Ltd., 1974); Hugh Aitken, "Defensive Expansionism: The State and Economic Growth in Canada", in Aitken, op. cit., pp. 79-114; and Gary Teeple (ed.), Capitalism and the National Question in Canada (Toronto: University of Toronto, 1972).

31 Annmarie Hauck Walsh, The Public's Business: The Politics and Practices of Government Corporations (Cambridge, Mass.: MIT Press, 1978), p. 3.

32 See the list of U.S. federal government corporations compiled by Walsh. Ibid., pp. 34-36.

33 The United States Deputy Attorney General expressed the administration's sense of impotence when he testified: "Either (AT&T and the other carriers) will dominate the system through ownership, as the communications industries initially proposed to the FCC, or under a government-owned system they will dominate it through contract." In Michael Kinsley, op. cit., p. 9.

34 Senator Kerr was considered to be one of the most influential members of the Senate during this period. Kerr was a consistent advocate of big business interests, including those of the gas industry, and was outspoken in his opposition to state intervention.

35 Ownership is effectively divided between the federal government and the common carriers. Telesat has yet to issue a public share offering, and in order to meet the letter of the Telesat Act the corporation's president holds a single share on behalf of the investment public.

36 For an historical elaboration of how defensive expansionism has informed state economic intervention in Canada, see Hugh Aitken, "Defensive Expansionism: The State and Economic Growth in Canada", in Hugh G. J. Aitken, The State and Economic Growth (New York: Social Science Research Council, 1959), 79-114.

CHAPTER THREE

CANADA DEVELOPMENT CORPORATION

(The) CDC may very well be an early prototype of a model to which all but the most doctrinaire capitalist or socialist economies may turn.

William Dimma, "The Canada Development Corporation", Ph.D. dissertation, Harvard University, p. 10 (chapter one), mimeo.

As it stands, the only thing public about the CDC is its money.

Robert Couzin, "The Canada Development Corporation: A Comparative Appraisal", McGill Law Journal (1971), p. 436.

An appreciation of the decision to create the Canada Development Corporation must be situated within the context of an economic nationalism which gathered increasing political force in English Canada through the 1960s. Chronologically, the Report of the Royal Commission on Canada's Economic Prospects (the Gordon Commission, 1957) serves as a necessary starting point for an understanding of the developments which finally culminated in the passage of the Canada Development Corporation Act in 1971. In fact, the debate on the need for, and organization of, a CDC follows a path marked by several major assessments of the Canadian economy. After the Royal Commission Report of 1957, these include Finance Minister Walter Gordon's 1963 budget, the Report of the Task Force on Foreign Ownership and the Structure of Canadian Industry in 1968 (the Watkins Report), and the Report of the Task Force on Foreign Direct Investment in Canada in 1972 (the Gray Report). While this last task force published its Report after the passage of the CDC Act, the problems it addressed were inseparable from those which informed positions taken regarding the CDC. Moreover, the refusal of the government to wait for the findings and recommendations of the Gray Report was interpreted in some quarters as an indication that the government either did not accept the nationalist analysis of the

structural impact of high levels of foreign direct investment on the Canadian economy or, what amounts to the same thing in terms of consequences, was unwilling to act on this critical diagnosis..

The issue of high and increasing levels of foreign ownership of Canadian industry was at the centre of controversy over the Canadian economy during this period. However, there was no consensus on the consequences of foreign direct investment and such disagreement as to the cause(s) of structural underdevelopment in Canadian industry. While the subject of foreign control was not specifically mentioned in the terms of reference for the Gordon Commission, the issue was raised in a number of representations. The Commission's Final Report devoted relatively little space to the subject, and suggested that the political limitations resulting from a high level of foreign ownership were nebulous and that the economic benefits which had resulted from the inflow of foreign (mostly American) equity capital far outweighed any associated costs. Interestingly, while the Commission's analysis was not critical of foreign direct investment, the Report included a number of recommendations which were intended to expand Canadian control over domestic industry. Briefly, these included: i) the expansion of opportunities for Canadian participation in corporate decision-making, especially appointments to the board of directors of corporations; and ii) an increase in the issue of equity by foreign-controlled corporations for purchase by Canadian investors. Specifically, the Commission recommended that corporations meeting these conditions receive special tax advantages (e.g. a lower rate of withholding tax on dividends paid abroad). This recommendation was subsequently acted upon by the federal government.

The recommendations of the Gordon Commission regarding increased Canadian participation in foreign-controlled corporations were independent of any critical assessment of the economic consequences of high levels of foreign ownership in the Canadian economy. Indeed, they are best understood in the context of a decade of national introspection which also produced the Report of the Royal Commission on National Development in the Arts, Letters and Science (the Massey Report) in the field of cultural nationalism. However, criticisms of the economic performance of foreign-controlled industry increasingly were expressed, and the decade of the 1960s saw the development of a more articulate critique of foreign direct investment. This analysis found expression in the Watkins Report (1963), and in the writings of Canadian political economists, many of whom had attachments to the New Democratic Party.

At the same time an opposite view developed within the mainstream of Canadian economics. This analysis denied that any empirical basis existed for the criticisms levelled against foreign direct investment by the economic nationalists, and instead attributed structural shortcomings in the Canadian economy to such factors as the role of tariff barriers in fostering production inefficiencies.² A. E. Safarian's work on foreign ownership of Canadian industry was at the centre of this counter view.³

Out of the controversy over the economic and political costs and benefits of high levels of foreign direct investment emerged the proposal to establish a CDC as a source of Canadian equity. The debate between the economic nationalists and their opponents provides a necessary background for understanding the support for and opposition to the CDC concept. In each of its successive incarnations the CDC was

proposed as an investment vehicle through which increased Canadian control over the domestic economy could be furthered. However, disagreements regarding the precise role and organization of the proposed CDC, and even over whether foreign ownership posed a problem, can be traced to wide differences in the analysis of Canada's political economy. With the exception of periodic and visible instances of the extra-territorial application of United States trading restrictions to Canadian-based corporations, the consequences of foreign ownership were unclear. Nonetheless, questions about the impact upon Canada's balance of payments, and the export/import performance of foreign-controlled firms were raised with increasing frequency in the years immediately subsequent to the Gordon Commission.

These concerns were expressed in Finance Minister Gordon's budget of June, 1963, which proposed a 30 per cent takeover tax to be levied against foreign buyers of Canadian businesses. At the same time, Gordon's budget speech outlined the government's intention to establish the Canada Development Corporation as a pool of domestic equity. The economic problem of Canadian industrial performance was thus conceptualized within a national framework in an explicit way. Gordon's prescriptions involved building an independent capitalist Canada, and therefore stressed the control of foreign takeovers and an extension of the policy of domestic control in certain key sectors of the economy.⁴ Gordon's CDC proposal never reached the legislation stage. The demise of this first proposal was inevitable given the crushing opposition to the proposed takeover tax in particular, and the nationalistic tenor of the budget in general.

The idea of the CDC continued on the political agenda after this

early reversal. With some simplification one can distinguish between a financial markets version and an industrial strategy version in CDB proposals. The former was based upon a perception of shortcoming in Canadian capital markets, though there was disagreement as to whether the problem involved a relative reluctance on the part of Canadian private and institutional investors to purchase equity as opposed to debt issue, or whether the problem was one of inadequate opportunities for direct investment in Canadian corporations.⁵ The industrial strategy version of the CDB arose out of a fundamentally different conceptualization of the economic problem, an analysis which considered that the prevailing high levels of foreign ownership of Canadian industry represented a serious obstacle to economic development. According to this latter assessment, an expansion in domestic control over the Canadian economy was necessary not simply to provide Canadians with an increased share of the benefits flowing from economic activity in this country (the redistribution motive) but, more importantly, to correct for structural distortions in the economy caused by foreign ownership (the economic development motive).

The publication of A. E. Safarian's study, Foreign Ownership of Canadian Industry (1966), brought into clear relief the issues involved in the debate on the consequences of foreign ownership at the level of the firm. The critique of direct foreign investment which Safarian refuted involved the following specific arguments:

- 1) subsidiary companies in Canada, because they are foreign-owned, tend to import more and export less than domestically-owned corporations, thereby contributing to a built-in tendency toward trade deficits and a sub-optimal allocation of economic resources;

2) the branch plants of foreign parent corporations will import technology rather than performing research and development activities in Canada, resulting in under-development of Canada's applied technology sector and dependence upon external sources of product innovation and development;

3) the fact that the locus of corporate decision-making is effectively outside of Canada, combined with the fact that the Canadian subsidiary represents only a regional component in an international operation, means that production and expansion/reduction decisions for the subsidiary will be determined in view of the alternatives available to the parent corporation in other countries in which it operates; and

4) the dividends and profits which flow out of Canada to the parent corporations of Canadian subsidiaries represent a negative factor in terms of Canada's balance of payments, especially since subsidiaries tend to finance their expansion largely from retained earnings.

Briefly stated, Safarian found little empirical support for the view that, "decisions about Canadian-based facilities, made in the context of the international firm, may lead to something less than the maximum feasible development of Canadian resources, as well as to distortion of the direction of development away from certain areas such as secondary manufactures and research facilities".⁶ Safarian's analysis led him to conclude that economic performance is not related to ownership in any consistent way. From this it followed that proposals for a CDC were at best misconceived in that such an institution would only lead to an increase in Canadian participation without contributing to either an expansion or desirable redirection of industrial activity in Canada.⁷ The change which the idea of the CDC underwent between

the Gordon proposals of 1963 and 1965, and the CDC as introduced and enacted under Finance Minister Edgar Benson in 1971, demonstrates that the federal government (and particularly the Department of Finance) either accepted the analysis of Safarian, Harry Johnson, and the mainstream of Canada's economics community, or simply was unwilling to face the political and economic fall-out (including aggravated bilateral relations with the United States) which would have resulted from a CDC which challenged the expansion of foreign direct investment in the Canadian economy.

While the position on foreign ownership developed by Safarian and others had wide support among economists and continentalist sections of the Liberal Party and the business community, the economic nationalist view was sufficiently strong to compel the appointment of two federal task forces on the consequences of foreign ownership. It must be recalled that the period of the late 1960s witnessed a breakdown in the economic dimension of the so-called "special relationship" between the governments of Canada and the United States, due mainly to a number of measures taken by American administrations in reaction to balance of payments problems and the exigencies of financing an escalated war effort in Viet Nam. Consequently, the practice of extra-territoriality, involving an extension of the requirements of the American state to the Canadian subsidiaries of U.S.-based corporations (and therefore placing limitations upon the economic and political choices available to Canadian decision-makers), increasingly became a cause for concern and a rationale for expanding Canadian control over domestic economic activity.

It was in this context of sensitized nationalism that the federal

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government appointed the Task Force on Foreign Ownership and the Structure of Canadian Industry, headed by Melville Watkins. The Watkins Report (1968) focussed upon the monopoly power of the large U.S.-based multinational corporations operating in Canada.⁸ The Report argued that, "the essence of the extra-territorial issue is not the economic costs...but rather the potential loss of control over an important segment of Canadian economic life". And further, "Power accrues to nations capable to technological leadership, and technical change is an important source of economic growth".⁹ This conceptualization of the problem of foreign ownership implied specific remedies; including an expansion of the investment role of the Canadian state in order to challenge the dominance of foreign capital and repatriate economic and political decision-making. A broadly similar analysis was offered by the subsequent Gray Report (1972), which observed that, "Many industries in which foreign direct investment in Canada is high are also ones characterized by oligopolistic structures internationally".¹⁰

Stultified entrepreneurship and truncated industrial development were considered inseparable from distortions in Canada's capital markets, all of which were attributed, in part, to high levels of foreign direct investment. The economic nationalists pointed to the tendency of subsidiary corporations to finance expansion from retained earnings, meaning that surplus generated from production and sales in Canada was unavailable to finance the development of other sectors of the Canadian economy.¹¹ Moreover, the general reluctance of foreign-owned corporations to issue equity on Canadian financial markets was identified as a major factor contributing to a shortage in equity investment opportunities for Canadian investors. The conventional wisdom regarding the alleged

conservatism of the Canadian investment community and its preference for portfolio investments, a view expressed by Maurice Strong in his argument in support of the CDC,¹² was challenged in the Watkins Report and by economic nationalists generally. In arguing that the financing practices of foreign-owned corporations introduced structural distortions in Canadian capital markets, the economic nationalists pointed to the ultimate irony: the shortage of domestic direct investment opportunities compelled Canadian investors to turn to American exchanges for equity investments, thereby contributing to the expansion of the United States economy.¹³

Thus, in the decade from the publication of the Report of the Gordon Commission (1957) to the Watkins Report (1968) the conceptualization of the political/economic problem posed by foreign ownership evolved from a critique of legal extra-territoriality and the limited opportunities for Canadian participation in the business elite, to include structural underdevelopment in the economic sphere. In this evolving context of economic nationalism the idea of the CDC was a protean concept. Among the advocates of the corporation there existed a fundamental division between those who would restrict the CDC to a capital markets role, providing a vehicle for the expansion of Canadian ownership in the economy, and those who saw in the CDC a potential cornerstone in a national industrial strategy.¹⁴ This latter approach required that the investment role of the CDC be purposely linked to the government's policy on foreign takeovers of Canadian businesses, a linkage which in the end was repudiated by the government.

The division among advocates of the CDC had significant implications for the organizational form of the proposed corporation. If

the CDC was to play a pivotal industrial strategy role the ability of the federal government to direct the investment activities of the corporation would have to be unimpaired. From this point of view the mixed enterprise organizational structure was inappropriate, due to the attenuation of state control which the participation of private sector owners would involve. Max Saltzman, the principal NDP critic of Bill C-219 which established the CDC, expressed this view in arguing that the corporation should be an agent of the crown; a status which was expressly repudiated in the CDC Act as finally passed.¹⁵ Those who advocated a more limited financial role for the CDC saw the mixed enterprise organizational structure as both a guarantee that private sector considerations would guide the corporation's investment decisions and, relatedly, as a medium of direct investment by the state which would not challenge the sovereignty of the private sector in economic decision-making.

This second view informed the CDC Act, 1971. More specifically, this understanding posited a "capital gap", consisting of inadequate equity investment by individual and institutional Canadian investors. It was not fortuitous that responsibility for the CDC was assigned to the Department of Finance instead of Industry, Trade and Commerce. Indeed, as testimony before the House of Commons Standing Committee on Finance, Trade and Economic Affairs makes clear, the Capital Markets division of the Department of Finance was instrumental in the development of the CDC legislation.¹⁶

The difference between the CDC proposal put forward in Walter Gordon's ill-fated 1963 budget and the CDC Act passed in 1971 is instructive. In view of Gordon's proposal of a 30 per cent tax on the purchase

of Canadian companies by foreign buyers, a sufficiently capitalized CDC would have acted as an alternative buyer with a clear advantage over non-Canadian bidders. An unmistakable linkage was envisaged between the treatment of foreign investment and the Canadianization role of a CDC.¹⁷ No such relationship was considered in the case of the Benson-sponsored CDC. Rather, in proceeding with the CDC before the publication of the Gray Report on foreign direct investment the Liberal government dissociated the corporation from its policy toward foreign investment, as it came to be embodied in the Foreign Investment Review Act (1973). This separation had two consequences: 1) it deprived the government of the opportunity to provide a clear policy signal to guide CDC management; and 2) credence was lent to NDP criticism that the fledgling corporation amounted to a symbolic gesture intended to placate economic nationalists, while failing to address the structural problems which had been identified in the Watkins Report, and which formed the basis of the nationalist critique. Only six months after passage of the CDC Act the Canadian Forum made public an abbreviated version of the Gray Report, which re-affirmed the nationalist analysis of foreign direct investment. In this context of deliberate dissociation from the recommendations of the Task Force on Foreign Ownership of Canadian Industry, the timing and final form of the CDC read as an attempt by the Liberal Government to cultivate the support of nationalist elements of the electorate, while not alienating the business community through a major state intervention into Canadian capital markets.¹⁸

To appreciate the anomalous character of the CDC one must recognize that Canadian experience with the mixed enterprise organizational form had been extremely limited and, indeed, the creation of the CDC

marked the first time that the federal government had on its own initiative deliberately set out to establish a public/private enterprise which would begin life ex nihilo.¹⁹ To what extent the government drew upon the Western European experience with mixed enterprise and state holding companies is difficult to ascertain. In testimony before the Committee on Finance, Trade and Economic Affairs the sponsoring minister, Edgar Benson, acknowledged that such cases as Italy's Istituto per la Ricostruzione Industriale, Sweden's Statsforetag, and Britain's Industrial Reorganisation Corporation had been studied by the government, but he refused to release the findings of these inquiries and did nothing to dispel criticism that the CDC was uninformed by instructive experiences in other western jurisdictions.

Although the evidence is less than conclusive, it appears that the only parts of the federal bureaucracy with a significant hand in the development of the CDC were the Department of Finance, particularly the Capital Markets division, and the Justice Department.²⁰ This in itself was not unusual. More important in determining the form the CDC legislation would take were the individual participants during the pre-parliamentary stage. It is no secret that Maurice Strong, originally expected to head the CDC, was instrumental in drafting the first version of the bill establishing the corporation, in 1969. This was confirmed in separate interviews with a senior economic official in the federal government, and a CDC management official who has been with the corporation from its inception. However, this economic official insists that the legislation which ultimately was tabled in parliament was the responsibility of Simon Reisman, then Deputy Minister of Finance.²¹ The exclusion of both IT&C and DREE, and the fact that respon-

sibility for the corporation was lodged with Finance, was consistent with the government's insistence that the CDC was to be neither a guided instrument of industrial policy nor burdened with a regional development mandate.

Several features of the CDC legislation made clear that the proposed corporation was to operate unfettered by formal lines of control by, and accountability to, the federal government. These included:

- 1) Section 6, which states that the objects of the corporation "shall be carried out in anticipation of profit and in the best interests of the shareholders as a whole", thereby establishing an agent/principal relationship virtually identical to that of a private sector corporation;
- 2) Section 7(e), whereby the corporation is empowered to invest outside of Canada when, in management's judgement, such investment is expected to promote the objects of the company;
- 3) Section 13(1), whereby the selection of the corporation's president is the prerogative of the board of directors;
- 4) Section 30(1), especially clauses (a) and (b), whereby the corporation is effectively exempted from the requirement of parliamentary approval for changes in the objects and powers of the company;
- 5) Section 31, stating that the CDC is not an agent of the crown, and does not fall within the classes of organizations covered by the Financial Administration Act; and
- 6) Section 40(1), whereby the federal government is given the option of annually appointing up to four of the members of the board of directors, in lieu of voting its shares on resolutions electing members to the board (thereby accepting a lower level of board representation).

than the government's ownership share would entitle it).

The fact that the lines of control and accountability between the government and the proposed CDC were so weak gave rise to a revealing discussion during the debate on second reading of Bill C-219. Stanley Knowles raised the procedural question of whether the Bill was in fact public legislation, or whether it was more appropriately classified as a private bill, to be treated accordingly. In this argument Knowles was joined by Marcel Lambert (PC, Edmonton West). Between them they observed that not only was the government denying itself control through the board of directors, but also that the proposed corporation was neither an agent of the crown nor a body coming within the purview of either the Financial Administration Act or parliament.²² Finally, given the personal liability of the directors and the fact that, "(t)he objects of the company are and shall be carried out in participation of profit and in the best interests of the shareholders as a whole" (emphasis added), with no suggestion in the bill that the CDC is established for the general advantage of Canada, both Knowles and Lambert argued that the bill created a private company and ought therefore to be accorded the status of private legislation. This also was the assessment of the Canadian Bar Association;²³ a view which was expressed most perceptively by Robert Cousin in his article entitled, "The Canada Development Corporation: A Comparative Appraisal".²⁴ Indeed, Cousin argued that, measured against mixed enterprise in continental Europe, the CDC could not be considered as falling within this class of governing instrument but instead was an actionnariat de l'Etat (i.e. a portfolio investment of the government).

The question of the CDC's legal status cannot be considered sepa-

rately from the broader political question of the firm as an instrument of policy in Canada. While it would be insupportable to suggest that the CDC was intended to perform as a national champion after the French fashion,²⁵ the corporation was intended to advance a long-term policy aim of the government. Stated briefly, the CDC was to make a contribution to the repatriation of economic decision-making power by fostering the extension of Canadian control within an industrial structure which would remain essentially unchanged. This was to occur in the deliberate absence of government control over corporate decision-making. Instead, the end would be a consequence of particular features of the institution being created. Within the organizational parameters set forth in the CDC Act, and given the intervening condition of government non-interference in the management of the corporation, the anticipated outcome was a contribution to the expansion of domestic control over corporate decision-making in Canada.²⁶

Thus, the spirit of nationalist demands was given symbolic expression in the CDC, though the substance of state intervention was considerably diluted. This is illustrated by the fact that the mixed ownership structure of the CDC provided a means for the effective privatization of Polymer, the acquisition of which was anticipated by the CDC Act (see chapter eight). Moreover, an eventual reduction in the state's participation to 10 per cent of the CDC's equity also was contemplated by the Act. It is probably fair to say that the federal government did not have a clear idea of what its own relationship to CDC decision-making would be. In attempting to satisfy the economic nationalists while not alienating the business community, which was suspicious of the CDC idea, the government laid the basis for misunderstandings which

would surface at the end of the decade.

Footnotes

1 See Karl Levitt, Silent Surrender: The Multinational Corporation in Canada (Toronto: Macmillan, 1970); Robert Laxer (ed.), Canada Ltd.: The Political Economy of Dependency (Toronto: McClelland and Stewart, 1973); and Abraham Rotstein (ed.), Independence: The Canadian Challenge (Toronto: CIC, 1972), An Industrial Strategy for Canada (Toronto: Canadian Forum, 1972).

2 For statements of this view see H. C. Eastman and S. Stykolt, The Tariff and Competition in Canada (Toronto: Macmillan, 1967); and H. E. English, Industrial Structure in Canada's International Competitive Position (Montreal: Canadian Trade Committee, 1964).

3 A. E. Safarian, Foreign Ownership of Canadian Industry (2nd ed.) (Toronto: University of Toronto Press, 1973).

4 See Gordon's writings, particularly A Choice for Canada: Independence or Colonial Status (Toronto: McClelland and Stewart, 1966).

5 These issues are discussed, with reference to the CDC proposal, by Maurice Strong, "The Case for the Canada Development Corporation", The Canadian Banker (1965), pp. 21-28; and E. P. Neufeld, The Canada Development Corporation (Montreal: Canadian Trade Committee, 1966), pp. 29-33.

6 Safarian, op. cit., p. 20. While Safarian's conclusions have been disputed, mainly on the basis of his methodology, the point is that his analysis was a major touchstone in the debate on the effects of foreign ownership and continues to be supported by the mainstream of Canadian microeconomics, including the Economic Council of Canada.

7 A similar critique was advanced by E. P. Neufeld in "Some Qualifying Thoughts on the CDC", an appraisal written for the Canadian Trade Committee of the Private Planning Association of Canada (February, 1966).

8 Concern over the economic and political consequences arising from the business activities of the multinational corporation was not limited to Canada. See Raymond Vernon, Sovereignty at Bay: The Multinational Spread of U.S. Enterprises (New York: Basic Books, 1971).

9 Watkins Report, p. 339 and p. 35, respectively.

10 Canada, Task Force on Foreign Direct Investment in Canada (Ottawa, 1972), p. 403.

11 Both the Watkins Report and Karl Levitt's book, Silent Surrender, develop this argument.

12 M. Strong, op. cit.

13 See G. R. Conway, The Supply of, and the Demand for, Canadian Equities, a study commissioned from the Faculty of Administrative Studies, York University, by the Toronto Stock Exchange (Toronto, Sept., 1968), mimeo.

14 The CDC constituted an essential part of the industrial strategy recommendations advanced by Abraham Rotstein in his book entitled, An Industrial Strategy for Canada (1972).

15 Saltzman tabled a private members' bill which contemplated a wholly state-owned CDC, with a clearly-defined industrial policy role. See Bill C-204, 3rd Session, 28th Parliament, 19 Elizabeth II, 1970.

16 Canada, Parliament, House of Commons, Standing Committee on Finance, Trade and Economic Affairs, Minutes of Proceedings, 4 May and 25 May, 1971.

17 Commenting on the Gordon budget, one journalist suggested that the 30 per cent take-over tax was the guillotine, and the CDC was the basket to catch the severed heads. Cited in William Dinnia, "The Canada Development Corporation", Ph.D. thesis, Harvard University, 1975.

18 A federal general election was called shortly after a year from the passage of the CDC Act.

19 Though the creation of Telesat (1969) preceded the CDC by two years, the case is substantially different, as is clear from the previous section.

20 This observation is based upon the record of committee proceedings. Refer to the House of Commons Standing Committee on Finance, Trade and Economic Affairs, Minutes of Proceedings, for the 4th, 11th, and 25th of May, 1971.

21 Personal interview; 21 February, 1984.

22 See s.31 of the CDC Act (1971). By s.28 Parliament assumes a role in the event of the CDC being wound up, but this is the extent of the legislature's relationship to the Corporation.

23 Refer to the CBA submission to the House of Commons Standing Committee on Finance, Trade and Economic Affairs, 11 May, 1971.

24 Robert Couzin, "The Canada Development Corporation: A Comparative Appraisal", McGill Law Journal (1971), pp. 405-436.

25 The concept of the national champion, whereby a special status and supports are accorded to a particular firm in return for the firm's responsiveness to the government's public policy objectives, suggests a sympathy of understanding between the public and private sectors which has not been typical of Canada. See John Zysman's discussion of the business/state relationship in France, and especially the interpenetration of the two elites, in Political Strategies for Industrial Order (Berkeley: University of California Press, 1977), especially pages 59-63.

26 Michael Graham has demonstrated that even a massively capitalized CDC would have been incapable of a significant contribution, in total

dollar terms (and thereby ignoring the qualitative dimension), to the expansion of domestic control over corporate decision-making in Canada. See, the Royal Commission on Corporate Concentration (Ottawa: Queen's Printer, 1977).

CHAPTER FOUR

LA CAISSE DE DEPOT ET PLACEMENT DU QUEBEC

The Caisse de dépôt et placement is destined to become the most important and the most powerful financial instrument that we in Quebec have had until now. (author's translation)

Premier Jean Lesage, before the Quebec National Assembly, 9 June 1965.

Although it is not organized as a mixed enterprise (unlike Telesat and the CDC, the Caisse is by statute an agent of the crown with ownership vested ~~entirely~~ in the state), the private sector investments of the Caisse, have been the focus of critical comment. Critics of the Caisse, including the federal government, argue that the investment policy of this fund has become "politicized" under the Parti Quebecois government, and that the Caisse was neither intended to be a tool of nationalist economic policy nor is this in the interests of the millions of Quebec citizens whose mandatory income contributions provide the Caisse with the largest cash flow among Canadian financial institutions. Measured both quantitatively, in terms of the dollar value of the Caisse's equity holdings, and qualitatively, by the industrial sectors in which the Caisse has investments and the particular corporations in which it is the major shareholder, the significance of the Caisse's mixed enterprise activities is evident.¹ However, suggestions that this financial weight is being used to effect "backdoor nationalizations" as part of the P.Q. government's province-building strategy are more often based upon hysterical reaction than reflection upon the history of the Caisse and its relationship to successive Quebec governments.

In considering the origins of the Caisse the subsequent analysis is divided into two parts. The first examines relevant features of Quebec's political economy, which formed the background to the Lesage government's economic reforms, including the decision to establish

the Caisse. Albert Breton's economic theory of nationalism is used as a framework for understanding the developments of this period. However, the reductionism of Breton's interpretation is avoided. The second part focuses more closely on the reasoning behind and expectations surrounding the equity investment role of the Caisse. This is based upon a comprehensive review of the legislative record,² as well as inferences drawn from other public policy initiatives taken by the Lesage government.

1) The Caisse as Economic Nationalism

In an important article in the literature on modern nationalism Albert Breton advances a theory which explains nationalistic public policy as, pre-eminently, "a tool used by the new middle class to accede to wealth and power".³ Summarized, Breton's analysis involves two necessary conditions and a set of consequences which follow from the practice of economic nationalism. The necessary conditions are: 1) an imbalance in economic benefits between the members of national groups; and 2) a newly emergent middle class within the economically inferior national group, demanding that the authority of the state be used to change the distribution of economic rewards/opportunities between the national groups. In Breton's words, "These claims and demands are justified on the grounds that the identity and even the existence of the group making the claims are supposed to depend essentially on a positive response to these claims".⁴ The consequences of an investment in nationalism, according to Breton, are income-redistributive rather than growth-generative. Moreover, socio-economic strata within the assertive national community will benefit unequally from this redistribution. Gains achieved by the new middle class, in terms of expanded

opportunities for high income positions, are likely to be at the expense of lower income groups within the national group.⁵

Applied to the nationalizations and state expansion which took place under the Lesage administration, Breton's analysis has become part of the conventional understanding of the Quiet Revolution. The first condition, viz. an imbalance in economic benefits between the members of national groups, is easily demonstrated. Between the publication of Victor Barbeau's, Mesure de notre taille (1936), which sought to measure the economic influence of francophone Canadians through an examination of directorships held on the boards of Canadian corporations, and Jacques Melançon's reassessment twenty years later,⁶ the pattern of domination by English-Canadian and foreign capital, and the low level of participation by French-speaking Quebecers above the level of foreman in Quebec industry, had remained substantially unchanged. Observing that, "the French-Canadian business--with the exception of the savings sector--is essentially familial", Melançon documented the insignificance of the francophone-controlled public corporation in the period immediately prior to the Lesage government. In other words, French-Canadian participation in the most characteristic institution of the modern industrial economy, viz. the public company, was inconsequential.⁷ This led Melançon to conclude:

The nation as such is only slightly called upon to contribute to the capitalization of business. Even in the case of our most advanced businesses we have preserved, here in Quebec, the traditional character of the family business...

And furthermore,

The number of securities available for investment by the saving public is restricted in the majority of cases to amounts so limited that all the characteristics of a publicly-traded stock disappear. All in all, there is not a market for French-Canadian securities. ⁸

From this perspective, the problem was not one of inadequate French-Canadian savings for investment in Quebec industry, but rested in the paucity of opportunities for investment in francophone-controlled corporations.

This structural problem in capital markets was reinforced by the distribution of French-Canadian participation between industrial sectors. An examination of the inter-sectoral distribution of control between French-Canadians, English-Canadians, and foreign principals, in 1961 led André Raynauld to observe that, "francophone Canadian industries are the traditional industries which all existed in the 19th century".⁹ The following figures provide unequivocal proof of the domination of the most modern sectors of the Quebec economy, in 1961, by non-francophones.

**MANUFACTURING SECTORS IN WHICH 50 PER CENT OR MORE OF VALUE ADDED
IS ACCOUNTED FOR BY CORPORATIONS CONTROLLED BY A SINGLE NATIONAL GROUP***

<u>French-Canadian</u>		<u>English-Canadian</u>		<u>Foreign-Control</u>	
Wood	83.9**	Clothing	88.6	Petroleum	100.0
Leather	(49.4)	Textiles	68.3	Non-ferrous metals	84.7
		Printing and Publishing	65.7	Transportation equipment	79.2
		Beverages	64.9	Chemical products	77.1
		Electrical equipment	58.0	Precision instruments	71.9
		Furniture	53.6	Tobacco	67.9
		Non-metallic mineral products	51.2	Machinery	54.7
				Iron and steel	59.4
				Rubber	54.5

*The Quebec subsidiaries of foreign corporations fall under the Foreign-control category. In the case of Canadian-owned corporations, control has been operationalized as the linguistic group to which the majority of members of the board of directors belong.

**Wood products accounted for only 2.5 per cent of the value of all industrial production in 1961.

Adapted from: André Raynauld, "La propriété et la performance des entreprises dans le Québec", Études Internationales 2:1 (March, 1971), p. 96.

Raynauld goes on to demonstrate that the average size and, relatedly, productivity of a francophone-controlled corporation in Quebec was less than that of English-Canadian and foreign-controlled corporations, both within each industrial sector (with the exception of rubber products and leather commodities) and for the Quebec manufacturing sector in total. With 100 representing the size of the average manufacturing firm, Raynauld calculated the following indices for the three national groups.¹⁰

<u>French-Canadian</u>	<u>English-Canadian</u>	<u>Foreign-controlled</u>
16.7	70.0	118.7

Predictably, an index for productivity revealed a similar pattern.

<u>French-Canadian</u>	<u>English-Canadian</u>	<u>Foreign-controlled</u>
73	85	133

Francophone-controlled corporations in Quebec were, on average, both smaller and less efficient than other corporations, primarily because the former tended to be concentrated in the least modern sectors of the economy.

The diagnosis of the Quebec economy had not changed in the period separating Victor Barbeau's documentation of the exclusion of French-Canadians from the command posts of the Quebec economy, and the later analyses of Melançon and Raynauld. However, the explanation for the inferior economic status of the francophone population, and therefore the prescriptions for reform, changed from a stress upon cultural values (particularly the dominance of the Church in education, and socialization patterns inappropriate to a modern economy) to a structural explanation. According to this latter, francophone Quebecers were excluded from full participation in the economic life of the province due to

the domination of the most modern sectors of the economy by English-Canadian and, especially, foreign capital. In view of the fact that the expansion of subsidiary corporations is generally financed through retained earnings and/or debt instruments,¹¹ opportunities were not available for the equity investment of the savings of the French-Canadian population. The financing practices of francophone-controlled corporations in Quebec were not different. Speaking in the debate on second reading of Bill 51, the legislation establishing the Caisse, Eric Kierans, Minister of Revenue in the Lesage government, remarked that approximately 75 per cent of savings in Québec were accounted for by the business sector in the form of retained earnings and depreciation allowances. Typically, these savings would be re-invested in the industrial sector from which they accrued, thereby reinforcing the existing pattern of economic activity (including the relative exclusion of French-Canadian capital from the most modern sectors of the economy).

With respect to the 25 per cent of provincial savings accounted for by individuals, Kierans observed that this was concentrated in financial institutions which had little interest in equity investment. Kierans offered the example of Canadian insurance companies which typically invested approximately 5 per cent of their portfolio in equities. And of that equity, the majority would be comprised of non-Canadian stocks yielding a higher return than could be earned in Canada.¹² Of course a good part of the cautiousness in the investment policies of insurance companies, banks, and other fiduciary institutions could be accounted for by the restrictive conditions of federal and provincial legislation regulating the investment activities of these financial organizations. But this only reinforced the Lesage government's argument

that rigidities in capital markets stood in the way of change in the traditional pattern of ownership and investment in different sectors of the Quebec economy.

When the low representation of French-Canadian capital in the most dynamic sectors of the economy is conceptualized as a structural problem, the solution requires reform of those structures, in this particular case the pattern of investment in Quebec, which is considered to be responsible for the imbalance in the distribution of economic benefits between national groups within the province. In order to carry out this sort of reform the state must be able to challenge the hegemony of private capital. The Lesage government already had shown itself prepared to intervene in unprecedented ways in the economic life of the province. The nationalization of eleven electric power companies in 1962, the creation of the Société générale de financement du Québec (SGF, 1962), and the establishment of Sidérurgie québécoise (SIDBEC, 1964), were major illustrations of the government's resolve that the presence of francophones be increased in the upper management levels of the Quebec economy. The decision to create the Caisse fit within an economic policy which sought to alter the distribution of economic benefits in Quebec and, simultaneously, widen the sphere of economic self-determination.¹³

The emergence of a new middle class in Quebec by the early 1960s, identified by Breton as the primary carrier and beneficiary of economic nationalism, is generally acknowledged. Of particular importance to an understanding of the original expectations surrounding the Caisse and, later, an assessment of its subsequent performance is the fact that this new middle class developed within the para-statal educational,

health, and welfare organizations of the Church (organizations which would be absorbed by the Quebec state in the 1960s), the co-operative movement, and within the catalytic institution of Hydro-Quebec. In brief, this new middle class developed both within and on the fringes of the state, and would expand to fill the increased opportunities provided through the creation of state enterprises and the extension of the state bureaucracy. The idea of planned development under the direction of the state was congenial to this most educated and politically active stratum of Quebec's francophone population. The Caisse, involving the channelling of Quebec pension contributions (and other less important sources of savings) into investments determined within the province, was seen to represent a necessary part of this economic development strategy.

Certainly, Quebec's francophone new middle class stood to benefit from the increased economic opportunities afforded both directly by this expansion of the state's administrative apparatus and indirectly by the economic growth that was expected to be generated by the Caisse's investments. However, it would be an overstatement to argue that the Caisse, along with Hydro-Quebec, the SQP, and SIDBEC, was merely another case of "public works for the middle class".¹⁴ Behind the creation of these state enterprises was another, equally important factor: the desire on the part of government leaders and representatives of the nascent francophone bourgeoisie to modernize Quebec's industrial structure and thereby catch up, (rattrapper) with the mainstream of the North American economy. In order to accomplish this end it was considered necessary to "patriate" the major economic decision-making centres that were predominantly controlled by non-francophones. This analysis,

and the policy measures that followed from it, formed a bond between the state elite and the francophone bourgeoisie, the clearest evidence of which was found in the recommendations of the Conseil d'orientation économique du Québec (COEQ).

The COEQ was an advisory body whose function was to elaborate, in consultation with the government, "the plan for the economic organization of the Province, with a view to the most complete utilization of its material and human resources".¹⁵ The Conseil, originally created in 1943 by the Liberal government of Adélard Godbout but allowed to lapse during the Duplessis administration, had been revived in 1961. Its board of directors comprised representatives of Quebec's francophone bourgeoisie (its first president was a past president of the Quebec Chamber of Commerce, René Paré, and two other prominent members of the provincial and national Chambers of Commerce sat on the board), some senior public servants, and a number of academics and union representatives.¹⁶ According to the COEQ:

...it is necessary to make of the State a real lever for the Quebec economy. The Government should...favour technical innovations...which are absolutely necessary for the emancipation and the progressive liberation of our economy, dominated by outside techniques and capital. ¹⁷

The instruments of this autonomous economic development were to be such state institutions as Hydro-Québec, the SQF, and a proposed steel complex in Québec (what was to become SIDBEC). The capital invested by a provincial pension fund was considered to be another such tool. In a report dated June 21, 1963, and submitted to the province's Executive Council, the COEQ recommended the establishment of a universal, contributory pension plan which would allow for the "accumulation of a retirement fund (that) could serve as a reservoir of capital in con-

formity with the Government's economic expansion policy".¹⁸

In its report on the proposed Quebec Pension Plan and the Caisse de dépôt, the Dupont Committee, the provincial task force whose mandate was to study and make recommendations on the province's pension policy, followed the recommendations of the COREQ. Moreover, the Committee drew on the experience of some Western European nations--notably France, with its Caisse des dépôts et consignations, Belgium (Caisse générale d'épargne et de retraite), and Sweden (National Provident Fund for Retirement Pensions)--and proposed the creation of an investment fund that would serve the dual purpose of fiduciary and instrument of economic development.¹⁹ According to the Report:

...this plan, insofar as it taps a large portion of personal savings and creates per contra a fund of proportioned investments, transfers to the directors of a deposit and investment fund centers of economic decisions which are at present mostly located outside Quebec. 20

Premier Lesage, speaking in the legislature during debate on second reading of the legislation establishing the Caisse, supported the Dupont Committee's analysis of the fund's potential role in promoting economic development in Quebec:

...the Caisse should not only be seen as an investment fund like any other, but as an instrument of growth, a more powerful lever than any we have had in the province up to now. 21

There is no doubt that the Lesage government's analysis of the under-representation of French-Canadian capital and managers in the most dynamic sectors of the Quebec economy, and the policies need to alter the balance of economic benefits and decision-making power in the province, followed the lines laid down by the COREQ and the Dupont Committee. Explaining the economic policy of the government, the Minister of Natural Resources, Rene Levesque, observed that state expansion

was the key to the development of autonomous control over the economy:

...Quebec and its state are making use of the economic jurisdiction that they possess....(One) way, the first and foremost, is the employment of people and the mobilization as never before of the skills which they now have, and which above all in public administration, within the machinery of the state, generates an increase which is geometrical....It is truly a geometric progression which is accomplished through control of the resources which the state has available. 22

But in addition to the employment of the francophone managerial/technocratic class, and the regulation or ownership of "les secteurs-tremplins de l'activité économique", the role of savings was considered critical to this nationalistic development strategy:

Among pressing matters I would add the caisse de retraite du Québec; this powerful instrument for the channelling of savings and the control of investments....Among other means which together comprise...the constituent elements of a good economic policy, are the Société de financement (sic), provincial bonds, and the diversification in financial policies which Quebec is beginning to acquire after all these years. Let us add to this the massive fiscal readjustment that we urgently need through the caisse de retraite, and do this as fast as possible.... 23

Indeed, the Lesage government's decision to establish the Quebec Pension Plan, separate from the Canada Pension Plan participated in by all the other provinces, was taken in recognition of the importance of this capital pool for financing both provincially-centred economic development and the expansion of the Quebec state. More than province-building was involved in Quebec's insistence upon a separately administered pension fund, a fact demonstrated by the willingness of the comparatively affluent and politically powerful provincial governments of Ontario and British Columbia to participate in the national plan. The terms of the 1964 federal/provincial pension agreement assigned 100 per cent of the fund to the provinces and, moreover, the CPP and QPP had identical provisions and were fully coordinated.²⁴ In view

of all this, the Lesage government's decision to establish both the Régie des rentes, to administer the QPP, and the Caisse de dépôt et placement, to invest the savings collected under the plan, must be understood as an investment in nationalism. There were obvious financial costs involved in the creation of a new and separate bureaucracy to administer the QPP and invest the pension fund. However, the decision carried a number of clear political advantages, including the assertion of provincial dominance in this area of social policy, de facto recognition of Quebec's special status within Canadian federalism, and autonomous control over the development of the pension plan, and the terms regulating the disposition of the fund. These advantages accrued primarily to the government of the province, in its competition with Ottawa over the levers of social and economic policy, and to the new middle class which would benefit both directly, from the managerial positions created by the Régie des rentes and the Caisse, and indirectly through the state expansion which the investments of the Caisse would allow.

The contribution which the Caisse would make to the social and economic development of the province was not expected to stop at underwriting state expansion. Examination of the Caisse's origins and subsequent assessments of the agency's role reveals a broad area in which the Caisse is free, within the limits imposed by management's fiduciary responsibility, to invest directly in private sector firms with an eye to provincial economic development. While the Caisse is not precluded from direct investment in corporations without significant Quebec operations (nor even from investing in non-Canadian equity, although there is a 10 per cent ceiling on the proportion of the Caisse's total assets which may be invested in foreign securities), there always

has been a clear expectation that priority would be accorded "Quebec" corporations.

2) The Equity Investment Dimension of the Caisse

Although the Caisse is not organized as a mixed enterprise, direct equity investment in public companies, in common with private sector investors, has come to comprise approximately 20 per cent of total assets (\$3.5 billion, 1982), making the Caisse's equity portfolio the largest in Canada. And there is room for expansion in that the enabling legislation of the Caisse provides that up to 30 per cent of the fund may be invested in equities. That the Caisse was assigned the legal capacity to acquire an important ownership stake in publicly traded companies is clear. However, the reasons behind the investment conditions imposed on the Caisse by its charter and, particularly, the expectations surrounding the equity investment role of the Caisse are matters requiring closer examination.

First of all, it is significant that the Caisse was preceded by another institutional innovation of the Lesage government, la Société générale de financement du Québec (SGF). The SGF was organized as a mixed ownership provincial development corporation, with its capital distributed between the government, the caisses populaires, and the private sector. Its purposes were to provide equity capital for small-scale French-Canadian firms within the province and, secondarily, to serve as a source of management expertise upon which other companies could draw. The apparent similarity between the Caisse and the SGF as equity investors was belied by major differences in policy role (Caisse: fiduciary investor/SGF: source of risk capital), organizational structure (Caisse: wholly state-owned/SGF: mixed ownership).²⁵

and capitalization (Caisse: massive pool of capital, primarily from contributions received under the QPP/SGP: limited capitalization under the terms of its charter). The Caisse was not intended to be a giant version of the SGP, performing in the monopoly capital sector of the Quebec economy the role that the SGP played in the more competitive sectors of the provincial economy.

An examination of the statutory provisions regulating the investment policy of the Caisse provides some indication of the expectations which the Lesage government had for this crown agency. The charter sets out three main classes of investment, namely: i) government bonds and the government-backed issues of public authorities; ii) fully-secured instruments in the private sector; and iii) equity holdings. With the exception of limiting conditions regarding the purchase of school board and municipal bonds in Quebec (s.26), investment in government bonds and the issues of public authorities is without restriction on either value or debtor. While the Lesage Government acknowledged that financing the Quebec state was to be an important function of the Caisse, investment in the bonds of other governments and public authorities, whether in Canada or abroad, was anticipated. With respect to the bonds of private corporations, the charter of the Caisse stipulates a 1 per cent limitation on the total investment of the fund in any single corporation, as well as requiring a proof of security (for example, if the bonds are secured by privileged claim on property, or by a proven financial track record). However, there is no limitation on either the absolute value or proportion of the Caisse's assets which may be held as corporate bonds. The most restrictive conditions obtain in the case of equity investments. These conditions include the require-

ment that a corporation whose shares are purchased by the Caisse must have yielded at least a 4 per cent annual return on common shares in each of the preceding five years, and that the Caisse may not hold more than 30 per cent of the equity of any single corporation, nor may more than 30 per cent of its total assets be invested in equity.²⁶

Prima facie, the conditions regulating equity investment appeared broad enough to permit the Caisse to operate as an instrument for the ownership and control of private sector corporations. The rate of return provision was not, when the Caisse was created, a restrictive condition, save for the fact that it limited the Caisse to established corporations listed on a stock exchange. In the case of the ownership ceilings, the 30 per cent limit placed upon the proportion of assets which could be held as common shares was far in excess of the proportion held by private sector financial institutions. The major insurance companies typically had only 4 to 6 per cent of total assets invested in equity, and the banks and trust companies had similar investment profiles (and operated under statutory restrictions on their investment behavior). While the Lesage government did not expect that the Caisse would immediately acquire a large ownership stake in private sector corporations (and, in fact, the proportion of Caisse assets held as equity has grown quite gradually from 1965 to the current figure of 20 per cent), the capacity to operate as a major pool of equity capital, surpassing in importance any single conventional financial institution, was provided for by the agency's charter.

Pierre Fournier has remarked that the 30 per cent ceiling on both the proportion of total assets held as equity, and ownership in any single corporation, demonstrate that the fund was intended to provide

capital support for private corporations, with no expectations that the Caisse would exercise any control over the corporate policies of its holdings.²⁷ However, this interpretation is not at all obvious from the terms of the Caisse's enabling legislation. A 30 per cent ownership share in a corporation is, in most circumstances, easily sufficient to ensure effective control through domination of the board of directors. If one looks at the largest publicly-traded corporations (with assets over \$100 million) operating in Canada in 1960, one finds that approximately 16 of the 41 firms in this category were judged by John Porter to be controlled by a minority shareholder with 30 per cent or less of the corporation's stock.²⁸ The phenomenon of minority control by a single shareholder (or small coalition of shareholders), where ownership is divided among a large number of investors, was not a secret known only by the financial community. One can safely assume that the architects of the Caisse were aware of the leverage which minority control could carry. In view of this, if support for private capital accumulation was, as Fournier argues, the sole basis for the equity investment capacity assigned the Caisse, the "height" of the investment ceilings still must be explained. Financial support of private companies through the less risky avenue of corporate bonds was, after all, available to the Caisse (to say nothing of preferred shares and non-voting equity). The latitude permitted the Caisse in equity investment is particularly remarkable when compared to the 5 per cent limit on the shares of any single corporation which may be held by the Alberta Heritage Savings Trust Fund. Whereas a ceiling of 5 per cent speaks for itself (the Fund is effectively restricted to the role of passive investor), a limit of 30 per cent is more ambiguous.

Part of the explanation to this apparent paradox of a fiduciary institution with a major equity investment capacity was provided by Premier Lesage in his remarks on second reading of Bill 51.

- After all, the interests of Quebecers do not stop with the security of the savings which have been placed aside for their retirement. Such considerable funds must be channelled toward the accelerated development of the public and private sectors, so that Quebec's economic and social objectives may be attained rapidly and with the greatest possible efficiency. 29

These economic development expectations were discussed in the previous section on the Caisse as economic nationalism. As Lesage's statement makes clear, the Caisse was not intended to be a state-owned trust company, with an investment policy identical to private sector financial institutions. Both the terms of its charter and the expressed views of the government demonstrated that the fiduciary role of the Caisse was to be complemented by economic policy functions.

In a very real sense, recent controversy over whether the Caisse has developed along very different lines from those laid down by its founders can be ascribed to the fact that a number of not easily reconciled expectations were held for the Caisse at the time of its creation. The economic policy role of the Caisse was first described in the Report of the Interdepartmental Study Committee on the Quebec Pension Plan (Quebec, 1964: the Dupont Commission), and was the subject of consensus among the government and the opposition parties. Within this general role the Lesage government identified a number of specific functions which the Caisse might perform. These included, inter alia, the following:

- 1) Pre-empting the foreign takeover of a corporation, where it is considered vital to the public interest that control remain within

the province, Premier Lesage observed:

Let us suppose that in some particular case it is essential that control of a business not be allowed to pass to foreign interests. In such a situation the Caisse de dépôt would not assume by itself all the risks of the transaction, but would organize a group in which it would be, of necessity, the pivot. To the extent that its moral authority on the market will have been established, I do not see why such a group could not be formed. In any case, this is a formula which often has been tried with a good deal of success in other countries. 30

The Premier's reference to the anticipated moral authority of the Caisse in the provincial financial community was based upon a couple of factors. Most importantly, the government estimated that the fund administered by the Caisse would increase steadily, reaching \$2.6 billion by 1976 and \$4 billion by 1985 (for a number of reasons these projections have turned out to be far lower than the actual growth of the Caisse, even after discounting for inflation). As a major investor in the Quebec market, and an agent of the crown, the investment signals provided by the Caisse would be expected to carry the weight of public policy in circumstances such as the foreign takeover scenario outlined by Lesage. Relatedly, the example of similar financial institutions in western Europe, particularly the Caisse de dépôts et consignations in France, was cited by both the Lesage government and the Dupont Commission as demonstration of how an administratively-independent arm of the state could function as a lever of public policy.

ii) Moreover, the Caisse was expected to play, "in the future, a role not without analogy to that which the Bank of Canada has played in regard to Government of Canada securities"³¹ thereby stabilizing the market for the securities of the Quebec government and its agencies. In the performance of this role (a function which, clearly, is antici-

pated by the terms of its charter) the Caisse was expected to do nothing which might compromise its fiduciary responsibility as the guardian of the savings of millions of Quebec citizens. The difficulty in reconciling these expectations would become evident in the late 1970s when the Caisse, in accordance with the publicly-expressed desire of the PQ government, lent money to Hydro-Quebec and the Quebec government at rates of interest below those established by the market. Control, to the extent possible, over the market for the long-term obligations of the Quebec state was considered a sine qua non of autonomous economic development.³²

iii) With respect to private sector investments the Caisse was expected to be selectively supportive of initiatives coming from either the government, the SGF, or the private sector. In distinguishing this anticipated policy role of the Caisse from that of the SGF, the Lesage government insisted that the Caisse was not to be an entrepreneur, organizing and directing structural changes in the province's industrial economy. However, the door was explicitly left open for the Caisse to associate itself with entrepreneurial projects developed by other branches of the Quebec state ("[The Caisse] will play an absolutely essential role in supporting financially the rapid economic expansion of Quebec, in co-operation with the large organizations which have been established over the last few years".³³). The practical implications of co-operation between the Caisse and other organizations of the state, particularly the SGF, did not become evident until the late 1970s. With the takeover of Domtar in 1981 by the Caisse and the SGF, increasing the Quebec state's ownership from 23 to 42 per cent, the question of whether this sort of orchestrated investment was anticipated

when the Caisse was established has resurfaced.

iv) Another dimension of the Caisse's private sector investment role involves the relationship of the Caisse to the corporations in which it holds equity. While the charter is silent on this point, Premier Lesage was unequivocal in stating that the Caisse was not to become a holding company. In his speech on second reading of the legislation establishing the Caisse, Lesage referred to the French experience with holding companies, understood as, "a company which seeks to have control over other companies".³⁴ The Caisse was not envisaged as a vehicle whereby the Quebec state could acquire control over the corporate policies pursued by the crown agency's holdings. Lesage observed that the 30 per cent ceiling on ownership in any single corporation, "is fully sufficient to allow the Caisse de dépôt to exercise the influence that it must normally have on the economic development of our milieu", but that corporate control was neither within the spirit nor allowed by the letter of the Caisse's charter. Intentions aside, it is clear that an ownership share of considerably less than 30 per cent can be sufficient, under circumstances of dispersed share ownership, for effective control by a single minority shareholder. If the Lesage government had wanted to ensure that the Caisse would not, at some future date under another government, attempt to exercise control over the business policy of one or more of its holdings, this could have been accomplished through a statutory provision prohibiting the membership of Caisse officials (or individuals associated with the Caisse in some close business sense) on the boards of directors of corporations in which the Caisse holds equity. By codifying this passive investor role the Lesage government would have eliminated the ambiguity which surrounds

the provisions relating to the equity investments of the Caisse. At the same time, a subsequent government with more interventionist designs for the Caisse would have required revisions to the Caisse's charter, thereby focussing public and legislative debate on the appropriate role of the Caisse and the significance of the reorientation which statutory revision would permit.

The fundamental tension which emerges from a review of the expectations held for the Caisse is between the fiduciary responsibility of the Caisse as the investor of state-mandated savings, and its role in supporting economic development in the province. While there is no necessary contradiction between these two sets of expectations, particular decisions taken by the Caisse during the last several years (for example: lending money to Hydro-Quebec and the Quebec government at below-market rates; acquiring, in concert with the SGP, controlling interest in Dornier; and deciding to seek representation on the boards of directors of corporations in which the Caisse holds a large ownership share) have raised questions about the proper balance between these roles, and about the relationship of the Caisse's management to the government of the day. Because it is silent on such matters as the inter-sectoral distribution of equity investments, what constitutes acceptable participation in the affairs of a holding (simply voting shares?, seeking representation on the board of directors?...), and what the relationship may or ought to be between the Caisse and Quebec's state enterprise sector, the Caisse's charter provides little guidance in assessing the extent to which the recent operating history of the Caisse accords with the expectations of its founders.

As the foregoing pages have sought to demonstrate, the legislative

record is informative in revealing that the Caisse was not expected to be a passive investment agency, operating as would a private pension fund. Indeed, it is difficult to overstate the expectations which were held for the Caisse as an instrument of economic nationalism. As the major francophone-controlled fund of investment capital in the province, the Caisse would be situated at the confluence of the sectoral economic policies of the government of Quebec. The agency's contribution to provincial economic development would be effected through the performance of three more specific roles: 1) the Caisse would invest some portion of its capital in the bonds and shares of Quebec corporations; 2) the agency would not act as an entrepreneur in initiating and organizing economic projects, but would be prepared to participate in financing projects initiated by some other part of the state apparatus (the SGF was mentioned by Lesage), or by the private sector; and 3) through its size and interventions in the province's capital markets, the Caisse would acquire a position of moral authority, allowing for suasion instead of coercion, in the private sector of the Quebec economy. Whatever co-ordination occurred between the government's economic policy objectives and the Caisse's investment behavior would be achieved through the presence on the Caisse's board of directors of three associate (non-voting) members appointed by the government: the Deputy Minister of Finance, an officer of Hydro-Quebec, and a member of the Municipal Commission or an official from the Ministry of Municipal Affairs. This fell far short of co-ordination under an indicative economic planning regime, of the sort advocated by the COEQ and the Dupont Commission, and would eventually occasion criticism from the left that the Caisse was too autonomous to operate as an effective instrument of economic

policy.

3) The Continuity of Original Expectations: Later Assessments of the Caisse

After the Caisse's creation in 1965, the relationship of that agency to provincial economic development was the subject of critical analysis in three important documents. The first was the 1972 manifesto of the Parti Quebecois, La prochaine étape...Quand nous serons vraiment chez nous. The Report of the Interdepartmental Task Force on Foreign Investment (the Tetley Report), which included analysis and recommendations respecting Quebec's financial sector, appeared two years later. Finally, Pierre Fournier examined the operations of the Caisse, with particular emphasis upon the agency's contribution to Quebec's industrial development, in a study of state enterprise commissioned by the Office de Planification et de développement du Québec.³⁶ All three documents recommended a more activist investment role for the Caisse, with both the PQ manifesto and Fournier's analysis situating reform of the Caisse's economic development mandate within an ambitious project of state-orchestrated indicative planning, while the Tetley Report extended the capital markets critique advanced ten years earlier in the Report of the Dupont Commission. However, the more active role recommended for the Caisse did not involve a new formulation of the agency's purpose. In relation to provincial economic development the three general expectations listed above have not changed in any fundamental sense with the passage of time and governments.

La prochaine étape formed the basis of subsequent party programmes of the PQ, and therefore is significant both for the fact that it assesses the Caisse within an indépendantiste framework, and because with the

PQ in power one might have expected eventual legislative reform affecting the Caisse, in view of the activist role recommended in the Party's 1972 manifesto. Considering the Caisse's brief history and projections of future growth in the agency's assets, the authors of this document observed:

Founded in 1965, the Caisse already disposes of assets which this year will surpass two billion dollars. Given current conditions, the Caisse's assets will reach 38 billion in twenty years. But for our purposes this is too little, too late. Instead, we must aim to achieve this figure within ten years. 37

The Caisse was considered an essential, indeed the pivotal, tool in the nationalist project advocated by the PQ.

More precisely, the PQ manifesto identified the Caisse as "un actionnaire privilégié" which, in conformity with its foremost role among public sector financial institutions, should be a shareholder in any corporation above a certain threshold of importance to the Quebec economy, and certainly in any corporation dominated by foreign (i.e. non-Quebec) interests.³⁸ In deciding which sectors of the provincial economy, and which public companies meet these investment criteria, the Caisse would be guided by the indicative signals issued by the Economic Plan. For the planning exercise to succeed the allocation of public and private capital would have to reflect the choices and directions set forward in the Plan. At this point the investment behavior of financial institutions becomes crucial:

We have proposed a greatly increased participation by the State and the cooperatives (particularly the Mouvement Desjardins) in the control of financial institutions. In view of the significance of investment decisions for industrial development, one now understands why the behavior of these institutions must be tied closely to the objectives in the Plan. 39

The authors of La prochaine étape identified the Caisse, along with other parts of the state, the Mouvement Desjardins, and private sector francophone institutions, as potential purchasers of the 75 per cent ownership share which, by the PQ's proposal, non-Quebec interests in the province's financial sector would be required to sell to Quebec buyers. In fact, the Caisse was expected to be the main vehicle whereby the Quebec state would acquire effective control over "one or two of the chartered banks". This undertaking would be rendered less costly than outright nationalization by the fact that the Caisse already had a large shareholding in each of the major banks and, secondly, control could be established with a minority equity position.⁴⁰ Clearly, the ambitious scope of the PQ's designs for the Caisse would require an enlarged asset base, and indeed the 1972 manifesto recommended that the agency be assigned the management of savings accumulated under the pension programmes of all state agencies and, after the practice of France's Caisse des dépôts et consignation, that the Caisse be authorized to invest the pension funds of any private sector organization which might voluntarily join as a depositor.

— On the Caisse's relationship to the private sector corporations in which it then held, or would in future acquire, equity, the PQ displayed a curious ambiguity. At one point the Party's manifesto observes: "There is no question, however, of asking the Caisse to manage firms.... The Caisse is a pool of capital, not a holding company".⁴¹ This is a distinction upon which Premier Lesage had insisted in the 1965 legislative debate on the Caisse, and which informed the agency's direct investment policy under Claude Prieur, the Caisse's first president. However, in a later discussion of the Caisse's role in the "patriation"

of economic decision-making within Quebec, the PQ manifesto states:

The Caisse will be called upon to carry out more and better financial analysis of corporations. It has already done much in this regard. No other public sector institution would be as well prepared for this observation and surveillance role. 42

This clearly implies a holding company function, as opposed to that of passive investor. And in view of the reforms advocated by the PQ, transforming the Caisse into a tool of economic nationalism whose investment policy would be informed by the state's indicative economic planning, participation of the Caisse on corporate boards of directors (representing the goals of the Plan) followed logically.

Contrary to what one might have expected, the comparatively moderate recommendations of the 1974 Interdepartmental Task Force on Foreign Investment, appointed under Liberal Premier Robert Bourassa, more closely approximate the changes which have occurred in the Caisse's direct investment policy since the PQ came to power. In addressing the issue of foreign investment and its consequences for the Quebec economy, this committee of senior public servants expanded upon the earlier analysis of the Dupont Report in arguing that the behavior of the financial sector was of particular importance for economic development in the province. Therefore, the structure of that sector and the relationship of investment decisions to such economic objectives of successive Quebec governments as increased economies of scale through merger, expansion of the market for the securities of Quebec-based corporations, and channelling savings generated in Quebec toward the most dynamic sectors of a modern industrial economy, were central concerns of the Task Force.

Like the PQ manifesto before it, the Tetley Report recommended

a more instrumental role for the Caisse in relation to provincial economic development. However, the Report's analysis presupposed neither Quebec independence nor a global system of economic planning, as practised in France or Sweden (two planning regimes cited favourably in La prochaine étape), in arguing for a more activist Caisse de dépôt. The investment problem as viewed by the Interdepartmental Task Force was two-fold: 1) how to regulate investment activity so as to require savings generated in the private sector of the Quebec economy to be directed toward specific purposes; and 2) how to counter the secular decline in Montreal as a financial centre. The Task Force followed the reasoning of the Report of the Study Committee on Financial Institutions (1969)⁴³ in rejecting restrictions on non-Quebec control of financial institutions, of the sort proposed by the PQ in 1972, because of the mobility of capital both within Canada and internationally. The Tetley Report recommended that the government be empowered to require particular financial institutions which generated a large share of their revenue in Quebec (e.g. insurance companies) to invest some specified portion of their earnings in the province. But as a general rule, the Report did not consider restrictive legislation to be the solution to the poor correspondence between investment patterns and the development needs of the Quebec economy. Rather, the Task Force was of the opinion that, "the availability of savings for Québec's economy is in the final analysis dependent upon the quality of the organization of the indigenous financial market".⁴⁴

At this point the role of the Caisse became vital. The Task Force observed that the savings accumulated under the Quebec Pension Plan and invested by the Caisse represented a major contribution to the

stabilization of the market for provincial bonds. While acknowledging that the Caisse also had contributed to private sector development through large-scale debt and equity financing, and through its facilitating, and in some instances initiating, role in certain cases of industrial reorganization (particularly the transformation of private firms into public companies), the Tetley Report argued that the Caisse's potential as an instrument of economic policy was yet untapped. The 30 per cent ceiling on the ownership share which the Caisse was permitted to hold in any single corporation was, according to the Report, a limitation which should be removed. Moreover, the Report remarked that the Caisse had rarely used its influence to have Quebeckers appointed to the boards of directors of corporations in which the agency was a major shareholder, and that board representation should become a practice. The instrumental role recommended for the Caisse is evident in the following:

It seems obvious that from the viewpoint of integrating foreign enterprises and introducing Quebeckers into circles where the specialized knowledge of the business world is readily available, the action of the (Caisse) must be modified. In addition, the management staff, analysts and investment officers of the (Caisse) already possess the type of competence required to enable them to make an efficient contribution to the administration of the companies in which the (Caisse) holds interests. 45

In advocating a more interventionist role for the Caisse, the authors of the Tetley Report recognized that the organizational structure of the agency would need to be reformed. Operation as a holding company in relation to the Caisse's direct investments could not be well accommodated within the agency's unspecialized administrative structure. The creation of specialized investment subsidiaries (after the fashion of a massive private sector investor like Trilon Financial Corporation)

was the central organizational reform suggested by the Task Force. In addition, the Report argued that the savings accumulated under all public and para-public pension plans should be deposited with the Caisse. The resultant increase in the pool of capital invested by the Caisse would ensure continued capital formation from invested pension savings, and thereby prevent reduction of the main QPP into a "pay as you go" plan as the number of recipients under the Plan increased.

Overall, the Tetley Report considered that the Caisse's potential as an instrument of provincial economic development was limited by: 1) features of its charter and organizational structure which, in the committee's view, would require statutory reform; and 2) an unsystematic relationship between the government's economic policy and the investment behavior of the Caisse. On this second limiting condition the authors of the Tetley Report did not offer concrete prescriptions that would have had the effect of reducing the autonomy of the Caisse. However, in advancing a tacit critique of the Caisse's passivity in relation to the reorganization and expansion of economic activity in Quebec, the public servants who authored the Report demonstrated that transformation of the Caisse into a more responsive tool of economic nationalism was a project with which important members of the state elite were sympathetic.

In considering the Caisse as an instrument of industrial development, both the PQ manifesto and the Tetley Report focussed upon the agency in its role as an equity investor. This dimension of the Caisse, though never accounting for more than 20 per cent of the agency's investment portfolio in any year before 1983, was likewise the main concern of Pierre Fournier's critical assessment of the Caisse in a study of

Quebec's state enterprise sector done for the Office de planification et développement du Québec (OPDQ). Fournier concluded that the success of the Caisse measured in terms of the return received on its aggregate investments (a record superior to that of the CPP and most private pension funds), and in stabilizing the market for provincial bonds, thereby reducing the provincial government's dependence on anglophone financial capital, must be set against the agency's failure to consistently shape its investment behavior with reference to the economic policy goals of the government.

Writing in the second half of the 1970s, Fournier argued that the Caisse had made an erratic contribution to the achievement of such economic development goals as financing the growth of Quebec-based corporations, participating in industrial reorganization, francizing the management of corporations operating in Quebec and, generally, "patriating" economic decision-making. He criticized the Caisse's typical lack of concern with acquiring an influence over corporate decision-making commensurate with the size of its ownership share, and the agency's failure to approach the 30 per cent statutory limit on total assets invested in equity. Not only had the Caisse failed to expand fully into the direct investment possibilities permitted under its charter, it had in fact contributed to a problem for which it originally had been proposed as a partial solution, i.e., the outflow of savings generated in Quebec to finance economic development elsewhere. This resulted from the Caisse's practice of holding large ownership shares in corporations whose income-generating operations were located in some other province(s), or indeed some other country. Fournier concluded that the Quebec government had allowed the Caisse too much

autonomy for the agency to perform effectively as a tool of economic policy.

But in fact the Lesage administration had endeavoured deliberately to prevent the politicization of the Caisse by distancing the agency's decision-making from the government of the day, and protecting the Caisse's president from removal before the expiration of his ten-year term in office. Whatever co-ordination occurred between the government's economic preferences and the Caisse's investment behavior presumably would have to be achieved through the presence on the Caisse's board of directors of three non-voting members appointed by the government, or, more likely, through informal exchanges between the president of the Caisse and the Minister of Finance. In Fournier's view this unsystematic relationship was not enough. He recommended that the Caisse's charter be amended in order to spell out more clearly its economic development role, and to provide it with the powers to attain the objectives which this would entail. Removal of the 30 per cent ceiling on both the portion of the Caisse's total assets invested in equity, and the ownership share permitted in any single corporation, and a requirement that the Caisse invest at least some specified minimum proportion of its total investment in corporate stocks and bonds in Quebec-based companies were in the genre of amendments which Fournier advocated. Moreover, the government would have to involve itself more directly in the management of the Caisse if this state agency was to fulfill its promise as an instrument of economic policy.

In assessing the performance and possibilities for the Caisse in relation to the province's economic development, neither the PQ Manifesto, the Tetley Report, nor Fournier's study for the OPDQ con-

sidered that the agency should displace private capital in the Quebec economy. Instead, their unanimous concern was that the public savings invested through the Caisse be harnessed in support of Quebec-centred economic development. This is a project which challenges "foreign" control of the province's economic structures, but which does not challenge the principle of capitalist accumulation. Indeed, Fournier would later write approvingly that the Caisse has as its main objective to carve out an accumulation base for the emergent Quebec bourgeoisie.⁴⁶

Footnotes

- 1 See the analysis in chapter eight.
- 2 Unfortunately, committee proceedings from the National Assembly are not available. An official published record of debates in the Assembly was not kept until 1964, and an official record of committee proceedings was begun in the late 1960s.
- 3 Albert Breton, op. cit., p. 381.
- 4 Ibid., p. 376.
- 5 Breton uses the nationalization of eleven power companies in 1963, and the early investment policy of the SGF, in support of his argument that the benefits of economic nationalism accrue only to the middle class.
- 6 Jacques Melançon, "Retard de croissance de l'entreprise canadienne-française", L'Actualité Economique (Janvier-mars, 1956), pp. 503-522.
- 7 See ibid., pp. 507-509.
- 8 Ibid., p. 509 (author's translation).
- 9 André Raynauld, "La propriété et la performance des entreprises dans le Québec", Etudes Internationales 2:1 (March, 1971), p. 96.
- 10 Ibid., p. 97.
- 11 Safarian's work on the performance of foreign-owned firms in Canada examined the financing practices of subsidiary corporations during this period. See Safarian, op. cit., chapter eight, pp. 218-256.
- 12 Débats de l'assemblée législative, 10 juin, 1965, p. 3404.
- 13 See René Lévesque (ministre des ressources naturelles), "La politique économique de l'Etat du Québec", Action Nationale, vol. 54 (1964-65), pp. 44-75.
- 14 Breton, op. cit., p. 385.
- 15 Quebec, Bureau de la statistique du Québec, Annuaire du Québec 1963, p. 518.
- 16 See Roland Parenteau, "L'expérience de la planification au Québec (1960-1969)", L'Actualité économique 45:4 (janvier-mars 1970), p. 680; and Dorval Burnelle, La désillusion tranquille (Montreal: Hurtubise HMH, 1978), ch. 2.
- 17 Annuaire du Québec 1963, p. 519.
- 18 Cited in Quebec, Report of the Inter-Departmental Study Committee on the Quebec Pension Plan, vol. 1 (Quebec, April 1964), p. 29. Here-

after cited as the Dupont Report, after its chairman, Wheeler Dupont, an official in the provincial Ministry of Labour. Claude Castonguay served as consulting actuary to the committee.

19 Ibid., vol. 2, pp. 250-254.

20 Ibid., vol. 2, p. 204.

21 Quebec, Débats de l'assemblée législative, 9 juin, 1965, p. 3311 (author's translation).

22 Lévesque, op. cit., p. 61.

23 Ibid., p. 68. By "la caisse de retraite" Levesque is alluding to what ultimately would be designated the Caisse de dépôt et placement.

24 See Richard Simeon, Federal-Provincial Diplomacy: The Making of Recent Policy in Canada (Toronto: University of Toronto Press, 1972), pp. 56-72.

25 Owing to a record of unprofitable investments and the fact that its practical function was to bail out financially-distressed corporations, the SGP experienced difficulties in selling its shares to private sector investors. In September of 1972, SGP became a wholly state-owned enterprise.

26 Quebec, Laws, Statutes, etc., Caisse de depot et placement Act, R.S.Q. 1977, chapter C-2, sections 31, 32.

27 Pierre Fournier, The Quebec Establishment (Montreal: Black Rose Books, 1976), p. 185.

28 These figures exclude firms which could not be classified because of insufficient data. See Table 15 ("Ownership and Control of Corporations with Assets over \$100 Million, 1960") in John Porter, The Vertical Mosaic (Toronto: University of Toronto Press, 1965), pp. 592-594.

29 Débats de l'assemblée législative, 9 juin, 1965, p. 3311 (author's translation).

30 Ibid., p. 3328 (author's translation).

31 Ibid., p. 3316 (author's translation).

32 Ibid., p. 3315.

33 Ibid., p. 3325 (author's translation).

34 Ibid., p. 3327 (author's translation).

35 From legislative debates concerning the Caisse it appears that the non-voting status of the three associate directors was intended to reinforce the independence of Caisse decision-making from the government of the day, while still allowing for direct links with those parts

of the Quebec state for which the Caisse's investment activity would be most important.

36 The full citations are: Parti Quebecois, La prochaine étape...quand nous serons vraiment chez nous (Montreal: Les Editions du Parti quebecois, 1972); Government of Quebec, A Quebec policy on foreign investment, Report of the Interdepartmental Task Force on Foreign Investment, 1974 (Known as the Tetley Report); and Pierre Fournier, Les sociétés d'Etat et les objectifs économiques du Québec: une évaluation préliminaire (Quebec: Editeur Officiel, 1979).

37 La prochaine étape, p. 77 (author's translation).

38 Ibid., p. 95.

39 Ibid., pp. 104-105 (author's translation).

40 "Such a transformation of the banking system would not require massive amounts of money. Nationalization, pure and simple, of the entire banking system would cost less than what it cost to nationalize the electric companies in 1962. As the Caisse de dépôt is already an important shareholder in all of the chartered banks, and as the Caisse populaires already have an appreciable holding in one among them...it becomes clear that the cost for the Quebec state of the transformation suggested would be less than a medium-sized dam for Hydro-Quebec." (Author's translation.) La prochaine étape, p. 82.

41 Ibid., p. 78 (author's translation).

42 Ibid., pp. 95-96 (author's translation).

43 Réport of the Study Committee on Financial Institutions (Quebec: Editeur Officiel, 1969); known as the Parizeau Report.

44 Tetley Report, p. 152.

45 Ibid., p. 153.

46 See Fournier's recently published contribution entitled, "The New Parameters of the Quebec Bourgeoisie", in Alain G. Gagnon (ed.), Quebec: State and Society (Toronto: Methuen, 1984).

SUMMARY OF PART II

GOVERNMENT'S EXPECTATION OF INFLUENCE ON THE FIRM

This survey of three specific cases of equity participation by the state was prefaced with the observation that the mixed ownership corporation appears to provide a middle ground between nationalization and control at a distance (whether by regulation, tax measures, business law, or some other less direct form of state intervention). The following proposition was advanced:

The mixed enterprise organizational form is expected to allow for direct influence by the state on corporate behavior, while not challenging the principle of private capital accumulation.

After examination of the separate origins of Telesat, the CDC, and the Caisse, the validity of this proposition can be assessed. While the general validity of the proposition is confirmed, the distinctive circumstances of each case require that certain qualifications be made.

As an explanation of the state's decision to select the relatively untried policy instrument of joint ownership with the private sector within a single corporate organization, the proposition receives almost flawless confirmation in the case of Telesat. Direct equity participation in the new domestic satellite communications corporation, accompanied by state membership on the board of directors and various approval requirements which, by the terms of the Telesat Act, assigned the federal government a pre-eminent role in the board's decision-making, were to provide the state with both a window on developments and levers of control in a sector characterized by unpredictable technological change. At the same time, the ownership stake of the common carriers provided the industry with a direct channel of participation in the development of the satellite system. In short, the mixed enterprise

organizational structure satisfied the demands of both the federal government and the common carriers for control over the domestic application of this new telecommunications technology.

Notwithstanding that there were advocates of the crown corporation option, including the Science Council of Canada, the New Democratic Party and, at one point, the Canadian Broadcasting Corporation, while the common carriers initially took the position that they ought to be assigned exclusive ownership of the new satellite corporation, it would be a distortion to conceive of the mixed enterprise choice as a political compromise between these positions. Unlike the earlier case of COMSAT in the United States, the Canadian telecommunications carriers (represented by the TCTS) did not possess the political leverage to effectively dictate terms to the government. While the Bell Canada-dominated TCTS paralleled the telecommunications dominance of AT&T in the U.S., the structure of political decision-making in Canada (characterized by a dominant executive and a compliant legislature) did not enable the Canadian carriers to control a necessary stage in the policy-making process, in the way that the interests of the AT&T-led telecommunications oligopoly were represented by the Senate Aeronautical and Space Committee, chaired by industry advocate Robert S. Kerr. The Canadian carriers were compelled to seek access to the policy-making system at the cabinet level, and their success in acquiring a share of control over the new satellite corporation, as well as a share in the returns which might ultimately flow from this technology, must be ascribed to three factors.

The first involved the fact that the only organizational precedent, viz. COMSAT, was itself a mixed enterprise, although the American govern-

ment's participation was limited to presidentially-appointed directors without any ownership share. The MacIntosh Report to the Canadian cabinet relied heavily upon the American precedent as a model to be followed with some significant adaptations. The second and third factors are less amenable to documentation, but are deductively convincing.

The terrestrial telecommunications companies, represented by the TCTS, argued that their massive capital investment, together with the fact that a satellite system would require interconnection with this terrestrial infrastructure, argued for direct industry participation in any new domestic satellite corporation. When it became clear that the federal government would not be content with regulatory control over the domestic satellite system, the industry embraced the mixed enterprise option as a less than optimal response to its demand for control.

One must recall that the federal government's technical experience and policy-making capability in telecommunications carriage was quite limited. The Department of Communications had not even been constituted when the idea of a domestic satellite system reached the political agenda (DOC was created in 1969, the same year as the Telesat Act was passed). The carriers' arguments that their research and operational expertise would be necessary for the success of the domestic satellite system and, moreover, that a satellite system would have to be integrated into the existing system of terrestrial telecommunications (owned and operated by the common carriers), were doubtless persuasive in convincing the federal cabinet that direct participation by the carriers was necessary. Relatedly, in a cabinet which included such supporters of the business community as Mitchell Sharp, C. M. Drury, Alistair Gillespie, John Turner, Edgar Benson and Paul Hellyer, one can safely

assume that the industry's demands for control received a sympathetic hearing. The government's reluctance to countenance complete ownership of the satellite system by the common carriers must be attributed to the lessons learned from the organizational structure of COMSAT, and the fear that the development of satellite communications would not proceed with dispatch if placed under the control of the carriers.

In adopting a mixed enterprise organizational form for the Canada Development Corporation, the federal government was responding to a very different configuration of actors and demands than that which brought forth Telesat. As a holding company intended to increase Canadian ownership in industrial sectors of the economy, the CDC galvanized a more powerful set of opponents. Indeed, uncertainty about what purpose(s) the CDC was to pursue led to suspicion and trepidation in the business community. Moreover, the CDC involved direct state participation in a part of the economy which, except under unusual circumstances, such as the exigencies of wartime, was considered the exclusive preserve of private sector decision-makers. The legitimate bounds of the state's role extended to defining the ground rules regulating activity in the industrial economy (i.e., combines legislation, business law, product standards), and measures in support of private capital accumulation (tariff and non-tariff barriers to foreign competition, industrial assistance through the subsidization of infrastructural requirements). But as demonstrated by perennial demands from the business community for the privatization of Polymer, direct state ownership of commercially viable corporations was considered an illegitimate intrusion upon private sector hegemony in the produce-for-profit sector of the Canadian economy.

The mixed enterprise organizational structure of the CDC repre-

sented an unequal compromise between two conceptions of the problem of high levels of direct foreign investment in Canada's industrial economy. At the centre of the industrial policy view was the argument that foreign ownership led to the underdevelopment of Canada's economy. This was caused by the production, financing and investment policies of foreign-owned subsidiaries, policies which were shaped to serve the interests of the foreign parent corporation and its shareholders. According to this analysis, a CDC was a necessary part of an industrial policy to repatriate economic decision-making. The advocates of the industrial policy CDC argued for a wholly state-owned investment vehicle with a mandate linked to a government policy restricting foreign take-overs of Canadian corporations.

In opposition to this approach were the more conservative analyses of Canada's mainstream economists and the nationalist wing of the Liberal Party. These groups considered high levels of foreign ownership of Canadian industry to be a problem only to the extent that a disproportionate share of the benefits from economic activity in Canada accrued to non-nationals. According to this capital markets analysis, a CDC would contribute to an expansion in domestic ownership of the Canadian economy by serving as a large pool of equity capital for investment in Canadian industry.

While the capital markets analysis ultimately informed the CDC legislation, this diagnosis of the problem did not necessarily call for state investment as a policy response. Certainly, taxation instruments would have been preferred by the Department of Finance, in which the tools of fiscal policy comprised the conventional wisdom on state intervention in the economy. Furthermore, there was general

opposition to the CDC concept in the business community, and strong reservations within parts of the governing Liberal Party.¹

In view of this combination of bureaucratic disinclination and private sector opposition, the government's decision to establish a mixed enterprise investment corporation must be attributed to the political commitment which had developed under successive Liberal governments. The idea of the CDC had been a prominent issue on the public agenda from the time of Walter Gordon's nationalistic budget in 1963. While it was never considered a panacea, economic nationalists viewed the CDC as a necessary part of a broader policy of repatriating economic decision-making. The CDC created under Edgar Benson, although unconnected to the government's policy on the foreign takeover of Canadian corporations and lacking an unequivocal industrial development mandate, nonetheless would be a wholly Canadian-owned holding company with a mandate to, "help develop and maintain strong Canadian controlled and managed corporations in the private sector of the economy and (to) give Canadians greater opportunities to invest and participate in the economic development of Canada".² Thus, symbolic expression was given to nationalist demands, while at the same time the anticipated participation of private investors appeared to confirm that the CDC would not be a government-controlled instrument of social policy.

The Caisse de dépôt et placement bears a surface similarity to the CDC to the extent that an important expressed rationale for each was to increase "indigenous" ownership of industry in Quebec and Canada, respectively. Of course the Caisse was not organized as a mixed enterprise, but as an administratively independent investment agency of the Quebec state. However, it was assigned a direct investment capacity which, whether measured as a proportion of the Caisse's total assets or in absolute dollar terms, was expected to make the Caisse the largest

equity investor in the province, and one of the largest in the country (with growth of the Caisse's assets far in excess of original projections, the Caisse is today the single largest equity investor in Canada). With representatives on the board of directors of some of Canada's largest private sector corporations, including Domtar, Noranda, and Provigo, the Caisse has become a vehicle for direct state participation in both the provincial and national economy.

But as the case of the CDC demonstrates, the accoutrements of control, i.e., a large ownership share and representation on the board of directors, should not be confused with its effective exercise. The legislation establishing the Caisse is silent in regard to what constitutes legitimate participation in the affairs of corporations in which the Caisse is a major shareholder. Certainly there are no express prohibitions against Caisse representation on the board of directors of public companies, and the ceiling on the ownership share which may be held in any single corporation is, arguably, higher than would have been set if the Caisse was expected to be a passive investor in all circumstances.

As the investor of savings under the Quebec Pension Plan, and other deposits assigned to it by its charter and the provincial government, the Caisse has a clear fiduciary responsibility. However, evidence of the Caisse's economic development role is, while more circumstantial, no less certain. Statements of the Lesage government show plainly that the Caisse was expected to be the pivotal institution in the province's economic development. Cooperation with other parts of Quebec's state enterprise sector, including the entrepreneurial SGP, was anticipated. The fact that the Caisse was the trustee of the state-mandated savings of millions of Quebec citizens was not understood to preclude an active investor role for the Caisse. Within the conditions set

down by its charter, the Caisse's management was accorded wide latitude in determining such matters as the sectoral and regional distribution of equity investments, and participation (through board representation) in corporate decision-making. Under these circumstances the orientation of the Caisse's board of directors and, notwithstanding statutory guarantees of the chairman's independence, the expectations of the government would be key determinants of the agency's equity investment policy.

Direct participation by the Caisse in corporate decision-making is not, therefore, proscribed by the agency's charter nor outside (though admittedly not central to) the expectations held for the Caisse by its founders. Prima facie, this participation would appear to compromise the principles of private capital accumulation, and private sector decision-making hegemony, in the affected economic sector. This presumes that the state's expectations for a public company in which it is part owner will not be identical to those of either management and/or private sector investors, for if they were identical it is implausible that the state would seek to be represented on the board of directors of such a corporation. However, the challenge which the Caisse poses to private capital accumulation and private sector decision-making prerogatives is qualified by the nationalist purposes which the agency represents. The proposition might be restated as follows:

Direct participation by the Caisse in corporate decision-making (through representation on the board of directors of a public company) involves, at minimum, an implicit challenge to private capital accumulation and private sector decision-making hegemony. However, this challenge is directed at non-francophone capital rather than at private capital accumulation and decision-making per se.

In other words, certain of the mixed enterprise investments of the Caisse may represent an intrusion upon the decision-making prero-

gatives of the non-francophone private sector, while at the same time contributing to the strength of the francophone business class. This proposition will be examined more closely in the subsequent sections on decision-making and instrument effectiveness. While generally valid, one must explain the fact that not all segments of Quebec's francophone business community are supportive of the Caisse's direct investment activities.

The proposition offered in explaining government's choice of the mixed enterprise organizational structure is confirmed by analysis of the origins of these three cases of joint public private ownership. In each case government anticipated that the partnership of public and private capital would provide a means of infusing public policy goals into a fundamentally unaltered capitalist system of economic relations. The next chapter examines the structural limitations on state control. Following this, chapter six analyzes the actual relationship between the state and its private sector partners, as it has unfolded in the decision-making experience of Telesat, the CEC, and certain mixed ownership investments of the Caisse. Whereas the first proposition was grounded upon government's original expectations in selecting the mixed enterprise as an instrument of public policy, the one tested in the decision-making section of this study is informed by the practical limits upon shared business-state control of a single organization. It will be shown that government's original expectations of influence have run up against the recalcitrance of management and participating private sector interests, and that the marriage of public and private capital within the mixed ownership firm has been an unequal and uneasy partnership.

Footnotes

1 According to one principal who was involved with the CDC at its inception, the government's idea that the corporation should be based in Vancouver was a concession to western Liberals who had opposed the CDC concept. Personal interview, 20 January, 1984.

2 CDC Act, s. 2.

PART III

DECISION-MAKING UNDER CONDITIONS OF MIXED OWNERSHIP

CHAPTER FIVE
STRUCTURES AND ACTORS

In a recent survey article of public enterprise, Harvey Feigenbaum asks: "(W)hy should firms organized exactly as those in the private sector, responding independently to the incentives of highly imperfect markets, act any differently than those privately owned?"¹ Feigenbaum cites several Western European cases in support of his argument that state ownership is no guarantee that a corporation will respond to different signals and pursue different goals than its privately-owned counterparts. At the level of corporate decision-making, managerial autonomy and profitability insulated the state-owned corporations from government influence. Feigenbaum questions whether the corporate form of organization for the state's commercial activities, commonly assumed to combine features of business efficiency with policy objectives, does not in fact possess biases toward organizational autonomy and market- (rather than government-) responsiveness which render it problematic as an instrument of public policy.

This question is of central importance in the study of mixed enterprise, as demonstrated in the slender literature on decision-making and organizational structure of the mixed ownership firm. To anticipate the analysis carried out in chapters six and seven, the fact that the state's influence on corporate decision-making typically is not commensurate with the weight of its ownership stake calls for an explanation of the factors behind the apparent subordination of public to private capital. In order to arrive at such an explanation it is first necessary to examine more closely the organizational parameters within which the decision process unfolds in the mixed ownership corporation. This analysis of how corporate behavior is shaped by organiza-

tional factors is preliminary to an examination of the ways in which political and economic interests have been mediated within these parameters. By describing the organizational parameters of the decision process in the mixed ownership corporation, this chapter will lay the basis for the examination and understanding of conflictual decision situations in chapter six.²

Structures

1) THE CORPORATE CHARTER³

From the standpoint of decision-making in the mixed ownership corporation, the provisions of the charter under which the firm operates can be significant in defining both the state's prerogatives as shareholder, and the corporation's relationship to public policy. To cite an example from abroad, the corporate charter of the Société Nationale Elf-Aquitaine, a petroleum corporation owned jointly by the French government (67 per cent) and private shareholders, assigns to the state as shareholder a right of final approval over major capital spending decisions.⁴ A Canadian counterpart to this power of veto over particular classes of decisions is found in s.8 of the Telesat Act, which requires that capital expenditure proposals for satellites and earth stations be submitted to the Minister of Communications for review before contracts are entered into. The main significance of such a provision lies less in its ultimate exercise (coercive significance) than in the policy signals it provides for management (persuasive significance).

To continue with the case of Telesat, that corporation's charter contains a second provision which, prima facie, assigns the government a control prerogative not enjoyed by Telesat's other shareholders. This is s.14(1) of the Act, which provides that cabinet must annually

approve the board of directors' selection of Telesat president. In fact, the corporation has had only two presidents during its 15-year history, and there is no evidence that this annual ratification requirement has influenced the behavior of Telesat management. Indeed, the only consequence of this provision seems to have been that certain legal problems have arisen with respect to the signing of contracts during the period between the expiration of the president's term and his confirmation for a subsequent year. One Telesat principal suggests that the ratification provision could operate as a lever of government influence in the event that the president had limited career options; a dependent position which has characterized neither of Telesat's presidents.

The CDC, though also incorporated under a special act of parliament, contains no provisions discriminating between the control prerogatives assigned the state as compared to private sector shareholders. However, s.40(1) gives the government the option of annually appointing up to four members of the CDC's board of directors in lieu of voting its equity in the corporation. This option was exercised by the government until the control crisis of 1981, and represents a remarkable case of legislative provision for the government, as shareholder, to voluntarily assume a decision-making influence which is much less than its ownership share would warrant.

Although neither the CDC nor Telesat is an agent of the crown, a status which is explicitly repudiated in their respective charters and a distinction from crown corporations upon which the management of each corporation has always insisted, the corporate objects of each refer to public policy goals. In the case of the CDC, the objects

are so general as to impose no significant limitation on the corporation's investment latitude. Moreover, there is no indication in the Act of the relative emphasis which should be placed upon different sectors of economic activity, although the government publicly expressed certain expectations in establishing the CDC.⁵ From conversations with management actors it is clear that the only part of the corporate objects section which has had any relevance in decision-making is the directive that the CDC's operations, "shall be carried out in anticipation of profit and in the best interests of the shareholders as a whole".⁶ This provision is invoked as a shield in defending the corporation from charges that it has been insensitive to the industrial policy expectations of its principal shareholders.

A rather similar use of the corporate objects section is found in the case of Telesat. Questioned as to the goals of the satellite corporation, a number of Telesat actors referred to s.5(1) of the corporation's charter which states that Telesat is to operate a domestic telecommunications system, "on a commercial basis", and that the backward linkages policy goal which also is stipulated in Telesat's corporate objects shall be, "to the extent practicable and consistent with its commercial nature". This is interpreted by management as a mandate for profitable operation, and therefore provides it with a lever in negotiations with the government over Canadian content in satellite procurement decisions. One Telesat actor acknowledged that the public policy objectives set forth in the 1968 White Paper on satellite communications were compromised with the stress placed upon commercial operation in the Act as ultimately passed.⁷ This view was echoed by another management actor who stated that, "(t)he ancillary social goals of

Telesat are quite secondary. In fact, the social and nation-building goals are misconstrued".⁸

The fact of incorporation under special legislation, with the federal government controlling 50 per cent of the corporation's equity and reference in the charter (albeit ambiguous) to public policy goals, may have been a disadvantage in Telesat's relationship to the CRTC. Management actors argue that the regulatory commission has misconceived Telesat as a public service corporation, a misconception which has resulted in rate decisions which have compromised the commercial viability of the satellite company. In other words, the special charter and mixed ownership structure of the corporation are cues which signal to the CRTC, the body responsible for setting the rates charged to Telesat's clients, that the corporation is not pre-eminently a profit-oriented enterprise in competition with other telecommunications carriers. Management actors suggest that privatization of the government's ownership share would remove the ambiguity in Telesat's status and compel the CRTC to apply the same rate-of-return standards used in the case of Bell Canada, B.C. Telephone, and CN/CP Telecommunications (all of which are regulated by the CRTC). At issue is what constitutes a "fair" or "reasonable" rate of return on shareholder equity, and it is here that Telesat actors suggest that the corporation's anomalous status has contributed to rate board decisions which are based upon a misunderstanding of Telesat's relationship to the government. Indeed, cabinet varied CRTC decisions in 1977 and again in 1981, each time demonstrating support for management's view of the necessary conditions for commercial viability, in opposition to the CRTC's view that the public interest was not served.

While both Telesat and the CDC are incorporated under special legislation, the private sector corporations in which the Caisse holds equity are incorporated under general business law. In this latter case there is certainly no question of the state, as shareholder, possessing special ownership prerogatives. In fact the experience of the Caisse, in seeking representation on the board of directors of such corporations as CP, Dominion Textile and Alcan, has been that the spirit of the Canada Business Corporations Act with respect to board representation of major shareholders in a publicly-traded company is contravened when the Caisse is refused representation which would be accorded a private sector owner with an equal-sized equity share. The formal equality of shareholders under the CBCA has not prevented what is, de facto, discriminatory treatment of the Caisse as shareholder, owing to private sector uneasiness over the relationship between that investment agency and the economic policy of the Quebec government.

2) THE JOINT-STOCK COMPANY

A joint-stock company may take two forms. The first involves relatively few owners, and shares in the business are not traded on the stock exchange. In law this is referred to as a partnership. The second form of the joint-stock company, and arguably the institution most representative of capitalism in the 20th century, is the publicly-traded business corporation. The CDC and the private sector equity investments of the Caisse fall into this second category, while Telesat, notwithstanding the original intention to sell shares to the general investment public, remains a partnership between the federal

government and thirteen telecommunications corporations (with Bell Canada holding a 25 per cent ownership share).

With the two exceptions of silent partner status (under which a party contributes equity to a closely-held company without receiving the right to control prerogatives) and that of non-voting equity issued by a publicly-traded company, equity carries both voting rights and an expectation, enforceable in law, that management will exercise reasonable judgement in protecting the investment of the corporation's shareholders. In general there are no legal limitations on the state's capacity to purchase equity in a private sector corporation, aside from the legislative provisions which regulate the investment activities of particular state agencies like the Alberta Heritage Savings Trust Fund and the Caisse. Nonetheless, while the state as investor has in law the same rights as a private sector shareholder, the fiduciary responsibility of management to the shareholders as a whole, and, in the case of a publicly-traded company, the ready transferability of ownership shares on the stock exchange are factors which complicate the state's equity involvement in a joint-stock company.

The 1981 confrontation between the federal government and the CDC over control of that corporation provided a dramatic lesson in the limitations of the public company as a policy instrument. In the words of one actor: "After the experience of May, 1981, the Government learned something about public companies. The Government came to realize the problem of fitting into a public company, and this led to the decision to establish the CDIC as a vehicle for managing, and eventually divesting, the Government's holding the CDC".⁹ In the view of CDC management, the federal government could not have opposed the board

of directors and elected Maurice Strong as chairman of the corporation. Politically the government might have decided to risk whatever fallout would have ensued from such a move. However, the government's demand that Strong be installed as chairman was untenable from a legal point of view. Not only had the incumbent chairman been duly appointed under a two year contract, but the assertion of the government's voting power (48 per cent of CDC equity) under these circumstances would have raised the legal question of whether the rights of the shareholders as a whole, as described in s.6 of the Act, were compromised by such an action. The period from the CDC's refusal to invest in Massey-Ferguson to the failed effort to install Maurice Strong as chairman and increase the government's voting representation of the board of directors, represents a steep learning curve whereby the federal government came to realize that a decade of non-interference in CDC affairs had simply reinforced the implicit limits on state control which inhere in the public company.

Investment in the shares of a publicly-traded corporation is regulated by a complex set of rules, administered by the securities commission of the province in which a transaction occurs. The 1981 takeover of Domtar by the Caisse and the SGP, raised the question of whether the state as investor is subject to the same rules as a private sector investor. After reviewing the trading activity which culminated in the effective takeover of Domtar, the Ontario Securities Commission observed that the Caisse had committed two transgressions. The first involved a violation of the Caisse's own charter, which proscribes it from holding more than 30 per cent of the equity of any single corporation¹⁰ (a violation which, presumably, ought to have been of greatest

concern to the Quebec government). More relevant to the question of whether the crown is bound by the same investment rules as private sector investors was the OSC's judgement that the Caisse had made a takeover bid which, under the terms of the Act governing share trading in Ontario, required a public offer to all shareholders. These circumstances brought to a head the issue of public disclosure of investment transactions, and led the OSC to suspend the Caisse from trading on the Toronto Stock Exchange. The Caisse's position was, and remains, that as an agent of the crown it is not bound by the disclosure requirements attendant upon share trading. Until all crown corporations are required by law to observe these regulations the Caisse is not prepared to be more forthcoming in filing trading reports.¹¹

At issue is whether the investment activity of the state, through public sector agencies like the Caisse, should be subject to the same controls as regulate private sector investors. The purpose of these controls is to protect the rights of shareholders in publicly-traded corporations, rights which could be prejudicially affected in the absence of full disclosure. In failing to comply with the rules which govern investors generally, a state agency may indeed be acting in the interests of its principal. This was certainly the case in the Domtar takeover, where a public offer to all shareholders (which the OSC maintains was required under the Ontario Securities Commission Act) would have increased the cost of acquiring control. However, while circumvention of trading regulations behind the shield of crown status may be understandable for either financial or political reasons, or both, failure to abide by the groundrules which regulate private sector investors points up the anomalous status of the state as an

investor in private sector corporations.

As demonstrated by the sharp decline in the value of CDC shares during the control confrontation of May, 1981, and by a similar fall in the value of Domtar shares after the announcement of the joint Caisse SGP takeover of that corporation, state investment in a public-traded company is complicated by the perceptions of other shareholders as registered in the market for the corporation's shares. Thus, CDC decision-making in regard to equity financing has been influenced significantly by the fact that the government has been the corporation's principal shareholder. Management's recognition of the relationship between the marketability of CDC shares and investment community perceptions regarding the likelihood of government intervention in the affairs of the corporation has resulted in regular avowals of corporate autonomy, and periodic assurances from the government (usually timed to coincide with a public share offering) that it will abstain from exercising its legitimate rights as the corporation's largest shareholder.

CDC actors suggest that ambivalence in the investment community's reaction to CDC equity issues was dispelled by the time of the corporation's second public share issue in 1980. In the words of one actor: "The irony is that it was just after the successful marketing of the second share issue that the government made its abortive attempt to pitchfork in Maurice Strong (as chairman), without really thinking of the rights of the thousands of private sector shareholders who had purchased shares partly on the strength of a share prospectus which assured non-intervention by the government".¹² Consequently, when the corporation drew up a preliminary share prospectus in March of 1983, the issue of the CDC's relationship to the government had to

be addressed once again. The prospectus included the complete exchange of letters between Senator Jack Austin, the Minister responsible for the government's interest in the CDC, and Anthony Hampson, president of the corporation. At the centre of this correspondence was the decision to create the Canada Development Investment Corporation, as an instrument for the divestiture of the government's interest, "as soon as the markets are favourable and a reasonable investment return is available".¹³ intended to provide an unequivocal signal confirming the CDC's corporate autonomy.

The equity market does not represent a decision-making constraint in the case of closely-held joint-stock companies, except when there is an intention to issue shares at some point in the foreseeable future, in which case the anticipated reactions of investors must be taken into account in current decision-making. In the case of Telesat, the fact that the corporation's shares are not traded publicly has meant that one pressure for competitive performance has been lacking. With the federal government's expectations for Telesat apparently limited to the backward linkages which flow from capital expenditures, and the common carriers satisfied to keep Telesat as it is, viz., neither a competitive threat nor a source of benefits, Telesat management has not been subject to profitability pressures from the corporation's shareholders. In the words of one actor: "With no growth and profitability pressures from either the government or the carriers, this puts a huge onus on management for corporate development....Management is on its own in determining the long term role and future of Telesat".¹⁴

Actors

1) THE BOARD OF DIRECTORS

While in law a corporate director's sole responsibility is to take reasonable care that the interests of the shareholders as a whole are protected in the decisions of the board, in fact, "directors can protect whomever they choose--organizations or external constituency--depending on their own needs and the pressures to which they are subject".¹⁵ As demonstrated in the 1981 confrontation between the CDC and the federal government over the government's representation on the board of that corporation, and in the reluctance of CP, Alcan, and Dominion Textile to concede Caisse demands for representation, the board of directors of a mixed ownership corporation occasionally can become both a forum for the resolution of divergent public sector private sector preferences and itself a stake in such conflicts. In the case of Telesat, the latent tension between competing shareholder interests is worked out in a less confrontational manner, though the peculiar membership of the corporation's board sensitizes management to considerations which would divide directors.

Before discussing the role of the board as a collective actor in the decision-making of mixed ownership corporations, some general observations are required.¹⁶ Most important is the fact that membership of the board of directors of a joint-stock company incorporated under general business law usually is not specified. Consequently, any significant interest may be represented or excluded, with membership on the board being a matter of influence and negotiation. Secondly, the relationship between the board and management typically involves pro forma approval by the former of decisions that are based upon technical

matters in which management is expert. Obviously not all corporate decisions come before the board, although most corporations have a value threshold past which capital expenditure decisions must be submitted for board approval. Indeed, the real power of a board of directors lies not in its ability to control the day-to-day production and investment choices of the corporation, but in its power to appoint and dismiss the corporation's senior managers (a power which, to be effective, requires that management be aware of what circumstances could compel its exercise).

While typically passive in corporate decision-making, there are four factors which, either singly or in some combination, may result in the board of directors exercising effective control. These are:

- 1) concentrated ownership;
- 2) corporate dependency, especially for outside financial support;
- 3) knowledge of corporate operations; and
- 4) crises and transitions.¹⁷

This last factor, viz., crises and transitions, recognizes that the board may itself be transformed into a forum for conflict. As Mintzberg writes: "(A) prerequisite to the emergence of the (board as) Political Arena are new major pressures from influencers to realign a coalition or change the power configuration".¹⁸ The CDC control crisis in May of 1981 represents a classic case of challenge to an established power alignment. However, though well-publicized when they occur, episodes of uncontained conflict, such as one observes in the case of proxy battles, are quite rare.

The pattern of management dominance and board passivity, typical in large publicly-traded companies, is observed in each of the mixed

ownership corporations under examination, with the case of Telesat requiring some important qualifications. This pattern has been challenged in certain cases, as the circumstances of both the Domtar takeover (factor 1, concentrated ownership) and the CDC control crisis (factor 4, crises and transitions) demonstrate. However, the unusual composition of Telesat's board of directors, comprising individuals expert in the telecommunications industry who are drawn from several corporations with which one might expect Telesat to compete (or, as in the case of the longstanding conflict between Telecom Canada and CN/CP, the directors are officials of corporations which themselves compete) results in a board which has technical and market knowledge in the corporation's area of activity (factor 3)."

Telesat's board of directors brings together government appointees, including officials from the Department of Communication and the CBC, and representatives of various interests in the telecommunications industry, some of which are in competition. The fact of having directors who are drawn from organizations which compete with one another (basically the Telecom Canada/CNCP conflict over the issue of interconnection¹⁹) means that management cannot bring certain questions before the board. One management actor mentioned the specific case of a contract under Telesat's membership in Telecom Canada that involved competition with CN/CP which has a representative on Telesat's board of directors.²⁰ Perhaps more important as a source of latent conflict is the fact that expansion of Telesat's market share in long-distance communications, or service diversification, could threaten a number of the corporation's shareholders. These two conflicts of interest, between Telesat shareholders and between Telesat and its shareholders, led one management

actor to observe: "If the government expects us to compete as a retailer in the telecommunications industry it must change the shareholder composition of our board which, currently, involves obvious conflicts of interest".²¹

A longtime director of Telesat expressed the view, confirmed by all Telesat actors interviewed, that with the exception of the 1976 decision to enter the TCTS (opposed by the CN/CP official on Telesat's board) there has never been any problem in reconciling apparent conflicts of interest at the level of the board of directors.²² In a limited sense Telesat does, in fact, appear to operate as a vehicle for organizing consensus in the telecommunications industry, at least with respect to the role of satellite carriage within the Canadian communications network. The composite character of the corporation's board, including customers, shareholders, and potential competitors, enables Telesat to fulfill this role, a role which was anticipated in the initial decision to organize Telesat as a mixed ownership corporation.²³ However, the successful performance of this function requires that Telesat not pose a competitive threat to any of the common carriers, a condition which was part of Telesat's terms of entry into the TCTS.²⁴

As a forum for reconciling the sometimes conflicting preferences of the state as shareholder and those of management and private sector shareholders, the board of directors is overshadowed by less formalized channels of interaction. To continue with the case of Telesat, one management actor insisted that, "We have never negotiated with the government through the medium of government directors: we have always consulted directly with the minister of communications and his deputy".²⁵ Supporting this view that the board is of minor importance as a forum

wherein the government's preferences for Telesat are expressed and accommodated, is the assessment of a government appointee to the board. This individual indicated that the government had never expressed its preferences on satellite procurement or other decisions through him, and suggested that the government view must have been channelled through the bureaucratic DOC member of the board ("although DOC board members have always argued that they were speaking in their personal capacity as a Telesat director, as company law requires, rather than as an agent of the government"²⁶). Government representation on Telesat's board of directors, particularly through the DOC member, is simply one window on the corporation's decision-making, and not even the most important one.

In the case of the CDC, the federal government's general lack of concern with the corporation's activities during the first ten years of the CDC's operating history was reflected in the irregular attendance at board meetings of the government's ex officio members, the deputy ministers of Finance and IT&C,²⁷ and the fact that it was the usual practice for lower-ranking officials to substitute for the deputy ministers.²⁸ For reasons which will be discussed in chapter seven, this changed after the Liberal Party returned to power in 1980. The Senior Assistant Deputy Minister of Finance, A. S. Rubinoff, attended CDC board meetings as the government's representative, and the Deputy Minister, Dr. Ian Stewart, personally attended board meetings in 1981, the year of accelerated conflict in the government/CDC relationship.

However, this higher level of government representation at CDC board meetings did not signify greater influence in the corporation's decision-making. In a management-controlled holding company like the

CDC, the board operates to approve or censure the pattern of decisions made by management. Particular choices and overall corporate strategy are the preserve of management. During the first several years of the CDC's operating history meetings with the minister of finance (until the 1975 public share offering, the corporation's sole shareholder) were annual, albeit perfunctory, occurrences, held in order to meet the letter of the CDC's charter.²⁹ These meetings could hardly be said to have provided the federal government with an effective "window" on CDC decision-making, nor was the irregular attendance of the government's ex officio board members a channel whereby the largest shareholder's view was expressed.³⁰ In any case the prevailing government view during these years, centred in the Department of Finance, was that the CDC's corporate autonomy should be maintained, both because the corporation was not understood to be a policy instrument and because a record of non-interference by government was considered necessary if the corporation was eventually to issue shares to the public.

As in the case of Telesat, government preferences have never been expressed through the state shareholder's representatives on the board. Generally, requests that the CDC consider investing in a particular corporation were made informally by officials in IT&C. In certain exceptional instances such as Canadair and deHavilland in the mid-1970s, and then Massey-Ferguson in 1980, the investment proposal emanated from cabinet, communicated through a deputy minister.³¹ But it was not until the 1981 issue of the chairmanship of the CDC and increased government representation on the board (an issue which was perceived as an unprecedented challenge to corporate autonomy) that the government communicated its preferences through its ex officio board members,

specifically the deputy minister of Finance. Even then, informal channels of communication (telephone conversations between the Minister of Finance and various CDC directors; media reports of cabinet dissatisfaction with the corporation's investment policy, and of the government's intention to propose Maurice Strong for the chairmanship) were important in expressing the government's preferences before these were formally stated to the board by Dr. Stewart.

The crisis situation which culminated in the confrontation between the federal government and the corporation at the CDC board meeting of May 21, 1981, elevated the significance of the board of directors both as a stake and an actor in the decision-making process. As an actor, the unanimous opposition of CDC directors to the government's demands that Maurice Strong be installed as chairman and two additional government nominees be appointed to the board was crucial in protecting corporate autonomy. The

confrontation demonstrated that the normally passive board of directors of this management-controlled corporation could, in time of crisis, be mobilized as a decisive force in resisting an increase in the influence of the CDC's principal shareholder. While the federal government could have forced the issue by voting its equity, this would have produced a Pyrrhic victory.

Board representation also has been a matter of contention between the Caisse and management of some of its private sector investments. Indeed much of the private sector's hostility toward the Caisse is attributable to the agency's policy of placing representatives on the board of directors of the firms in which it holds a large ownership share. Caisse officials maintain that the agency has no threshold

level at which board representation is sought, but that their policy is flexible across investments, depending upon such factors as the expected duration of the Caisse's investment and the proportion of equity held by the Caisse. The rejection of Caisse representation requests by Dominion Textile, Alcan, and CP, respectively, during the period 1981-82, led to a reassessment of the Caisse's method of acquiring representation. Instead of the pattern observable in the CP and Dometex cases, under which the Caisse made a rapid and significant increase in its share of equity and then approached corporate management with a request that the Caisse be accorded the right to nominate members to the board of directors, one Caisse official observed that, "(t)here are other ways to get representation on the board". In explaining the Caisse's approach, this official pointed to the way in which the membership of a corporate board of directors is usually decided upon:

One can't simply point to a board and say, "Well he is their representative, and he is our representative", and so on. A particular board may be proposed to us as a major shareholder, and we will indicate whether we are satisfied or whether we have reservations. At other times we will directly nominate candidates. 32

This suggests that methods followed in seeking board representation have become more subtle since 1981. Indeed, it is arguable that the Caisse's record of non-interference in the management of Domtar since the 1981 takeover has contributed to an increased receptivity of the agency's claim to representation.³³

Currently, the Caisse has representation on the boards of approximately fifteen public companies.³⁴ In some instances the Caisse is represented directly. Carmand Normand, Vice-President in charge of variable income assets, holds directorships on the boards of Provigo

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and Prenor. Jean Labrecque, Vice-President in charge of fixed income assets, is a director of Trust General; Philippe Girard, a portfolio manager with the Caisse, is a director of Gaz Métropolitain, and Denis Giroux, the Caisse's manager of equity investments, sits on the boards of Dometar, Le Groupe Videotron, and La Verendrye. In other cases, representation is achieved through directors who are sympathetic to the Caisse's views as shareholder. For example, Fernand Paré, a director of the Caisse, sits on the board of Noranda Mines which is controlled by Brascade Resources (a partnership in which Brascade holds 70 per cent ownership, and the Caisse 30 per cent). Antoine Turmel, chairman of the board of Provigo, sits on the boards of several corporations in which the Caisse has a major shareholding, including Quebec-Téléphone, Noranda Mines, and the Banque Nationale du Canada. Roger Charbonneau, President of Laboratoires Anglo-French Ltée, holds directorships on the boards of Rolland Inc., Gaz Métropolitain, and Donohue Inc. (in each of which the Caisse is a principal shareholder). As a final example, Yves Pratt, a Montreal-based lawyer with close ties to the Quebec government, became chairman of the board of Dometar in December of 1982, and also holds a directorship with the Banque Nationale.³⁵

The extent and nature of Caisse participation in corporate decision-making through representation on the board of directors varies with the particular circumstances of the investment. An example of very active involvement in the affairs of Caisse holdings was provided in the merger of three small food retailing corporations into Provigo, a reorganization which was spearheaded by the Caisse and which was congruent with the provincial government's policy of encouraging, through merger, the creation of more scale-efficient corporations in the Quebec

economy.³⁶ While this intervention was unusual in its degree, it demonstrates the sort of circumstances which could compel the Caisse to play an active part in decision-making by its investments. More generally, Caisse officials insist that juggling two fiduciary roles (viz., the Caisse's responsibility to contributors to the Quebec Pension Plan and other citizens whose contributions are invested through the Caisse, and the responsibility to a corporation's shareholders as a whole, which is incumbent upon any member of a public company's board of directors) and an acknowledged economic development role may seem problematic in theory, but has posed no problem in practice.³⁷

The fact that the Caisse views board membership as a means of expressing and protecting the agency's preferences for its holdings, is confirmed by the statement of a high-level Caisse official: "We at the Caisse don't want honorary board members, and we don't support the idea of non-voting participation or companies controlled solely by officers."³⁸ Representation is not sought as an end in itself but as a means of sensitizing a corporation to the provincial economic development goal which, within the constraint of the Caisse's fiduciary role as the investor of various compulsory contribution programmes, forms an acknowledged part of the agency's mandate. In acquiring board representation the Caisse contributes to the achievement of an expressed goal of Finance Minister Jacques Parizeau and the PQ government, namely, state representation on the boards of directors of major private sector corporations operating in the Quebec economy.

Given that the Caisse's representatives are typically members of Quebec's francophone business class, the process of Caisse influence through the board of directors of a private sector corporation clearly

is more complex than participation through a delegate. And aside from the Caisse-inspired reorganization of Quebec's food retailing sector through merger leading to the creation of Provigo, it is difficult to isolate specific cases where Caisse representation on the board of directors of a private sector corporation has been used to influence particular corporate decisions. With representation being "indirect" (through members of the francophone business class who are considered sympathetic to the economic nationalism goals which inform state economic intervention in Quebec), and Caisse decision preferences being general rather than specific (in other words, that the indicative economic policy signals of the Quebec government figure as a "constraint in corporate decision-making, not that particular investment or production decisions be taken), the board of directors of a public company is unlikely to be transformed into a forum for the reconciliation of sometimes conflicting public and private sector goals simply because of Caisse representation. Caisse influence through representation on a corporation's board of directors is properly understood as latent, an observation made by a senior official of the Caisse: "Certainly a corporation like Noranda is made more sensitive to provincial economic interests because of the Caisse's ownership participation".³⁹

Confirming the general rule that the board of directors acquires elevated significance during transition periods in a corporation's history, the Caisse/SGF takeover of Domtar precipitated an extended period of conflict on the board of this corporation. In the words of one state actor:

It took a full year to establish an effective and co-operative working relationship at the board level, and two years to get business community acceptance for Domtar under state control....We required a full year to convince outside members

of the Dornier board that the corporation would be run according to private sector business principles, and free from government pressure. 40

The period of crisis on Dornier's board of directors was marked by the resignation of several members. However, no major changes were made in corporate management, a fact which doubtless helped to allay private sector fears that Dornier would become a policy instrument of the Quebec state.

2) MANAGEMENT

The choice of management personnel has reinforced the development of both the CDC and Telesat along private sector lines, and away from a policy instrument orientation. In each case management has been consistently unreceptive to shared control with the government to a degree which is not attributable solely to the limitations imposed by the joint-stock company organizational structure.

The manager in a mixed ownership corporation, like his counterpart in a commercially-oriented crown corporation, may occupy an ambiguous position. Ambiguity will exist when different principals hold contradictory expectations for the organization, a situation which requires that management select amongst signals (including their own presumed interest in corporate autonomy) in making decisions. Catherine Eckel and Aidan Vining suggested that the structurally ambiguous position of managers in government-controlled enterprises which are assigned both profitability and public policy objectives, gives rise to an internalized tension experienced by managers. They write:

There is some evidence that managers in these firms develop a form of "organizational cognitive dissonance"....This appears to be particularly problematic when government "instructions" on social objectives are vague, conflicting (i.e. different "suggestions" from different ministries), changing, or implicit. It appears that many joint enterprises resolve the

dissonance by concluding that profitability is not important. 41

Interviews with several management actors from both Telesat and the CDC provided no support for this organizational cognitive dissonance argument. On the contrary, it was found that the existence of ambiguity provides an opportunity for management to affirm the commercial goals of the organization, and that this process is often experienced as role conflict (i.e., potential goal tension). Part of the explanation for managers' reluctance to identify organizational objectives, or responsiveness to the preferences of the state shareholder occasionally expressed lies in the mental sector cast of thought which characterizes the individuals who manage the CDC and Telesat, respectively.

Managers of both corporations expressed deep respect for the government as a decision-maker. Capturing a consensus among all the managers interviewed, one CDC actor observed:

The policy process in government is slow, slow, too slow, some, always catching up with reality, and invariably too late. These are the unavoidable pitfalls of political decision-making, but no commercial enterprise could hope to be viable with decision-making characterized by such conditions. 42

Similar views, frequently accompanied by disdain for the government's preferences, were expressed by all managers. When asked whether the French experience with joint public-private ownership and decision-making through such corporations as Société Nationale Elf-Aquitaine (a case with which CDC actors were quite familiar) demonstrated that joint control is not, ipso facto, impossible, some CDC officials suggested that cross-cultural differences in private sector expectations for the state are such that relationships which are not uncommon in

France and Britain, their western European allies and New Zealand
and Canada.

In establishing that the CDC and Telestar were established
under special legislation with the federal government as the sole
shareholder during the first years of each corporation's operation,
the government's role in management was in neither case based upon
a belief that the government would be sympathetic to government
policy or to the interests of shareholders. In the case of the CDC,
the government initially appointed Anthony Hampson as chairman, and
Marshall Crowe as president, thereby reflecting its own uncertainty
about the future development of the corporation. Hampson and Crowe
each had careers which straddled the public and private sectors. Hampson
had been with the Department of Finance and worked for the Gordon and
Porter Royal Commission before re-entering the private sector with
Power Corporation. The main part of Crowe's career had been devoted
to the public sector, with External Affairs and then the PCO, although
he spent six years as an economic advisor with the Canadian Imperial
Bank of Commerce. One senior economic official in the federal govern-
ment maintains that the early conflict of views within cabinet over
the relationship of the CDC to government policy was paralleled in
a division between Crowe and Hampson.⁴⁴ Whether or not this was the
case, Hampson officially assumed the positions of president and CEO
by May of 1973, and Crowe resigned from the board of the corporation
in October of that year.

Hampson's private sector background in finance and in the management
of a major Canadian holding company accorded with the Department of
Finance conception of how the CDC ought to be managed, i.e., as a private

sector corporation that happened to be started with government seed-money. The involvement of individuals drawn from the business community was considered vital in order to establish the CDC's credibility as a commercially-oriented investor. This was an important consideration in view of the business community's scepticism that the corporation would be able to operate free from government interference. One could speculate that the CDC might have developed differently if Maurice Strong, acknowledged to have been the chief architect of the first draft of the CDC legislation which went before cabinet in 1969, and originally expected to head the corporation before he accepted a position as undersecretary with the United Nations, had been involved in the CDC's early operation. Under Hampson's direction, management has been unequivocal in its commitment to corporate growth and profitability. The legitimate bounds of federal government involvement in the CDC were, in the view of management actors, limited to the original provision of capital and the fact that the corporation was established under special legislation (the most salient provision of which, for CDC officials, always has been the section anticipating a reduction in the government's ownership share to 10 per cent). The experience of joint public/private ownership of the CDC has reinforced management's scepticism about the state as an investor. In the words of one management actor: "Seed money is a ~~subsidy~~, but government is bound to conflict with the private sector ~~in~~ decision-making".⁴⁵ As an experiment in developing inter-sectoral understanding and accommodation, the CDC has been unsuccessful.

The marginally greater receptivity of Telesat management to the preferences of the government as shareholder appears to have been due to

the backward industrial linkage provisions of the Telesat Act (sections 5.2 and 8.1(2)), a coercive factor, and not at all due to greater management sympathy with the policy instrument conception of the satellite corporation. The first president of Telesat, David Golden, had previously been a deputy minister in the Department of Industry. Despite his public service background, Golden's approach to the government's interest in the corporation consistently was that public policy objectives were quite secondary to the commercial goals of Telesat, and where conceded should be treated as recompensable costs. This attitude had early consequences when Telesat management, supported by the board of directors, resisted the government's preference for Canadian-based RCA in the first satellite acquisition decision.⁴⁶

Golden's successor as president in April, 1980 is Eldon Thompson, formerly president of New Brunswick Telephone, a subsidiary of Bell Canada and a shareholder of Telesat. Thompson's involvement in Canada's domestic satellite system goes back to the late 1960s when he worked on studies purporting to demonstrate the uncompetitiveness of satellite technology for most telecommunication markets. Since becoming Telesat's president in April of 1980, Thompson has been publicly critical of

CRTC rate decisions which, he maintains, have constituted the main obstacle to the corporation's expansion into profitable commercial markets. Like Golden before him, Thompson expresses no ambivalence over whether Telesat is a public service with a mandate to operate "on a commercial basis", or a commercial enterprise for which the state shareholder has limited public policy expectations relating to capital expenditures, not markets, which can be accommodated in exchange for the payment of Canadian content premiums. The second characterization describes Telesat's relationship to public policy, as policy is defined by the government, although management argues that the CRTC's regulatory treatment of the corporation has been based upon the former conception of Telesat.

As in the case of the CDC, public policy expectations, whether expressed by the state as shareholder or regulator, are experienced as pressures from outside the organization. The private sector orientation of management contributes in both cases to a defensive attitude toward the state shareholder. In neither case does management consider joint public/private decision-making workable in practice, and corporate autonomy is for all managers a foremost value. These attitudes reinforce the structural limitations which the joint stock company organizational structure places upon state participation in corporate decision-making.

Summary: The Organizational Parameters of Decision-Making

The decision process in the mixed ownership corporation is mediated by the particular organizational features of the firm. Taken together these features involve a mobilization of bias which places the state shareholder at a disadvantage vis-a-vis private capital in corporate decision-making. While the state's capacity to influence decision

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outcomes varies between mixed enterprises, being greatest where the corporation operates under legislation which ascribes to the state shareholder special rights in regard to particular classes of decisions as in the case of Telesat. Generalization across the CDC, Telesat, and the nationally important private sector investments of the Caisse de la santé n'est pas possible.

The first relates to the cognitive dissonance argument advanced by Engel and Vinograd. The present study finds absolutely no evidence that managers of the mixed ownership corporation have at any time experienced role ambivalence in consequence of the sometimes divergent expectations of the state shareholder and private capital. If cognitive dissonance is intended to signify the phenomenon of cross-pressures from the corporation's shareholders, then the term is singularly inappropriate. Trade-offs between values does not occur as a psychological balancing act, where a manager seeks to reconcile his responsibility for corporate profitability or some other market-determined goal with the expressed or tacitly understood preferences of the state. Instead, cross-pressures are dealt with by treating the public policy expectations of the state shareholder (where these do not coincide with management's own preferences for corporate behavior) as intrusions upon corporate autonomy, to be resisted as far as possible or, if the cost of resistance is perceived as too high, to be accommodated with compensation (i.e. treated as an exceptional concession, rather than a matter of course). None of the management principals interviewed gave any indication that he perceived his own role, or the relationship of his corporation to the market, as affected by the fact that the state is a major shareholder. Management responsiveness to the state's public policy expectations

is not produced by the partial assimilation of a state agent role, but by coercion or management's perception that complete resistance could result in greater costs than accommodation.

Of course it may be that in some circumstances managers anticipate the reaction of the state shareholder, and thus their decisions are influenced in subtle ways which, for methodological reasons, are difficult to ascertain. Analysis of this unobtrusive influence is hampered by the practical difficulties in studying non-events. But even where there are grounds for suspecting subtle influence, the public policy preferences of the state are experienced as pressures external to management decision-makers, rather than as a schizophrenic role perception.

An examination of how the structure of the corporation and the actors in the decision process limit the state's ability to act through the mixed ownership firm in pursuing social goals recalls Peigenbaum's argument that the corporation is ill-suited as a policy instrument in a capitalist society. Thus, the second generalization to emerge from this analysis is that the partnership of public and private capital in a single firm is influenced by prevailing norms about the business firm in a capitalist society. Specifically, the corporation is viewed as a market-responsive organization for the pursuit of essentially private ends (i.e., shareholders' dividends, employees' career chances and incomes). The social dimension of the firm exists insofar as Adam Smith's metaphor of the "invisible hand" finds its modern restatement in the microeconomic orthodoxy, philosophically utilitarian, that the impersonal working of the market is the best means of maximizing social welfare. According to this view, failures in economic performance, which become manifest in social problems such as unemployment and declin-

ing industries, are caused by imperfect competition. The answer to monopolistic tendencies is not necessarily less state intervention, but certainly requires that the state do nothing to compromise the foundation stone of the capitalist economy, viz. the profit-oriented firm. Peigenbaum remarks upon the conjuncture of capitalist norms and corporate structure when he writes

It is my argument that public firms cannot be expected to achieve a public purpose if they are organized exactly as private firms, and this indeed is the prevailing mode in (Western) nationalized industry. The soft spot, I think, is the profit motive. It is widely assumed...that public firms should be profit maximizers so as to minimize waste and avoid "blind transfers". 48

The values which appertain to the corporation in liberal capitalist society, particularly profitability and organizational autonomy, represent important limits on the state's ability to act through a mixed ownership firm in pursuit of goals which challenge the principle of private capital accumulation. This is demonstrated more concretely from the analysis in chapters six and seven of particular decision situations, involving conflict between the preferences of the state and private sector stakeholders in the mixed enterprise.

Footnotes

1 Harvey Peigenbaum, "Public Enterprise in Comparative Perspective", Comparative Politics, vol. 15, no. 1, October 1981, p. 119.

2 This analysis in this chapter and chapters six and seven is based in part upon information gathered from fourteen personal interviews conducted by the author between 1 December 1983 and 21 February 1984.

3 Copies of the charters under which the Caisse, Telesat, and the CDC, respectively, operate are included in Appendix I.

4 See Øystein Noreng, "State-Owned Oil Companies in Western Europe", in R. Vernon and V. Anaróni eds., State-Owned Enterprise in the Western Economies (London: Croom Helm, 1981), pp. 135-136.

5 A typical statement of government expectations was expressed by the Minister of Finance, Edgar Benson, at the time Bill C-219 was introduced: "Able and experienced entrepreneurs will direct the corporation's operations to areas of critical importance in economic development--to high technology industry, to resource utilization, to northern-oriented companies and to industries where Canada has a special competitive advantage."

6 CDC Act, s. 6(1).

7 Personal interview; 2 December, 1983.

8 Personal interview; 9 December, 1983.

9 Personal interview; 19 December, 1983.

10 The OSC estimated that the Caisse's ownership share in Dornier went from 25.5 per cent before July 31, 1981, to 41.4 per cent by August the 11th. See Amy Booth, "Quebec's big affair with Dornier", The Financial Post (February 12, 1983), p. 6.

11 See M. Nadeau, "La Cour donne raison à la Caisse: Ouellet réclamait la divulgation des transactions", Le Devoir, 12 août 1982, p. 7. Since 1982, the Caisse has published a list of its private sector investments in its annual report. However, this is done voluntarily, and not in recognition of a legal obligation.

12 Personal interview; 20 January, 1984.

13 Canada Development Corporation, "Preliminary Prospectus dated March 16, 1983", p. 51.

14 Personal interview; 12 December, 1983.

15 Henry Mintzberg, Power in and around Organizations (Englewood Cliffs: Prentice-Hall, 1983), p. 69.

16. This understanding of the decision-making role of the board of directors follows ibid., particularly pp. 68-94.

17. Ibid., pp. 7-24.

18. Ibid., pp. 7-24.

19. At issue in the later competition issue is about the structure of competition in the long-distance and business telecommunications market. For a discussion from an industrial organization perspective, see Christopher Green, Canadian Industrial Organization and Policy (Toronto: McGraw-Hill Ryerson, 1986), pp. 1-14.

20. Personal interview; 11 December, 1983.

21. Personal interview; 11 December, 1983.

22. Personal interview; 9 December, 1983.

23. See the discussion in chapter two.

24. In ruling on the Telesat TCTS membership agreement the CRTS observed: "As a member of TCTS, decisions about satellite system design, capital costs and performance requirements as well as proposed terms, conditions and rates for satellite services would be subject to the unanimous approval of TCTS members and hence the veto of any one of them". See CRTS, Telecom. Decision CRTS 17-10, Telesat Canada, Proposed Agreement with Trans-Canada Telephone System, reported in The Canada Gazette, Part 1, September 3, 1977, pp. 4838-4883.

25. Personal interview; 9 December, 1983.

26. Personal interview; 9 December, 1983.

27. CDC Act, s. 41. These ex officio members were not entitled to vote at meetings of the board of directors.

28. The irregular attendance of government members on CDC's board of directors, and the fact that lower-ranking officials substituted for their deputy ministers (as is provided for by s.41(2) of the CDC Act) until 1981, was confirmed in several interviews. Personal interviews; 19 December, 1983, 20 January and 21 February, 1984.

29. Personal interview; 19 December, 1983.

30. All the CDC management actors and directors interviewed were of the view that the formal link between the government and the corporation, through the ex officio directors, did not operate as a channel for communication between the CDC and its largest shareholder.

31. Personal interview; 19 December, 1983.

32. Personal interview; 3 February, 1984.

33 In response to the statement, "The Caisse should be able to place its representatives on boards of directors", a majority of CEOs surveyed for a recent study agreed that this right should be accorded the Caisse: anglophone CEOs, 52%, francophone CEOs, 60%, client CEOs, 52%. See Marcel Côté et Léon Courville, "La perception de la Caisse de dépôt et placement du Québec par les chefs d'entreprises", Table 7 in Claude E. Forget, ed., La Caisse de dépôt et placement du Québec (Montreal: C. D. Howe Institute, 1984), p. 81.

34 During the Senate Committee hearings on Bill S-21, the Chairman of the Caisse, Jean Campeau, indicated that the Caisse had representation on the boards of "about fifteen companies". He listed four of the corporations: Noranda, Brascan, Dofasco, and Air Métropolitain, but in response to Senator Godfrey's request for a list of Caisse nominees who are not agency officials, Campeau would say only that they are prominent business people. While in its annual report for 1983 the Caisse discloses the publicly-traded corporations in which the agency holds equity, breaking with the past practice of secrecy, information on Caisse-nominated directors who are not Caisse officials remains unavailable.

35 This information is drawn from the Financial Post's Directory of Directors (1984).

36 The promotion of competitive economies of scale, through industry reorganization, has been an important goal of Quebec economic policy since the creation of the SQP in 1962. Aside from the Proviso case, the activities of the Caisse have not been central to this policy.

37 Personal interview, 3 February, 1984.

38 Personal interview, 3 February, 1984.

39 Personal interview, 3 February, 1984.

40 Personal interview, 3 February, 1984.

41 Catherine Eckel and Aidan Vining, "Toward a Positive Theory of Joint Enterprise", in W. T. Stanbury and Fred Thompson (eds.), Managing Public Enterprises (New York: Praeger, 1982), p. 215.

42 Personal interview, 20 January, 1984.

43 Personal interviews, 19 December, 1983, and 20 January, 1984.

44 Personal interview, 21 February, 1984.

45 Personal interview, 20 January, 1984.

46 See the discussion in chapter four.

47 See Robert Steklasa, "CRTC rulings enrage Telesat", Financial Post, 7 May, 1983.

48 Feigenbaum, op. cit., p. 109.

CHAPTER SIX

CASES OF DIVERGENT EXPECTATIONS

proposal was the most competitive, far lower than the price quoted by SPAR, but involved a low level of Canadian content. Telesat's president, David Golden, presented the government with the two proposals and indicated that the corporation was prepared to accept SPAR as the prime contractor on condition that Telesat be compensated for the difference in cost.

Thus, the preferences of the federal government were in conflict with those of Telesat management. When the subject of Golden's re-appointment as president arose, as required each year under the terms of the Telesat Act, the board of directors was solidly in support of Golden's confirmation.¹⁴ Whether the government was inclined to replace the president, as is its prerogative under the Act, is moot. But the board's implicit support for Golden's policy of treating the government's interest in Canadian content as a recompensable externality foreclosed this possibility unless, as also had been the case in the ANIK A decision, the government was prepared to force the issue of whether Telesat was foremost a commercial enterprise or a policy instrument.

2) THE TELESAT/TCTS MEMBERSHIP AGREEMENT

The agreement whereby Telesat became a member of the Trans-Canada Telephone System (since renamed Telecom Canada), a self-regulating consortium of common carriers in which Bell Canada is the dominant party, appeared to represent a step toward the government's expressed goal of an integrated terrestrial/satellite telecommunications system covering the entire area of Canada. However, the decision to seek membership in the TCTS originated with Telesat management and was unrelated to this public policy objective.¹⁵ While the federal government was supportive of the Telesat/TCTS agreement, as demonstrated

The resolution of divergent expectations under circumstances of shared ownership of a single corporation represents a particular case of business/state conflict, from which may be generated more general observations on the conditions which limit the use of the mixed ownership firm as an instrument of public policy. In considering several instances where the expectations of the state and its private sector partners are divergent, the following proposition is tested:

The state's ability to influence decisions of a mixed enterprise is contingent upon private sector satisfaction that the commercial objectives of the corporation are not compromised by the state's public policy expectations for the organization.

The decision situations reviewed in testing this proposition include the following specific cases.

1. Telesat Canada: i) the first (and subsequent) satellite acquisition by the corporation; ii) Telesat's application in 1976 to join the Bell Canada-dominated Trans-Canada Telephone System.
2. Canada Development Corporation: i) the federal government's request, in the autumn of 1980, that CDC management study Massey-Ferguson as a possible equity investment; ii) the federal government's attempt, in the spring of 1981, to replace the chairman of the CDC's board of directors with its own nominee.
3. Caisse de dépôt et placement: i) the 1981 takeover of Dometic Inc., by the Caisse and the Société générale de financement; ii) the decision by the Caisse to seek representation on the board of directors of Canadian Pacific.

Based upon a close examination of corporate operating histories, these conflictual decision situations stand out as crucial points in the determination of the relationship between the state and private

capital in the mixed ownership corporation. This analysis is informed by the rationalist assumption that interest provides an accurate measure of expectations. However, the question of interest is not reducible to a trade-off between profitability (private sector expectations) and the management of public support (state expectations). The fact that Telesat Canada is, by any conventional measure, an unprofitable investment for Bell Canada suggests that Bell's "interest" in equity participation in this mixed enterprise derives from considerations other than the prospect of a competitive return on investment. Clearly, a determination of the interests of either the state (or, more properly, those parts of the state with a stake in how a particular issue is resolved) or the private sector actors with which it must deal (particularly shareholders and management), is not a simple matter of assuming divergent and mutually exclusive needs. From elite theorists like C. Wright Mills and John Porter to neo-Marxists like Miliband, evidence of the inter-dependency of the state and important economic interests in society refutes this conceptualization.

Examination of these several cases of decision-making in circumstances where the expectations of the state as shareholder (or, as the TCTS/Telesat case will demonstrate, a significant organization within the state ensemble) and its private sector ownership partners are divergent, indicates that the interests of this latter group are refracted through management's goal of maintaining corporate autonomy. Consequently the business/state relationship, as it unfolds within the mixed ownership corporation, is in fact triadic. Variations in the pattern of the relationship will be determined by such factors as: (1) the set of private sector shareholders (ranging from widely-

dispersed share ownership as in the case of the CDC, Domtar and CP, to relatively few private sector owners in the case of Telesat, the shares of which are not publicly traded); ii) the parts of the state with an interest in the decisions of the mixed ownership corporation, and the capacity to influence outcomes; iii) the sector of the economy in which the corporation operates, and the particular constraints upon (and opportunities for) state intervention in this sector; and iv) the organizational structure of the mixed ownership corporation (Is it regulated by the terms of a special charter as are the CDC and Telesat, or is it incorporated under the general Canada Business Corporations Act? Is the state as shareholder assigned any special prerogatives in regard to any class(es) of decisions? How are the corporation's capital requirements financed, or, in other words, what parties are at risk in respect of the major investment/production decisions of the corporation?).

The focus upon the resolution of conflict should not obscure the fact that the interests of the state as shareholder, and the private sector actors (shareholders, management, financiers), with which it is involved through the mixed ownership corporation are frequently convergent. The chairman of the Caisse de dépôt, Jean Campeau, felt compelled to make this rather obvious observation in responding to the implicit criticism of the Caisse's equity investment activity which informed Bill S-31. In Campeau's words:

Bill S-31 alleges that since November 3, any share acquired by the Caisse or any share held or acquired exceeding the 10 per cent limit is acquired, not for profitability purposes, but for the purpose of sidetracking a company from its initial corporate goals for the benefit of Quebec. This is ridiculous. When one invests 200 million dollars in a corporation it would be ridiculous to think one does not seek profitability. 1

However, if the state's interest in its shareholdings was limited to the support of private capital accumulation and, perhaps, the expectation of a competitive return on invested capital, the question of how divergent expectations are reconciled in corporate decision-making would not arise. But as the conflict situations reviewed will demonstrate, the state may have public policy goals which are considered by management and private sector shareholders to compromise the competitive performance of the corporation. Even where these goals are imbedded within the charter of a mixed ownership corporation, as the backward industrial linkages objective is set down, albeit ambiguously, in the Telesat Act, the state as shareholder may find the corporation intractable as a policy instrument. Faced with a recalcitrant management, which generally is able to count on backing from the corporation's board of directors and the support of private sector shareholders, the state as principal shareholder is unable to impose its preferences over those held by management without precipitating a crisis of confidence which threatens the very capital structure (i.e. mixed ownership) of the corporation.

The policy expectations which the state as shareholder has for the mixed ownership corporation will be influenced by developments in the economic sector in which the corporation operates, and by the broader pattern of government policy. Thus, the Massey-Ferguson investment proposal which, ex post, became a source of tension in the relationship between the federal cabinet and CDC management, leading to the control crisis of May, 1981, should be understood in the context of the crisis in the manufacturing sector of the Canadian economy which Massey-Ferguson's plight symbolized. The industrial strategy advocates

within the Liberal Party dominated the government returned to power in 1980, and the general interventionism of this government combined with the acute crisis in Canadian industry to prompt the CDC's principal shareholder to reassess its decade-old relationship as silent partner in the corporation's affairs. Similarly, the relocation of Domtar's Sifto division headquarters from Montreal to Toronto, and major capital expenditures by the corporation in Goderich, Ontario at a time when the Quebec government was intent on increasing salt mining within the province,² were factors which combined to convince the Quebec government that the 20 per cent ownership share held by the Caisse was not sufficiently large to operate as a constraint upon Domtar's investment decisions. (Certainly the decisions to relocate Sifto headquarters and expand the Goderich operation did not threaten the value of the Caisse's investment in Domtar. This is one of the factors which make it implausible that the decision to acquire a controlling stake in the corporation did not originate with the Quebec government.)

The existence of private sector shareholders is a main limiting condition on state control of a publicly-traded corporation. Indeed, the 1981 confrontation between the CDC and the federal government over the chairmanship of that corporation provides a classic demonstration of how management is able to invoke its fiduciary responsibility to shareholders as a whole in resisting what it perceives to be the politically-motivated intrusions of the state as shareholder. In that particular case the support of the corporation's board of directors was instrumental in blocking an expanded government role in CDC decision-making. Similarly, the backing of the board of directors was a factor which reinforced Telesat management's position in resisting the federal govern-

ment's preferences in the ANIK A satellite acquisition decision (1970), and in bargaining for government compensation in the case of the ANIK D contract with SPAR (1979). Moreover, the limitation which results from the fact of private sector shareholders (a structural condition) is compounded by a business ideology which is able to accommodate direct investment by the state in the produce-for-profit economy,³ but which is extremely sceptical of the state as a partner in commercial decision-making. This ambivalence (a normative condition) is demonstrated in the attitudes of the Canadian business community toward the investment activities of the Caisse,⁴ and is confirmed by the uniformly negative views expressed by management actors with the CDC and Telesat in regard to the workability of shared public/private decision-making.

The purpose of the decision-making analysis in this chapter is to determine the economic and political factors which have shaped the balance of influence between the state and private capital in the mixed ownership corporation. This is done through the examination of concrete instances of conflict in that relationship, demonstrating how state preferences have been expressed as attempted influence, what the reaction of private sector interests has been, and how these divergent expectations for the firm have been resolved. This approach to the decision process follows the work of Grassini on Italian state enterprise,⁵ Anastassopoulos on state companies in France,⁶ and Mazzolini on government-controlled corporations of western Europe,⁷ in seeking to understand how corporate behavior is shaped by the configuration of political and economic interests mobilized within and outside the organization. Much of the evidence upon which this analysis is based was collected through interviews with state and business principals associated cur-

rently on at some important stage in the past with either Telesat, the CDC, or the Caisse.

Telesat Canada

1) ²⁵ SATELLITE ACQUISITIONS

All major capital expenditure decisions of Telesat involve the resolution of divergent expectations for this satellite communications corporation. On the one hand a Canadian content requirement is imposed upon Telesat by the terms of its charter, with the qualification that this will be, "to the extent practicable and consistent with (the corporation's) commercial nature" (s.5(2)). This rather ambiguous Canadian content provision is reinforced by the statutory requirement that the corporation's capital expenditure proposals, whether for satellites or earth receiving stations, be submitted to the minister of communications for approval (s.8). In this practice Telesat resembles a number of western European mixed enterprises, including the French petroleum corporation, Société Nationale Elf-Aquitaine, in that the state investor is accorded a veto power over major capital decisions. On the other hand, alongside this expectation that Telesat will promote backward linkages, contributing to the development of a Canadian manufacturing capacity in satellite technology, is the statutory condition that Telesat be operated, "on a commercial basis" (s.5(1)), interpreted by the corporation's management as meaning profitable operation, and that in meeting the Canadian content requirements of the Telesat Act the commercial viability of the corporation will not be compromised.⁸ Predictably, pressure for the utilization of Canadian suppliers, particularly SPAR Aerospace, has come exclusively from the government, while Telesat's management has been insistent on operating the corporation on a com-

mercial basis.

The decision to select a United States supplier, Hughes Aircraft Company, for the first generation of Telesat satellites, over an RCA Ltd. proposal which was estimated to involve 65 percent Canadian content (versus 20 per cent in the Hughes proposal, as finally agreed to), established a pattern in the relationship between Telesat management, the corporation's board of directors, and the government which has been maintained since. Directors and managers who were with Telesat at the time of this first satellite decision recall that the cabinet made clear its preference for the high-Canadian content RCA proposal, but Telesat management resisted the policy signals coming from the government and contracted with Hughes at a per satellite cost which was half that of the RCA proposal.⁹ The then minister of communications, Eric Kierans, did not exercise his power of veto under s.8 of the Act, and the only concession made to the government's interest in Canadian content was a negotiated increase in the value of work done by Canadian suppliers (i.e., Northern Electric and SPAR).

Telesat's ability to resist the nationalist preferences expressed by the government can be ascribed to a combination of factors. Most fundamentally, the corporation's management was determined that Telesat should be run as much like a private sector corporation as the terms of its charter and the fact of the government's 50 percent ownership share would allow.¹⁰ Autonomous corporate decision-making was therefore a necessary condition, and Telesat's first CEO, David Golden, was unrelenting in his insistence that the corporation's primary consideration must be the provision of domestic satellite communications on a cost-competitive basis. In resisting the view that an equally important

objective of the corporation involved the encouragement, through contracts, of a Canadian manufacturing capacity in satellite technology. Telesat management was able to invoke its corporate objects under the Act. Because the charter is quite ambiguous in regard to how far public policy goals (i.e., Canadian content) should intrude into corporate decision-making, the question of who determines this balance is crucial. In the case of the decision to select Hughes as the supplier for the first generation of domestic satellites, the decision was taken by Telesat management even though the government maintained its support for the high-Canadian content RCA proposal.¹¹

In view of the divergent preferences of the government and Telesat management, the role of the corporation's board of directors became crucial. All of the seven members of this first board were appointees of the government, with three of the members drawn from the private sector, three from the public sector, and the seventh being Telesat's president, David Golden. Notwithstanding the government's expressed sympathy for a high level of Canadian content, the directors were unanimous in supporting management's choice of the Hughes proposal. This demonstration of support for Telesat management was important in overcoming the government's reservations.¹² Had the minister of communications decided to exercise his veto under s.8 of the Act, in the face of the board's support for management's position, this would have been a clear signal to the government's ownership partners in Telesat (i.e., the common carriers), and to the CRTC (which would set the rates which Telesat could charge its customers), that the government considered the corporation to be primarily a public policy instrument rather than a commercial enterprise.

Since that first satellite decision, concluded in September of 1970, the proportion of Canadian content has increased regularly in subsequent generations of the ANIK satellite, reaching 50 per cent and a Canadian prime contractor (SPAR Aerospace) for the most recent ANIK D series of satellites.¹³ This has not resulted from an increased sensitivity of Telesat management to the government's interest in backward linkages to the satellite industry. Rather, the explanation involves a combination of Canadian content premiums paid by the government to compensate Telesat for the higher cost of contracting with Canadian firms, and, secondly, the development of a more competitive Canadian satellite industry (primarily SPAR Aerospace, which was nurtured through contracts from DOC and through its role as a subcontractor to Hughes in Telesat's ANIK A and ANIK C satellite procurements).

In having the cost of Canadian content isolated as a recompensable burden the corporation maintains the principle that the public policy interests of the government can be accommodated, but are not constraints which management need observe. The 1979 decision on the ANIK D satellite procurement demonstrates how the government's interest in the development of the Canadian satellite industry is taken into account by Telesat management. The government made known that it favoured SPAR Aerospace as the supplier for this generation of satellites. This preference was not expressed through the DOC representatives on Telesat's board of directors, but through the deputy minister of communications, as is usual in negotiations between Telesat and the government over capital expenditure decisions. The corporation's management contacted a number of suppliers for proposals, including U.S.-based Hughes which had been the prime contractor for the ANIK A and ANIK C satellites. The Hughes

proposal was the most competitive, far lower than the price quoted by SPAR, but involved a low level of Canadian content. Telesat's president, David Golden, presented the government with the two proposals and indicated that the corporation was prepared to accept SPAR as the prime contractor on condition that Telesat be compensated for the difference in cost.

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by cabinet's variance of the 1977 CRTC ruling which proscribed the agreement as contrary to the public interest, the government's support was based upon its acceptance of management's argument that the agreement was necessary to ensure Telesat a stable revenue base. It is highly improbable that the government was under any illusion that Telesat membership in the TCTS would provide a window on the telecommunications industry, allowing the government to directly participate in decisions regarding the national telephone system.¹⁶

The background to the Telesat/TCTS agreement is straightforward. In developing the original domestic satellite system, involving the three ANIK A satellites, Telesat management was responding to its mandate to put a system in place as soon as possible (dispatch was critical given the international competition for limited geo-stationary satellite locations). Telesat was not building a system in response to demonstrated demand, and indeed the market for the corporation's satellite channels, aside from anticipated contracts with the CBC and service to the remote North, was uncertain. Not surprisingly, a huge amount of excess capacity was built into this first system, with only eight full channels of thirty-six leased to customers before the TCTS membership agreement. The weak income position of the corporation after becoming operational in January of 1973 would have been worse had it not been for an unanticipated agreement between Telesat and RCA Global Communications/RCA Alaska Communications, whereby the latter leased a number of channels on an interim basis,¹⁷ and a five-year contract with the Canadian Overseas Telecommunications Corporation (renamed Teleglobe), a crown corporation which only entered the agreement under pressure from the government.¹⁸ Indeed, the CBC and COTC together accounted

for half of Telesat's regularly used channels during this early period in the corporation's operating history.

The obvious solution to this problem of soft markets was to acquire a share of the lucrative east/west long distance traffic. This market was dominated by the TCTS consortium, with CNCP Telecommunications occupying a comparatively minor position. Telesat management considered both the TCTS membership option and the alternative possibility of an integrated system with CNCP and Teleglobe.¹⁹ The first option was judged most likely to provide Telesat with the income stability it considered necessary in view of the difficulties the corporation had experienced in forecasting revenue.²⁰ Moreover, ten of the twelve common carriers with equity in Telesat were members of the TCTS, so that the idea of Telesat operating in competition with the TCTS (as would have resulted from integration with CNCP) did not represent a real possibility without a major change in the corporation's ownership structure.²¹ Under the terms of the agreement with the TCTS, Telesat undertook to respect the territorial markets of the respective TCTS members.²² Most significant from Telesat's point of view was the fact that the corporation would receive transfer payments from the TCTS, providing the income stability needed to finance the corporation's second generation of satellites. With neither the government nor the private banks prepared to finance Telesat's capital requirements,²³ and given that management was disinclined to press the government for new financing when Telesat was close to retiring an earlier government loan of \$25 million, the agreement with the TCTS removed much of the uncertainty surrounding Telesat's income for future years while enabling the corporation to avoid financial dependence on the government.

The TCTS/Telesat membership agreement was disallowed by the CRTC as contrary to the public interest. In handing down this ruling the Commission reasoned that integration of Telesat into the TCTS would make regulation of rates more difficult, a position that was supported by the Consumers' Association of Canada. Cabinet, which had previously approved the TCTS/Telesat agreement overruled the Commission's decision, so that it became apparent that the locus of state opposition to the idea of Telesat as a commercial enterprise was the CRTC and not the government as shareholder. Telesat principals maintain that the Commission has construed from the fact of the government's 50 per cent ownership share that Telesat is a public service which happens to be run as a business, rather than a market-oriented telecommunications carrier which happens to have the government as a major shareholder.²⁴

The circumstances of Telesat's entry into the TCTS demonstrate that the divergent expectations of the government as shareholder and those of the corporation's management, evident in the case of satellite procurement decisions, are not the only source of tension in Telesat's relationship to the state. Indeed, the corporation encounters the state in three separate guises. While the relationship with the Department of Communications is regular and generally carried out at a technical/co-operative level, the relationship between Telesat and the CRTC (the state as regulator) is adversarial, and that between cabinet (the state as shareholder) and the corporation is episodic and frequently defensive. The particular case of Telesat's decision to join the TCTS involved a conflict between management's resolve that, with the second generation of satellites, Telesat should focus upon commercial services and developing market opportunities, as against the CRTC's concern

with its ability to regulate rates and its understanding of Telesat as a public service organized as a business. In supporting Telesat management by varying the CRTC's ruling on the TCTS/Telesat agreement cabinet was acting on its interest in a domestic satellite system at least cost to the government.²⁵ The situation demonstrated that the government's conception of the public policy objectives of Telesat was different from that held by the CRTC. Whereas the regulatory commission's concern was with competition in the telecommunications market and the rates charged to customers, the government's policy expectations for Telesat lay principally in the backward linkages which the corporation's capital expenditure decision could generate in Canada's satellite industry.

The Canada Development Corporation

1) MASSEY-FERGUSON

In the interminable debate over the need for and components of a Canadian industrial strategy (a debate which has been ongoing since at least the mid-1960s), the role of the CDC has polarized the proponents of the two main rival views within the governing Liberal Party and the senior federal bureaucracy.²⁶ This question of the CDC's relationship (or non-relationship) to the government's policy goals surfaced recurrently throughout the 1970s, dividing the more nationalist/interventionist members of the government from the less interventionist view centred in the Department of Finance,²⁷ with the latter view supported by CDC management and the business community. The tension between the CDC as a policy instrument (a view with which the Prime Minister was sympathetic) and the CDC as a holding company which just happened to be started with government seed money, but in which the government's

ownership share would be reduced over time to 10 percent (a view shared by CDC management, deputy minister of finance, Simon Reisman, and finance ministers Edgar Benson, John Turner, and Donald Macdonald, successively), existed during the first years of the CDC's operation. A pattern was established during this early period, which persisted until the return to office of the Liberals in 1980, involving the Department of Finance, the CDC's state shareholder, insulating the corporation from those members of the government who saw the CDC as potentially an instrument in an industrial strategy which never congealed.²⁸

This pattern broke down in the period between CDC management's decision not to invest in the financially-struggling Massey-Ferguson corporation (Autumn, 1980), and the federal government's attempt to increase its leverage on the CDC board of directors (May, 1981). Change in the set of state actors with policy responsibilities most directly related to the investment activities of the CDC, the apparent general decline in the Canadian industrial economy, and the particular crisis of one of the largest Canadian-controlled firms in that economy, were factors which brought about a reassessment at the cabinet level of the relationship of the CDC to the economic policies of the government. More precisely, these factors involved the general interventionism of the Liberal government which was returned to power in 1980²⁹ (a government that, in the words of one very senior economic official, considered that it had been unfairly maligned by the business community in the late 1970s), the appointment of Allan MacEachen as Minister of Finance and Herb Gray as Minister of IT&C, two cabinet members known to be sympathetic to the industrial strategy concept,³⁰ and the rash of plant closings and the apparent decline of Canada's manufacturing sector.

This was the context in which the Massey-Ferguson investment issue arose. In fact the question of whether the CDC should invest in the farm machinery corporation only became a political issue, understood as a subject of conflict, ex post. The fact that CDC management declined to invest on strictly commercial grounds was considered by some members of the government, including the Minister of Finance, to be evidence of the insensitivity of the corporation to the interests of its major shareholder.³¹

The actual request that the CDC consider an investment in Massey-Ferguson was conveyed to the corporation's management by the deputy minister of Finance, Dr. Ian Stewart. All the principals involved agree that no pressure was placed upon the CDC. The corporation regularly received investment proposals from a wide range of sources, including MPs and officials in the federal bureaucracy.³² The high level of the Massey-Ferguson proposal, issuing from the cabinet and conveyed through the deputy minister of Finance, distinguished this particular case, as did the context of crisis in the central Canadian manufacturing sector which Massey-Ferguson's difficulties symbolized. However, CDC management's negative assessment of the investment was entirely predictable in view of the fact that the corporation had previously studied the possibility of investing in Massey-Ferguson, at the request of Argus Corporation chairman, Conrad Black.

Under Finance Ministers Turner, Macdonald, and Chretien the government had not been inclined to present the CDC with investment targets. Certainly nothing on the scale of the Massey-Ferguson investment proposal had ever been directly suggested to CDC management by the government.³³ The fact that the Massey-Ferguson proposal carried no suggestion of

coercion was consistent with this pattern of management autonomy in CDC decision-making. But the circumstances bearing upon the CDC's relationship to the government had changed. The Finance Minister, Allan MacEachén, considered that the corporation should be more responsive to the public policy interests of its major shareholder, a view that was shared by the Prime Minister and other key ministers on the Priorities and Planning Committee of cabinet (notably Herb Gray and Marc Lalonde).³⁴

The CDC's rejection of the Massey-Ferguson investment proposal as commercially unsound raised to prominence the larger question of whether the government's 49 per cent ownership share should translate into influence over CDC investment decisions. The tradition of non-interference which had developed through the 1970s, and the fact of private sector shareholders to whom CDC management could quite justifiably claim they owed a fiduciary responsibility, complicated the government's renewed interest in the corporation's possibilities as a policy instrument.³⁵ Insensitivity to government's policy signals, which CDC management had demonstrated in rejecting the Massey-Ferguson investment proposal, led to both increased tension between the corporation and its major shareholder and recourse by the government to more coercive measures in attempting to enlarge its influence over CDC decision-making.

2) THE CONTROL CRISIS: 1981

In May, 1981, the federal government unsuccessfully attempted to replace the CDC's chairman, Frederick Sellera, with its own candidate, Maurice Strong. This failure must be understood in the context of the tensions generated in consequence of the CDC's refusal to invest

in Massey-Ferguson, and a total breakdown in communication, including willful misunderstanding, in the months preceding the control bid. The government was determined to increase its influence on the CDC's board of directors, but was prevented in this by a combination of factors, including: i) the fact of private sector shareholders, a structural condition which served as a defense for management in resisting the idea that the CDC ought to pursue public policy objectives identified by the government; ii) the pattern of corporate autonomy which had been reinforced through successive investment decisions during the 1970s; and iii) the defensive hostility which developed within the CDC, resulting from media reports of government dissatisfaction with the corporation after its failure to invest in Massey-Ferguson, without the government's views being communicated directly to CDC management.

CDC's rejection of the Massey-Ferguson investment proposal led to a reassessment by the government of the corporation's role, and its relationship to public policy. The Minister of Finance considered that the CDC had become too isolated from its principal shareholder, and sought to increase the government's influence through new appointments to the board of directors.³⁶ According to a very senior state actor involved in the events heading up to the control crisis, an understanding was reached between the CDC and the Minister whereby the government was entitled to nominate four new directors, and that these appointments could be made any time before the corporation's annual meeting in May of 1981. Two of these nominations were made early in 1981, but the government waited until the week immediately prior to the CDC's annual meeting before proposing its other nominees.³⁷

During the interim communications between the corporation and

the government had broken down entirely. The chairman of the CDC, A. John Ellis, resigned in February of 1981, and a new chairman, Frederick Sellers, was chosen without consultation with the corporation's major shareholder. In view of the strained relationship which then existed between the CDC and the government, this action could be interpreted as a provocative demonstration of corporate autonomy. Notwithstanding the selection of Sellers the government contacted a number of directors in April to express its preference for Maurice Strong as CDC chairman. With tensions aggravated by media reports of the government's desire to have Strong appointed to the chairmanship, the Minister of Finance proposed Joel Bell, then a vice-president with Petro-Canada and well-known as an architect of the Gray Report, and David Beatty, a consultant with close connections to the Liberal Party, to fill the two directorships which the Minister understood remained under the government's agreement with the CDC.³⁸

The understanding which state actors allege existed broke down in the face of the particular nominations proposed by the Minister of Finance. CDC management considered Bell and Beatty to be too sympathetic to the policy instrument view of the CDC, and refused to support their nominations. The government continued in its resolve to increase its influence on the board of directors, and the deputy minister of Finance, Dr. Ian Stewart, met with the board on the day of the CDC's annual meeting and restated his minister's case that Maurice Strong be named as chairman, and that Beatty and Bell be appointed as directors. As no one denies, the board was unanimous in opposing the minister's request, and thus the government chose not to vote its equity on the issue.

At stake was whether the CDC's corporate autonomy would be infringed through recognizing the right of the major shareholder to significant voting representation on the board of directors. An increased government presence on the board was perceived by CDC management, the private sector directors, and the general investment community³⁹ as a compromise of the commercial orientation of the corporation. Strong and Bell were considered particularly objectionable because of their association with the development of Petro-Canada.

The control crisis demonstrated to the government that its inability to control the CDC was structural, i.e., a function of the participation of private shareholders whose interests could be invoked by the corporation's management in opposing government influence.⁴⁰ Moreover, the particular resistance of CDC management to any intrusion upon corporate autonomy by its major shareholder was reflective of a view widely held in the private sector, namely, that state decision-making involves considerations inappropriate to commercial activity. Between the structural constraint on the mixed ownership corporation as a policy instrument, and this normative bias against the state as a decision-maker in the produce-for-profit economy,⁴¹ the government was confronted with the choice of effectively transforming the CDC into a state-controlled enterprise (through voting its equity and thereby precipitating a crisis which certainly would have resulted in the resignation of most board members and senior management, and a major decline in the market value of CDC shares) or conceding the intractability of the CDC as a policy instrument. In establishing the Canada Development Investment Corporation the government chose the latter course.⁴²

The Caisse de dépôt et placement du Québec

1) DONTAR

During the first two weeks of August, 1981, Quebec's Caisse de dépôt et placement increased its ownership share in DONTAR from 25.5 per cent (31 July) to 41.4 per cent (11 August), thereby vesting effective control of this company with the Quebec state. This rapid takeover of DONTAR appears to have been both congruent with the economic policy preferences of the PQ government, and to have involved unprecedented co-operation between at least two organizations of the Quebec state; the SGF and the Caisse. The SGF borrowed \$145.8 million in August of 1981 in order to finance the purchase of 22 per cent of DONTAR's equity, acquired mainly from the Caisse.⁴³

A combination of two main factors led to the acquisition decision. In 1980 the Quebec government indicated to the management of SGF that a controlling investment in a major corporation was desirable in order to stabilize the income base of this state holding company.⁴⁴ While other candidates for investment were studied, the Caisse's already large ownership stake in DONTAR (approximately 20 per cent in the year before the takeover) was a factor which reduced the cost of acquiring control over this particular corporation, assuming that the combined ownership shares of the SGF and the Caisse can be taken to signify a single voice for purposes of control. The government's interest in seeing the SGF acquire a stable revenue base dovetailed with its interest in acquiring an effective veto, which could be used if circumstances warranted, over major capital and production decisions of DONTAR. A series of decisions by DONTAR management in the late 1970s, including the relocation of Sifto division headquarters from Montreal to Toronto,

expansion of the capacity of its Goderich mine, and investment in a processing facility in Chicago in order to expand its share of the mid-American market, had demonstrated to the Quebec government that the Caisse's approximately 20 per cent ownership stake was not sufficient to sensitize Domtar management to the economic development interests of the Government.⁴⁵

The effective takeover of Domtar by the Caisse and the SGP was brought about through the purchase of several small blocks of equity, rather than through a public takeover offer. This strategy was understandable from the joint perspective of the Caisse and the SGP. One state actor who was intimately involved in the takeover suggested that the public takeover option was estimated to cost \$500 million, as compared to the \$300 million which the market purchase strategy ultimately cost the Caisse and SGP.⁴⁶ However, the increase in the Caisse's ownership stake was later characterized by the Ontario Securities Commission as a takeover bid which, according to the Act regulating securities trading in Ontario, requires a public offer to all shareholders.⁴⁷

The reaction of Domtar's private sector shareholders, the corporation's financiers and the business community generally to the fact of the takeover was adverse. The market value of Domtar's common shares fell 15 per cent within a week of the news that the SGP and the Caisse together had acquired 42 per cent of Domtar's equity.⁴⁸ In fairness one must acknowledge that information regarding an accomplished or pending takeover commonly has a depressing effect upon the value of a corporation's stock. However, the suddenness and extent of this particular decline attested to shareholder uncertainty whether corporate autonomy could be maintained in the face of state control. The finan-

cial community had similar reservations, and these were communicated to senior officials of the SGP and the Caisse by a representative of the financial group which in the past had met Domtar's external capital requirements (in the words of one state actor, "I was submitted to the third degree, but in the end they were satisfied.").⁴⁹ The reaction of the business community was generally negative, and private sector anxiety over the future of Domtar and the possibility of other takeovers was not assuaged by the Industry Minister's statement that, "There could be other Domtars", and Finance Minister Parizeau's acknowledgment that Paul Desmarais, chairman of Power Corporation, was instrumental in the takeover operation.⁵⁰

Following upon the change in Domtar's ownership structure, the corporation's board of directors experienced considerable turnover in the two years after the takeover. However, increased state representation on the board was not accompanied by any demonstrable attempts to impose public policy objectives upon the corporation. Rather, the main effect of the state's controlling share, from the standpoint of decision-making, has been to sensitize management to the interests of its major shareholder. Thus, there is no evidence to suggest that Domtar's recent decision to invest \$773 million in a new manufacturing facility in Windsor, Quebec, was determined primarily by the industrial development preferences of the Quebec government. However, in deciding between alternative production possibilities and capital investments Domtar's management is cognizant of the latent power which its controlling shareholder might be able to wield in the event of a serious divergence between the preferences of management and those of the Quebec government. Domtar's president, James H. Smith, demonstrated his sensi-

tivity to this constraint when he stated: "One has to be conscious of the fact that a major block of the stock is controlled (by the Caisse and the SGP), but we've had no undue influence at all....The government wants the company to be profitable". Smith added, "It might be different if we came to a decision to leave Quebec".⁵¹

In summary, the decision to acquire a controlling interest in Domtar was based upon a combination of factors, including the government's interest in acquiring a veto over major capital and production decisions of one of the largest industrial employers in the province, the SGP's interest in stabilizing its income base, and the fact that the Caisse's existing ownership share in Domtar rendered the cost of acquiring control lower than would have been the case with another corporation of comparable size.

The strategy followed in acquiring control over Domtar has been characterized as nationalization without public debate.⁵¹ But the government's interest in controlling Domtar, through the ownership shares of the Caisse and the SGP, was not based upon an expectation that the corporation would operate as an instrument of public policy. As a publicly-traded company Domtar's capital structure would be sensitive to any such intervention. Instead, the provincial government was concerned to sensitize the corporation's management to the general interests of its major shareholder, and thereby alter the relative weighting of the constraints upon management decision-making.

2) CANADIAN PACIFIC

The issues involved in the conflict between the Caisse and CP management over Caisse representation on the corporation's board of directors have been documented extensively.⁵³ CP management's categor-

ical opposition to Caisse-nominated directors was a principal factor behind the introduction of Bill-S-31 (The Corporate Shareholding Limitation Act), legislation which polarized the interests of the federal government and anglophone big business, on the one hand, against those of the Quebec state and much of the francophone business class on the other. Indeed, the limited issue of Caisse representation on the board of CP expanded to include the related question of the relationship between the Quebec government's economic policy and the investment decisions of the Caisse, as well as the more general question of whether and under what conditions state participation in private sector corporate decision-making, through representation on the board of directors, is acceptable to the business community.

To begin with the limited question of Caisse nominations to the board of directors of CP, the chairman of the Caisse, Jean Campeau, met with Fred Burbidge, president and chairman of CP, in April of 1982 and suggested that the Caisse be allowed to propose two nominees for appointment to the board of directors.⁵⁴ The Caisse had acquired an additional 2 per cent of the share capital of CP during the previous month, bringing its ownership share in the corporation to roughly 9 per cent. In view of the wide dispersion of CP share ownership (Power Corporation, with approximately 11 per cent of equity, was the only other minority shareholder of significant size), a 9 per cent ownership share would carry under most circumstances a right of representation on the board of directors. This principle of proportional representation is consistent with the spirit of the Canada Business Corporations Act. However, CP's president immediately refused the Caisse's request, later citing uneasiness over the apparent public policy role of the Caisse,

and its relationship to the economic development goals of the P.Q. government, as the basis for his opposition.⁵⁵

This rejection of the Caisse's request for representation was, not an isolated case. The Caisse was refused representation on the board of directors of both Alcan and Dominion Textile, notwithstanding that in the latter corporation it had a greater ownership share than any other single shareholder.⁵⁶

The private sector's aversion to direct state participation in corporate decision-making, so evident at the time of the federal government's loan guarantee to Chrysler⁵⁷ and, more recently, in Dome Petroleum's desperate efforts to avoid recourse to capital support from the federal government, is an important factor in explaining these particular instances of opposition to Caisse representation on the board of directors. However, this general aversion is reinforced by the business community's perception that the investment orientation of the Caisse has undergone a transformation since the departure of Michel Cazavan, formerly the Caisse's CEO, and his replacement by Jean Campeau. The factors which have contributed to this perception are well known: i) the Caisse's 1979 decision to lend money to Hydro-Quebec and the Quebec government at rates of interest below the prevailing market rates (a policy which led to Eric Kierans' resignation from the Caisse's board of directors, on the grounds that the agency's fiduciary responsibility to its depositors was thereby compromised); ii) the takeover of Domtar, in concert with the SGP; and iii) indications that the Caisse was following a systematic policy of increasing its equity holdings, and unprecedented statements suggesting that circumstances could compel the Caisse to intervene in the management of a

corporation in which it held a large ownership stake.⁵⁸

In opposing the Caisse's request for representation on CP's board, the management of CP was motivated by more than an aversion to the idea, and uncertain consequences, of shared control with a state agency. Management's concern with preventing any shareholder from acquiring a position of control over the corporation's decision-making (with control understood as the capacity to replace the corporation's top management) is demonstrated by the agreement between CP management and Paul Desmarais which places a ceiling on the latter's ownership share.⁵⁹ The protection of corporate autonomy requires, in the view of CP management, the preservation of a widely held share distribution, a condition facilitating management dominance in corporate decision-making. While, an accommodation with one of the leading members of Canada's corporate elite was conceivable, a similar rapprochement with the Caisse was excluded by the norms of private sector corporate autonomy and, secondly, the particular reservations held by the anglophone business class regarding the intentions of the Caisse and the relationship of that agency to the nationalist economic policies of the PQ government.

The decision of CP management to oppose Caisse representation on its board of directors was entirely consistent with a general pattern of private sector aversion to shared control with the state which is evident in the results of a recent survey on the perceptions of chief executive officers regarding the Caisse (see chapter 8). This aversion is not restricted to the anglophone business community, but is shared by francophone CEOs and even clients of the Caisse. The perception that the Caisse is not sufficiently insulated from influence by the

Quebec government, reinforced by the particular circumstances of the Domtar takeover and CP management's resistance to the emergence of control blocks, were factors which combined to form the basis of CP's objection to Caisse representation:

Summary: Policy Instrument v. Corporate Autonomy

The cases of conflicting preferences examined above confirm the hypothesized relationship between private sector perceptions of the state shareholder's expectations for the mixed ownership corporation, and the state's ability to influence corporate decisions. Every perceived attempt by the state to influence corporate behavior in a way considered prejudicial to the commercial competitiveness of the firm was opposed by management as an illegitimate intrusion into corporate decision-making. In a sense this merely demonstrates that the dynamic of capital accumulation, as it unfolds in a firm which relies on private investors for some part of its capital requirements, resists the imposition of social goals which reduce the competitive return on invested capital. However, the force of this limitation on state influence seems not to have been appreciated by the governments which created Telesat, the CDC, and the Caisse. At least in the conflictual decision situations examined in this study, original government expectations that the mixed ownership corporation would somehow operate as an instrument of public policy have in practice been stymied by management, behind the protective shield of corporate autonomy.

In those cases where the state shareholder was successful in influencing corporate behavior along lines opposed by management (i.e., Canadian content in Telesat's satellite procurements), or in changing the structure of decision-making (i.e., the takeover of Domtar), success was not unalloyed with certain costs. The practice of treating the

federal government's backward industrial linkages preference as a recompensable cost has protected the profit motive in Telesat's operations (though profitability has been elusive for other reasons). In other words, management has successfully opposed the view that the state's 50 per cent ownership share and privileged relationship to the corporation's decision-making structure should dilute corporate autonomy. Public policy is treated as an externality, the cost of which is borne by the state rather than the corporation.

The alternative to inducement is coercion. But this option also carries costs as the Caisse discovered after acquiring a controlling interest in Domtar. The immediate costs of the takeover (i.e. suspension of the Caisse from trading of the TSE, a drop in the value of Domtar's shares, temporary hostility on the board of directors and in the financial community) were small compared to the latent private sector hostility, which eventually found expression in the Caisse/CP conflict and the controversy over Bill S-31. Thus, the price of forced compliance with the state shareholder's preferences appears to be crisis in the relationship between the state and private capital in the mixed ownership firm, a condition which was avoided in the CDC only when the federal government conceded defeat on the chairmanship issue.

These cases of conflict suggest that the reconciliation of divergent state and private sector expectations for the firm is likely to assume the form of a zero-sum game: a gain in set control corresponds to a reduction in corporate autonomy. The apparent inability of the state shareholder to substitute its own decision preferences for those of management and/or private investors, without either compensating the firm for the cost of carrying out these policy goals or precipitating

a crisis in the relationship between the state and private capital, is a function of the specific circumstances of corporate organization examined in chapter five, and the configuration of political, business and organizational interests mobilized in a decision situation. Indeed, the cases examined in this chapter indicate a tendency toward the "spill-over" of conflict, whereby the resolution of conflicting preferences for the firm is influenced by the broader pattern of business-state relations in the particular sector of the economy. This phenomenon is elaborated on in chapter seven.

Footnotes

1 Canada, Senate Standing Committee on Legal and Constitutional Affairs, Proceedings, 2 December 1982, p. 35. Hereafter cited as Senate, Standing Committee, Proceedings, date, page.

2 In the late 1970s the Quebec government approached Domtar with a proposal that the corporation co-operate with the government in developing the salt deposits on the Magdalen Islands. Domtar's management declined on commercial grounds and the government proceeded on its own through Soquem, a crown corporation.

3 Recent statements by the chairman of Chrysler, Lee Iaccoca, demonstrate that at least some members of the corporate elite are prepared to discard mystifying free enterprise rhetoric and acknowledge that the exigencies of international competition require that the state intervene directly in the economy in order to support private capital accumulation. Iaccoca has been outspokenly critical of the the Reagan administration's outdated views on the business/state relationship.

4 See the discussion in chapter eight.

5 Franco A. Grassini, "The Italian Enterprises: The Political Constraints", in Vernon and Aharoni (eds.); State-Owned Enterprise in the Western Economies (London: Croom Helm, 1981), pp. 70-84.

6 Jean-Pierre Anastassopoulos, "The French Experience: Conflicts with Government", in ibid., pp. 99-116.

7 R. Mazzolini, Government Controlled Enterprises: International Strategic and Policy Decisions (Toronto: John Wiley & Sons, 1979).

8 This unequivocal interpretation of "on a commercial basis" was repeated by every Telesat principal interviewed, with the exception of one of the government-appointed directors who expressed some mild misgivings about what he considered inadequate attention to social goals in the corporation's operating history. Personal interview, 9 December, 1983.

9 Personal interviews, 1, 7, 9 December, 1983.

10 Personal interviews, 1, 7, 9 December, 1983.

11 Personal interview, 9 December, 1983.

12 Personal interviews, 7, 9 December, 1983.

13 See Telesat Canada, Annual Report, 1979, p. 28.

14 Personal interview, 12 December, 1983.

15 Personal interviews, 1, 9, 12 December, 1983.

16 Doern and Brothers attribute to the government this window-on-the-industry reasoning, apparently based upon no more than a remark which the Minister of Communications, Jeanne Sauve, was reported to have made. In support of what is a rather major claim they cite only the remarks attributed to Sauve in Frank Howard's column, "Bureaucrats", Ottawa Citizen (7 November, 1977), p. 2.

17 This contract required an amendment to the Telesat Act and, according to some Telesat actors, encountered some resistance within the cabinet on the grounds that the nationalistic goals of the domestic satellite corporation might be compromised thereby.

18 Personal interview, 1 December, 1983.

19 See Telesat Canada, "Telesat Canada, Proposed Agreement with Trans-Canada Telephone System: Rationale--Motivation--Alternatives" (Ottawa: 29 March, 1977, mimeo).

20 Difficulties in forecasting markets and, therefore, arriving at reliable estimates of future income has plagued satellite telecommunications since the beginning of commercial satellite broadcasting. This situation continues, as demonstrated in the recent collapse of the fledgling pay-TV market in Canada, one of the consequences of which has been a major loss of anticipated revenue for Telesat.

21 Personal interview, 12 December, 1983.

22 The relevant passage of the memorandum of agreement (31 December, 1976) between Telesat and the TCTS reads: "...Telesat shall not build, own, operate, maintain or control any terrestrial transmission facilities in TCTS members' territories, except for the purpose of the operation and the control of the space segment of the system, and only then when such transmission facilities cannot be provided to Telesat's satisfaction by the TCTS members".

23 Personal interviews, 1, 12 December, 1983.

24 Personal interviews, 9, 12 December, 1983.

25 A longtime government-appointedee to Telesat's board argues that this is the government's primary expectation for Telesat, and that the Canadian content preference is a secondary goal advocated by DOC. Personal interview, 9 December, 1983.

26 The competing industrial strategy and capital markets versions of the CDC are discussed in chapter three.

27 One senior bureaucrat who was interviewed for this study referred to long debates within the government during the 1970s over the appropriate role of the CDC. Personal interview, 21 February, 1984.

28 This interpretation is supported by the remarks of a senior economic official in the federal government. Personal interview, 21 February, 1984.

29 This interventionism was most clearly manifested in the National Energy Program. Less concretely, the development of an industrial strategy was accorded priority in public statements by Herb Gray, the Minister of Industry, Trade and Commerce.

30 With the departure of such ministers as Turner, Macdonald, Gillespie and Sharp in the mid-1970s, the Priorities and Planning committee of cabinet came increasingly to be dominated by the more interventionist wing of the Liberal Party.

31 Personal interview, 21 February, 1984.

32 These facts were corroborated in a number of interviews with both management and state actors.

33 Personal interviews, 19 December, 1983.

34 Personal interview, 21 February, 1984.

35 This interpretation is supported by the remarks of a senior economic official who was involved in the events of 1980-81. Personal interview, 21 February, 1984.

36 Personal interview, 21 February, 1984.

37 Personal interview, 21 February, 1984.

38 CDC management actors support the version of events chronicled by Peter Foster in his article, "The Battle of the Sectors", Saturday Night (March, 1983), especially pages 27-30.

39 The investment community's reaction can be gauged from the decline in the market value of CDC shares which occurred during the period of the control crisis. In fact, CDC's stock declined in value by 8 per cent on a single day (May 12), representing a decrease of \$85 million in the corporation's market value.

40 This interpretation of the outcome is supported by both management actors, and the state official most intimately involved in the control crisis. Personal interviews, 19 December, 1983; 20 January, 1984; 21 February, 1984.

41 The currency of this negative view of the state as a commercial decision-maker is demonstrated in the continuing popularity of P. Mathias' book, Forced Growth (Toronto, 1971).

42 See my article entitled, "The State as Entrepreneur: From CDC to CDIC", Canadian Public Administration (Winter, 1983), pp. 525-543.

43 Société générale de financement, Rapport Annuel, 1982, p. 7.

44 Personal interview, 2 February, 1984.

45 See Bernard Descoteaux, "Parizeau accuse la Domtar d'agir à l'encontre des intérêts des Québécois", Le Devoir, 3 décembre, 1980, p. 1.

46 Personal interview, 2 February, 1984.

47 See the summary of the OSC's investigation in Amy Booth, "Quebec's big affair with Domtar", Financial Post (12 February, 1983), p. 6.

48 Michel Nadeau, "Les actions de Domtar ont perdu 15% de leur valeur", Le Devoir, 20 août, 1981, p. 5.

49 Personal interview, 2 February, 1984.

50 Quoted in Amy Booth, op. cit., p. 6.

51 Ibid.

52 See the remarks of Lucien Rolland, president of Rolland Inc. (a Montreal-based competitor with Domtar), quoted in Wendie Kerr, "Caisse role termed in spirit of free enterprise", Globe and Mail, 26 October, 1982, p. B-15. Similar views were expressed by Sam Hughes, president of the Canadian Chamber of Commerce, and Fred Burbidge, president of CP, in their respective testimony before the Senate Standing Committee on Legal and Constitutional Affairs (2 December, 1982) which considered Bill S-31.

53 See Allan Tupper, Bill S-31 and the federalism of State Capitalism, Discussion Paper 18 (Kingston: Institute of Intergovernmental Relations, 1983).

54 See the testimony of Fred Burbidge at, Senate, Standing Committee, Proceedings, 2 December, 1982, p. 7.

55 This concern runs throughout Burbidge's testimony. See ibid., p. 5-27.

56 In 1981, Dominion Textile's president, Tom Bell, was quoted as saying, "We feel a government agency isn't the kind of representation that should be on our board." Quoted in David Olive, "Caisse Unpopulaire", Canadian Business (May, 1982), p. 101. The Caisse held 11 per cent of the corporation's equity as compared to 8.5 per cent held by the next largest shareholder, the Sobey retailing interests of Nova Scotia. The Sobey interests were represented on Dominion Textile's board of directors.

57 At the time of the federal government's "decision" in 1980 to provide a \$200 million loan guarantee to Chrysler Canada, the minister responsible for negotiating the federal government's assistance to Chrysler, Herb Gray, stated both publicly and in negotiations with Chrysler president, Lee Iacocca, that financial support for the distressed automaker ought to be in return for government representation on the corporation's board of directors. This demand, which was quixotic in view of the fact that the United States administration had agreed

to a similar loan guarantee without any such condition, was rejected as inconceivable by Chrysler's president. Government representation on the corporation's board of directors was considered an illegitimate intrusion upon private sector decision-making prerogatives, a view which received general support in the business community.

58 On March 2, 1982, the president of the Caisse stated in a public address that under certain circumstances public sector interests supercede those of the private sector. While not a terribly controversial observation by itself, the fact that it was made by the head of the Caisse at a time when that agency was following a policy of increasing the proportion of its portfolio invested in equities, and given the questions raised by the Domtar takeover in regard to the relationship between the investment decisions of the Caisse and the economic policy of the PQ government, together contributed to uneasiness in the private sector (not to mention the federal government) over the instrumental role of the Caisse.

59 Under the terms of this written agreement Desmarais' ownership share in CP cannot exceed 15 per cent, except in the event that another party acquires more than 10 per cent of the corporation's shares. Should this happen Desmarais would be entitled to maintain a margin of 5 per cent over the second largest shareholder. In return for this undertaking Desmarais received a position on the executive committee of CP's board, as well as the right to nominate another member to the board.

7

CHAPTER SEVEN

ISSUE DEFINITION AND INTEREST MOBILIZATION

While managers, boards of directors, governments, shareholders, and regulatory agencies may have expectations which are expressed as positions taken on some particular issue(s), corporate decisions and the resolution of divergent expectations also are influenced by larger configurations of interests, the contours of which are determined by the issues and stakes involved. As Schattschneider observes, conflict is contagious, and the resolution of what may have begun as a limited confrontation between distinct actors frequently will be influenced by broader interests which become engaged as the scope of conflict expands.¹ How the issue is defined will determine the scope and intensity of conflict between interests as, for example, the Caisse's decision to seek representation on the board of CP provoked two related controversies: i) the relationship of Caisse action to the economic policy objectives of the Quebec government; and ii) the intergovernmental conflict between Quebec and Ottawa over spheres of authority in managing the economy.²

In the same way as the CP/Caisse conflict expanded to engage a broader range of actors and higher stakes, the confrontation between the federal government and the CDC over government influence on that corporation's board developed into a larger controversy which had been latent during the preceding years of non-interference by the government in CDC decision-making. The limited question of the CDC chairmanship and government representation on the corporation's board was transformed into the more fundamental issue of whether the CDC was, in any significant sense, a policy instrument. This issue had polarized opinion on the CDC from the mid-1960s, when the idea of a CDC first reached the public agenda.³ According to a senior economic official in the

federal government, the division continued to surface periodically at the cabinet level throughout the 1970s.⁴ What was at stake in this larger issue was the legitimacy of public policy preferences (particularly job maintenance and support for regionally and/or sectorally important firms) in the decision-making of a publicly-traded corporation. In other word, the outcome of a narrow decision situation (viz., the composition of CDC's board of directors) was influenced by a larger controversy which had gone unresolved from the time of the CDC's creation.

In the case of Telesat, the issue of competition in Canada's telecommunications industry, i.e., whether the domestic satellite system should develop as a competitor with the TCTS (Telecom Canada), was resolved when the federal government varied the CRTC's rejection of the Telesat/TCTS membership agreement. But before this imposed settlement, the conflict between the CRTC and Telesat management had widened to pit different factions of the telecommunications industry against one another, and ultimately placed the state as regulator (the CRTC) against the state as shareholder (cabinet). The specific matter of whether Telesat would be permitted to join the TCTS was transformed into the more general issue of the structure of competition in the telecommunications industry, with the further complication that different parts of the state held conflicting preferences for the satellite corporation's development.

This chapter examines the politics of scope in the decision process. Conflict between the state and private capital over the corporate behavior of the mixed enterprise mobilizes a wider set of interested parties around an issue with higher stakes than those attendant upon the proximal cause of dispute. This occurs when an originally narrow conflict be-

tween the state and private capital is perceived by third parties to have ramifications which touch their own interests. It is argued that this spillover phenomenon has limited the state's ability to act through the mixed enterprise in pursuing a public policy goal.

Telesat: Competition in the Telecommunications Industry

In the discussion of Telesat's origins it was suggested that the choice of a mixed ownership structure for the satellite corporation accommodated both the industry's concern with controlling the development of a potentially competitive technology, and the federal government's insistence upon direct participation in an enterprise considered to have implications for national unity, industrial development, and the government's ability to regulate telecommunications. On this last implication, one very senior private sector actor recalls conversations he had with Paul Hellyer and C. M. Drury, in which these Liberal Ministers indicated the government's view that satellite communications potentially could displace the terrestrial system for long-distance communications, and therefore overcome the problem of divided jurisdiction in telecommunications regulation.⁵ However, this displacement has not occurred, and Telesat has not developed into a competitive threat to the terrestrial technology of its industry shareholders.

The related questions of competition and regulation together constitute a central issue upon which the preferences of the state, in this case as regulator (i.e., the CRTC), and Telesat management have come into conflict. The configuration of interests which has formed around the issue of Telesat's competitive position vis-a-vis the terrestrial common carriers can be described schematically.

DIAGRAM 7.1: TELESAT IN THE TELECOMMUNICATIONS MARKET

This alignment of interests crystallized with the 1976-77 issue of Telesat's entry into the TCTS. Telesat's interest in TCTS membership was based upon management's view that commercial viability demanded integration into the east/west market for long-distance message and data transmission, and that the development costs for Telesat's ANIK C satellite system (which would carry this traffic) could only be financed through membership in the TCTS. In exchange for the TCTS commitment to a large proportion of Telesat's satellite capacity, and a formula for transfer payments from the TCTS to Telesat, the satellite corporation agreed to limitations on its market opportunities (i.e. Telesat may lease channels only to telecommunications carriers approved by the TCTS, or to other agencies for experimental work only). Telesat

was thereby integrated into the TCTS system, a development which was opposed by both CP Telecommunications (in view of government support for Telesat membership in the TCTS, CN could not overtly oppose this decision) and the CRTC as pernicious from the standpoint of industry competition. CP's position was clearly self-interested, based upon its competition with the TCTS for the expanding computer communication market and the expectation that TCTS control over Telesat would deprive CN/CP of the opportunity to contract for Telesat channels in competing with the TCTS.

The CRTC supported CP's position, concluding that, "it is clear from the evidence that as a result of the Agreement (between Telesat and the TCTS), instead of there being three separate alternative carriers for long-haul traffic across Canada there would be two, one of whom--CN/CP--would be under certain disadvantages".⁶ The Commission observed that the conditions of Telesat's entry into the TCTS ensured that Telesat's development as a telecommunications carrier would be under the control of TCTS members. Moreover, the Commission maintained that the membership agreement had not been demonstrated to be in the public interest, and that Telesat integration into the TCTS would complicate the rate board's ability to regulate the satellite corporation. These arguments in support of industry competition and public interest regulation were shared by the Consumers' Association of Canada, in the Association's representation to the Commission and in a later legal challenge of cabinet's decision to overturn the CRTC's rejection of the Telesat/TCTS Agreement.⁷

With CP Telecommunications and the CRTC opposing Telesat's entry into the TCTS, on the grounds that industry competition would be reduced

thereby, the decision of the federal cabinet to overturn the CRTC rejection of Telesat's application for membership in the common carriers' consortium was motivated by the government's reluctance to bear the development costs for Telesat's next generation of satellites (the ANIK C system, at the time estimated to cost \$120 million).⁸ Telesat membership in the TCTS would resolve the problem of financing these development costs (the banks were unwilling to provide the necessary capital, and a public share issue was not possible in view of the corporation's unprofitable past and uncertain future prospects), and could be justified as promoting the federal government's policy objective, first expressed in the 1968 White Paper, of an integrated national telecommunications system. However, integration of the country's domestic satellite communication monopoly into a consortium dominated by terrestrial technology appeared to reduce the likelihood of competition between telecommunications technologies. This certainly was the CRTC's assessment. In overturning the CRTC's judgement that, from the standpoint of industry competition, the public interest would not be served by the Telesat/TCTS Agreement, the federal government demonstrated that its public policy expectations for the satellite corporation had nothing to do with competition. Subsequently, the government's chief concern would be the backward industrial linkages expected to follow from Telesat's satellite acquisitions.

The competition issue determined the alignment of interests around the more specific question of Telesat's membership in the TCTS. Industry control over the competitive development of satellite technology, control which was denied the carriers when the federal government first decided to establish Telesat as a separate satellite communications monopoly

with state ownership participation, was conceded when the government varied the 1976 CRTC decision. On the relationship of Telesat to its partners in the TCTS (now Telecom Canada), a longtime director of the satellite corporation observed, "(w)hat Bell Canada loses in opportunity cost with its investment in Telesat, and the transfer payments from Telecom Canada to Telesat, is more than recovered through control over the direction of Telesat, because Bell effectively controls Telecom Canada".⁹ A management actor with Telesat confirms this view:

The carriers are satisfied to keep Telesat as it is: neither a threat nor a source of benefits. And so they would want to maintain ownership participation in Telesat for fear of what a non-commercial, wholly government-owned corporation would do in terms of competition. ¹⁰

Telecom Canada's position on the competition issue, as it relates to Telesat, is expressed by an industry member of Telesat's board:

Telesat had to be part of the national carrier network before the commercial carriers would use it. The American model is total competition. But in Canada, because of social and geographic factors, as well as the intergovernmental division of authority, regulation is more appropriate than competition. ¹¹

The position against competition between telecommunications technologies is explicit in the remarks of another industry actor whose involvement with Telesat spanned the years from the corporation's creation to its integration into the TCTS. This actor suggested that even though the industry was compelled to share ownership of the satellite company with the government, the carriers have seen their initial expectations satisfied through Telesat's integration into the national telecommunications system, and regulation instead of competition.¹²

CDC: Investment Choices and Industrial Policy

On the relationship of the CDC to the industrial policy goals of the federal government, one state actor expressed the view that,

"From the day the CDC issued a share, it was effectively a private sector corporation", and that the government, "failed to recognize the consequences of selling shares to the investment public".¹³ This failure to anticipate the practical consequences of the public company organizational structure was, according to this actor, accompanied by government confusion as to what could or should be accomplished by the CDC.

Successive Liberal governments demonstrated a confused ambivalence toward the CDC, at times indicating a weak expectation (unsupported by coercive action) that the corporation be responsive to public policy objectives identified by the state shareholder, while at other times employing the CDC as a policy symbol without this having any practical implications for the government's influence upon the CDC. The federal government's proposal that the CDC consider investments in Canadair and de Havilland (this proposal came after the government nationalized the failing aerospace firms and, in the view of one CDC actor, "found that it owned them, then considered what to do with them"¹⁴), and then the Massey-Ferguson investment proposal, demonstrated that Liberal governments faced with particular circumstances of industrial crisis, did conceive of the CDC as a policy instrument. That these governments were unwilling, until the control confrontation of 1981, to pressure CDC management was due to two factors: i) the dominance of the Department of Finance in economic policy and the fact that, until the Liberal government of 1980, the Finance view of the CDC as an autonomous organization with a capital markets objective (i.e. to expand Canadian ownership of the domestic economy) and ii) the absence of a coherent industrial strategy guiding the direct investment preferences of the govern-

ment.¹⁵

The symbolic uses of the CDC began with the passage of the CDC Act (1971). Arguably, the legislation represented a concession to economic nationalism demands which were then current, without the corporation being assigned the capital required to make a quantitative impact upon the ownership profile of Canadian industry,¹⁶ or the mandate (specifically, a relationship to the treatment of foreign direct investment) which would have enabled it to have a qualitative (sector- or firm-specific) impact on economic development.¹⁷ The CDC re-emerged as a policy symbol during the 1980 general election, when the leader of the Liberal Party, Pierre Trudeau, stated before an audience of Toronto businessmen his view that, "The Canadian (sic) Development Corporation...should be revitalized and play in the manufacturing sectors the more positive role that Petro-Canada has played in resources".¹⁸ This symbolic analogy between the CDC and Petro-Canada acquired practical significance for the relationship between the federal government and the corporation when, a week prior to the May, 1981, shareholders meeting at which the control crisis came to a head, the Prime Minister gave an interview to the Calgary Herald. In that interview Trudeau recalled his 1980 election statement:

I pledged that the CDC would become more directly an instrument of (government policy in the) national economy. When our government created the CDC more than ten years ago, it was with that in mind--a corporation run for the benefit of its shareholders and which would take into account the broad policy objectives of the Government of Canada. That is still our objective.¹⁹

The government's defeat on the chairmanship/board representation issue led to a reassessment of the relationship between the CDC and its major shareholder, and a late awareness of the intractability of this public

company as a policy instrument. After that, the merely symbolic significance of the CDC in relation to public policy was reconfirmed when in December of 1983 the Prime Minister referred to the corporation as one of the most important and innovative policy initiatives of recent Liberal governments.²⁰

The unresolved (prior to May, 1981) issue of the CDC's relationship to public policy was complicated by the fact that the corporation was unrelated to other economic policies of the federal government. Moreover, the interests supportive of an industrial strategy (in which, presumably, the CDC would be integrated) were too weak to provide the federal government with leverage in opposing the general business view that state participation in the produce-for-profit economy should be limited to support for private capital accumulation. On the unrelatedness of the corporation to the economic policy of the federal government, the deliberate dissociation of the CDC Act from the Gray Report and the Foreign Investment Review Act has already been noted.²¹ When asked whether "Canadianization", a rather imprecise purpose set out in s.2 of the Act, has operated as a constraint in corporate decision-making, one management actor, observed: "I guess nothing's white and nothing's black. We have chosen industries for investment based in part upon whether there was a significant Canadian presence: and if not, part of our goal has been to fill this gap".²² Effectively, interpretation of the CDC's "Canadianization" mandate, and the requirements of the Act, have been determined by the corporation's management.

In the years between passage of the CDC Act and the control conflict of May, 1981, the federal government never developed a conception of how the CDC's investment policies might advance some sectoral or more

general economic policy objective(s) of the government. Episodic proposals that the CDC consider an investment in some specific corporation have in every case represented an ad hoc response to a particular case of industrial distress, rather than a coherent policy of industrial development. CDC's acquisition of the Canadian assets of Société Nationale Elf-Aquitaine (SNEA), a transaction which almost doubled the corporation's assets base, obviously dovetailed with the federal government's objective of expanding Canadian ownership in the petroleum sector. However, it appears that the decision was taken without regard to the state shareholder's policy preferences. Rather, it seems to have been a management choice which coincided with management's internally-generated assessment of the corporation's (and its private shareholders') best interests. In the words of one management actor: "The Aquitaine acquisition came after the NEP. We had long been looking to expand in the energy sector, and the NEP provisions made this right in terms of timing".²³

The fact that Ottawa had never developed an industrial strategy, despite tentative but disjointed efforts during the 1970s at creating the apparatus of economic planning,²⁴ contributed to the well-founded perception that the government's investment preferences for the CDC (which were not expressed systematically) were based upon short-term considerations of political expediency, rather than on a forward-looking analysis of the contribution which a particular investment could make to industrial development, or indeed to the commercial viability of the CDC. Even during the first four years of the CDC's operating history, when the federal government was the sole shareholder, the precedent of cabinet or Department of Finance review of the corporation's capital

expenditures was never established.²⁵ This certainly reflected the view of the Department of Finance on the appropriate relationship of the CDC to the government, but also confirmed that there was no coherent set of government investment preferences against which the corporation's choices could be measured.

The interests in support of the centralized indicative planning, or industrial strategy, which would have been required in order to generate an integrated system of state investment preferences were (and remain) very weak. Nationally, the NDP and the Science Council of Canada were the principal advocates of an industrial strategy. Support from within the state developed in the early 1970s, during Jean-Luc Pépin's tenure as Minister of IT&C. In a speech before the Canadian Manufacturers' Association in June, 1972, Pépin expressed the government's commitment to an industrial strategy, and went on to demonstrate an awareness of the unprecedented comprehensiveness of the enterprise. He stated:

(A) strategy is an ensemble of co-ordinated objectives and instruments, i.e. policies, programs and institutions.

Applied to industry, the term means the proper planning by government (federal) for the optimum co-ordination of policies and decisions, on the use of all productive resources, in order to achieve defined (and accepted) social and economic goals.

The strategy must embrace all sectors of economic activity from resources to services, but must emphasize manufacturing and processing. 26

However, without tracing the rapid decline and fall of the concept's tenuous foothold within the state, it is enough to observe that the idea of a global industrial strategy was soon replaced by an emphasis on sectoral strategies. In addition to the enormous practical problems of organizing and enforcing consensus in an economy in which provincial

governments control important levers of power, and in which the high level of foreign ownership and the mobility of capital combine to reduce the state's bargaining power vis-a-vis the private sector, the industrial strategy concept carried ideological overtones which mobilized opposition within the business community, and also within the state. As Richard French observes:

The more ambitious the construction of industrial strategy and the greater the range of policies and programs to be reformulated in its interests, the further these policies and programs lie from the traditional orbit of influence of the Department of Finance, the more coercive and "interventionist" their use appears, and the greater the political polarization which results. 27

The relevance of the industrial strategy debate for the CDC is therefore two-fold. First, the Department of Finance, the federal government's shareholder in the CDC and the pre-eminent actor in the development of economic policy during the 1970s, was opposed to the sort of investment targeting which an industrial strategy would have implied for the government's relationship to CDC decision-making. Second, the interests in support of an industrial strategy, and therefore in favour of a systematic integration of the government's economic development preferences and CDC investment choices (i.e., the CDC as policy instrument), were incapable of influencing government decision-making. This might have been otherwise if there had been some significant support within the business community. But as the Minister of IT&C, Alistair Gillespie, remarked in 1973, the private sector's conception of industrial strategy involved, "special pleading for each of the various industry sectors, trying to point out to the government the special need, as well as the special opportunities, for each of the various major sectors".²⁸ Government as a participant in decision-

making at the level of the firm was not contemplated. When the federal government appeared to challenge the decision-making autonomy of the CDC, in proposing Maurice Strong for the chairmanship and the appointment of two additional government directors, the private sector's reaction (as expressed in the financial press) was immediate suspicion that the federal government was intent on transforming the CDC into an instrument of industrial policy.²⁹ This was broadly condemned.

The Caisse de dépôt et placement du Québec: Tool of Nationalism?

In the case of the ownership participation of the Caisse in public companies, the larger configuration of interests which have a stake in whether equity participation by this state agency should carry decision-making influence includes both the federal and Quebec governments, and big business in Canada. This latter interest is both divided and ambivalent in its reaction to the Caisse's equity investment activity.³⁰

Fundamentally, the issue comes down to whether the Caisse, through its equity investment activity, operates as a tool of economic nationalism in advancing the economic policy objectives of the Quebec government. If the answer is yes, this implies that Caisse investment decisions are significantly shaped by non-commercial objectives which reinforce the provincial economic development policies of the Quebec government. No one denies that the Caisse has been crucial in the province-building strategies of successive Quebec governments, and certainly the fact that Finance Minister Jacques Parizeau was the first Quebec state actor to testify before the Senate Committee on Legal and Constitutional Affairs, in opposition to Bill S-31, confirmed the importance attached to the Caisse by the PQ government.³¹

The Caisse's request for representation on the board of directors

of CP quickly developed from a limited conflict between Caisse and CP officials, to include the federal and Quebec governments and important segments of the business community. The issue was transformed from the situationally specific question of whether the Caisse should be conceded representation on the board of a major private sector corporation, into the larger question of the significance of the direct investment activities of this state agency for business/state relations and federalism. In addition to engaging the federal government and the government of Quebec, representatives of the anglophone and francophone business communities entered the controversy, and through their respective positions demonstrated precisely what was at stake in the proposal that limits be placed on the direct investment capacities of provinces and their agents.

The arguments of the federal and Quebec governments on Bill S-31 are well known, and at bottom involved a conflict between Ottawa's policy of maintaining the Canadian economic union and Quebec's province-building strategy, in which the investment resources of the Caisse play a major part. Within the business and financial communities a range of positions was found, from the self-interested support of S-31 by CP management to the equally undetached opposition expressed by Pierre Lortie, President of the Montreal Stock Exchange. CP's position received considerable support from other large public companies, and from the President of the Toronto Stock Exchange, J. Pearce Bunting.³² The TSE's President had consulted his counterparts with the Vancouver, Calgary, and Montreal exchanges in an attempt to organize pressure upon the federal government to prepare legislation like Bill S-31. Bunting went on record stating that his objective in this was

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to protect the integrity of CP decision-making from the possibility of joint influence by Paul Demarais, chairman of Power Corporation and the francophone bourgeoisie's foremost member, and the Caisse.³³ The broader interest of this segment of the Canadian business class, comprising large public companies under anglophone control, involved, "a reduction of the capacity of provincial pools of capital...to invest in significant national firms and to thereby threaten corporate autonomy and the integrity of private enterprise".³⁴ For this class segment and its sympathetic media organs like the Financial Post, the major shortcoming of Bill S-31 was that its investment limitations did not also apply to the federal government and its agents.³⁵

Private sector opposition to Bill S-31 was most articulately expressed by Pierre Lortie. In testimony before the Senate Committee considering the legislation, the President of the Montreal Stock Exchange observed that Bill S-31 was based upon a fundamental misunderstanding of Canada's political economy, and specifically the "role and behavior of governments as active participants in the economic activity and functioning of the financial markets in Canada".³⁶ While expressing sympathy with the view that all public authorities should be subject to limitations in regard to sectors of investment and voting rights (the MSE suggested that voting rights of a state institution be limited to 10 per cent of the total, but that the state investor be permitted to hold stock in excess of this proportion), Lortie drew upon a study by the Economic Council of Canada in arguing that the high debt to capital ratio of Canadian businesses is a consequence of an inadequate supply of equity capital in Canada.³⁷ The direct investment activities of the state, federal and provincial, reflect this deficiency in Canada's

capital markets. By Lortie's reasoning the investment limitations contained in Bill S-31 would, if implemented, impede the financing of Canadian business and thereby impose costs on the Canadian economy (to say nothing of the opportunity costs which Caisse President, Jean Campeau, argued would be incurred by the millions of Quebec citizens with savings invested through the Caisse). In assessing Lortie's critique one must keep in mind that the Caisse was (and remains) the single largest trader on the Montreal Stock Exchange, and officials of Canada's other exchanges (particularly the TSE) were on balance more concerned with the Caisse's circumvention of transaction disclosure requirements than with any possible shrinkage in the pool of equity capital that might have resulted with the passage of Bill S-31.

The Chamber of Commerce was divided on language lines in its reaction to Bill S-31, with the national organization supporting the federal government and the Quebec Chamber of Commerce calling for withdrawal of the legislation. Like the MSE, the Quebec Chamber supported restrictions on the participation of state agencies in the decision-making of private sector corporations,³⁸ but considered that the financing of Canadian business would be adversely affected by the 10 per cent equity investment ceiling. The division between the Canadian and Quebec Chambers of Commerce reflected a difference in the clienteles represented by the two organizations (anglophone capital and Quebec-centred francophone capital, respectively), reinforced by the much denser network of financial relations between the corporate interests represented by the Quebec Chamber and agencies of the Quebec state. For the majority of private sector firms, the so-called PNEs (petite et moyenne entreprise) in the Quebec economy, the capital support activities of the

Société générale de financement and the Société de développement industriel, both of which are more closely controlled by the provincial government, are of greater salience than the equity participations of the Caisse.

To suggest that the limited question of Caisse representation on the board of CP expanded to set the federal government, supported by anglophone-controlled big business, against the Quebec government, backed by the francophone bourgeoisie, would be to oversimplify the alignment of interests. The fact that the MSE and the Quebec Chamber of Commerce opposed Bill S-31 did not signify sympathy with the Caisse's policy of seeking representation on the boards of its private sector investments.

Rather, their opposition was based upon a realistic assessment of the role played by Quebec state agencies, including the Caisse, in financing economic development.³⁹ On the other hand, the support for Bill S-31 expressed by, inter alia, the Canadian Chamber of Commerce, officials of the TSE, and the managers of nationally-oriented public companies like CP, Dominion Textile, and Alcan was based upon a shared understanding, confirmed by the Domtar takeover, that direct investment by the Caisse could challenge corporate autonomy. These interests were indifferent to the federal government's arguments that S-31 was intended to maintain the integrity of the Canadian economic union, and that the direct investment activities of the federal state were, by virtue of Ottawa's role as a national government (and in contrast to the narrower horizons of provincial governments), intended to promote the national interest. Indeed, the business interests in support of Bill S-31 would have preferred that the legislation's investment res-

trictions be extended to cover the federal government and its agents as well.⁴⁰

More than any other single issue, the controversy surrounding Bill S-31 clarified what involved interests perceived to be at stake in the Caisse's bid for decision-making participation through representation on the boards of directors of private sector corporations. For constitutional and political reasons the federal government could not propose legislation singling out the Caisse for discriminatory treatment (notwithstanding that the Senate Committee hearings on S-31 confirmed what was already obvious, viz. that the real object of the proposed legislation was the Caisse). But because the Bill's application was general, covering all provincial governments and their agents, the issue was transformed from the CP/Caisse conflict to the larger issue of the state as an investor in public companies. This was the contradiction in Bill S-31 which rendered the federal government's position untenable: if the issue was the state as investor in private sector corporations, Ottawa's own direct investment activities were equally called into question. Having come to the aid of CP in that corporation's confrontation with the Caisse (and, in a pre-emptive way, to the defense of other public companies with similar concerns regarding Caisse influence), the federal government found that it could not control the outcome of the S-31 debate when the stakes were defined as the balance between the public and private sectors in the Canadian economy.⁴¹

Summary: The Scope of Conflict

Schattschneider's observation that conflict is contagious, and that as the scope of a conflict widens the stakes are raised and the

issue itself may become transformed is clearly demonstrated in the foregoing cases. Both the Caisse's bid for representation on the boards of some of Canada's largest industrial corporations, and the federal government's episodic policy designs for the CDC had ramifications beyond the firms directly involved. In each case opposition from the wider business community was instrumental in checking what was perceived as an attempt to introduce non-market decision criteria into the industrial sector of the economy, thus challenging the principle of private capital accumulation.

The narrower scope of conflict over the corporate behavior of Telesat reflects the comparatively small scale of the company's operations.⁴² If the relative value of the satellite communications market was as great as in the United States, it is quite probable that the contained pattern of business-state conflict evident from Telesat's history would have been more intense. Moreover, unlike the conflicts over Caisse representation and the industrial policy role of the CDC, the issue of Telesat's competitive relationship to the terrestrial telecommunications system did not place the state shareholder in opposition to the corporation's management and supportive parts of the private sector. Instead, it was the CRTC which opposed the preferences of Telesat management and the telecommunications industry (with the exception of CN/CP Telecommunications), and the federal government eventually entered the conflict on the side of management in varying the regulatory commission's categorical judgement that the Telesat/TCTS membership agreement violated the public interest in competition. Thus, the confrontation did not acquire the grander dimension of a contest between public and private capital in the telecommunications sector of the

Footnotes

1 E. E. Schattschneider, The Semi-Sovereign People (New York: Holt, Rinehart and Winston, 1960), chapter one.

2 On the intergovernmental conflict dimension of the debate over S-31, see Allan Tupper, Bill S-31 and the Federalism of State Capitalism, Discussion Paper 18 (Kingston: Institute of Intergovernmental Relations, 1983).

3 See the discussion in chapter three.

4 Personal interview; 21 February, 1984.

5 Personal interview; 7 December, 1983.

6 CRTC, Telesat Decision, op. cit., p. 4866.

7 Legal suits were filed against Telesat by CP Ltd., CableSat Ltd., and the Consumers' Association of Canada. See Telesat Canada, Annual Report, 1977, Note 11, p. 25.

8 For that matter, Telesat management was disinclined to seek financing from this quarter, owing to the expected leverage over the choice of satellite which government financing would be expected to carry.

9 Personal interview; 9 December, 1983.

10 Personal interview; 12 December, 1983.

11 Personal interview; 9 December, 1983.

12 Personal interview; 7 December, 1983.

13 Personal interview; 21 February, 1984.

14 Personal interview; 19 December, 1983.

15 See French, op. cit., chapter five.

16 Michael Graham has demonstrated that even a massively capitalized CDC would have been incapable of a significant contribution, in total dollar terms (and thereby ignoring the qualitative dimension), to the expansion of domestic control over corporate decision-making in Canada. See M. Graham, Canada Development Corporation; a study conducted for the Royal Commission on Corporate Concentration (1977).

17 This point is elaborated upon in chapter eight.

18 Quoted in Peter Foster, "The Battle of the Sectors", Saturday Night (March, 1983), p. 23.

19 Ibid., p. 29.

- 20 Trudeau made this remark in a speech at the Toronto Harbour Castle Hilton, 13 December, 1983.
- 21 See the discussion in chapter three.
- 22 Personal interview; 19 December, 1983.
- 23 Personal interview; 19 December, 1983.
- 24 See French, How Ottawa Decides (Toronto: Lorimer, 1980), chapter six, and H. G. Thorburn, Planning and the Economy (Ottawa: Canadian Institute for Economic Policy, 1984).
- 25 Personal interview, 21 February, 1984.
- 26 Quoted in French, op. cit., p. 106.
- 27 Ibid., p. 88.
- 28 Minutes of Proceedings and Evidence of the Standing Committee on Finance, Trade and Economic Affairs, 26 (June 5, 1973), p. 31.
- 29 The business community's interpretation of the government's bid for increased influence over CDC decision-making was typified in the remarks of a business columnist for the Globe and Mail: "(The) Government appears to regard a federally directed CDC as a potential instrument for intervention in the manufacturing sector, comparable to the part played in the oil and gas industry by Petro-Canada. The Government is said to be developing a strongly interventionist and nationalist industrial strategy, and it evidently requires a corporate vehicle as the carrier of its policy". Ronald Anderson, "Plan Subverting CDC would be a Betrayal", Globe and Mail, May 13, 1981, p. B2.
- 30 See Table 8.11, infra, pp. 272-273.
- 31 See Finance Minister Parizeau's comments in Senate, Standing Committee, Proceedings, 25 November, 1982.
- 32 See ibid., pp. 22-23.
- 33 Bunting's concern with a Caisse/Desmarais joint influence scenario must be understood in the context of the Domtar takeover, wherein the co-operation of Desmarais in facilitating the takeover was publicly acknowledged by Quebec's Minister of Finance, Jacques Parizeau.
- 34 Tupper, op. cit., p. 17.
- 35 See the editorial, "Bungled effort, but worthy purpose", Financial Post (10 December, 1983).
- 36 Senate, Standing Committee, Proceedings, 30 November 1982, 31:6.
- 37 Cited by Lortie, ibid., 31:7-8.

38 In a submission to the Senate Committee considering Bill S-31 the Quebec Chamber of Commerce states:

POLICY OF THE CHAMBER:

The Chamber believes that Crown Corporations, including the Caisse de depot et placement du Quebec, which hold voting shares in private undertakings should not be represented on the boards of directors of these same undertakings, nor should they interfere in any manner whatsoever with the normal daily management of their affairs.

CONCLUSION:

The Chamber wants to avoid seeing the state take control of the economy through investment operations. The Chamber's policy must be designed to avoid any interference in private enterprise by any state corporation, provincial or federal, and the Chamber must advocate the non-representation of such corporations on the boards of directors of private undertakings.

See Senate, Standing Committee, Proceedings, 2 December 1982, 33A:1.

39 In opposing Bill S-31, as drafted by the federal government, Pierre Lortie demonstrated the extent and indispensability of direct investment by the state in Canada. See his remarks in Senate, Standing Committee, Proceedings, 30 November 1982, especially 31:9.

40 Representative statements illustrating the business community's indifference to Ottawa's arguments that S-31 would protect both federal jurisdiction over transportation and the integrity of the Canadian economic union, include the testimony of Sam Hughes, president of the Canadian Chamber of Commerce, before the Senate Committee considering S-31 (Senate, Committee, Proceedings, 2 December, 1982, pp. 47-62), and the editorial, "Bungled effort, but worthy purpose", ibid.

41 In November of 1983 the federal government introduced an amended version of S-31, and indicated that the legislation would be tabled in the Commons during the next session of parliament. With the defeat of the Liberal Party in the September, 1984, election, the likelihood of Bill S-31 being reintroduced is very slender. The Conservative prime minister, Brian Mulroney, has publicly expressed his opposition to the legislation.

42 In 1983, Telesat ranked 480th by revenue and 157th by assets among corporations in Canada. The Financial Post 500 (Toronto: Summer, 1984), pp. 108-109.

PART IV
PERFORMANCE

CHAPTER EIGHT

PERFORMANCE: THE SOCIAL RETURN ON STATE CAPITAL

The public sector/private sector conflicts described in chapters six and seven suggest that the mixed ownership corporation is problematic as an instrument of public policy. The reconciliation of divergent state and business preferences, generally expressed as a conflict between corporate management and the state shareholder, is complicated by the corporation's relationship to the private equity market and by characteristic features of the business corporation in capitalist society. Dependence on the private sector for some significant proportion of the corporation's capital requirements means that state participation in corporate decision-making is either: a) contingent upon private investor satisfaction that the commercial objectives of the corporation are not compromised by the imposition of public policy goals (which describes the current situation of both Dornier and Noranda); or b) where the state shareholder influences corporate decision-making such that commercial objectives are compromised by public policy goals, the principle of compensation through state subsidy is observed (as in the case of Telesat's satellite procurement decisions).

In this chapter the mixed ownership corporation is assessed from the standpoint of its effectiveness as a policy instrument. Effectiveness signifies the relationship between desired output and the benefits actually received from corporate performance. As John Langford observes:

The recognition that the output of a public corporation--virtually by definition--contains some social benefits (or there would be no point in having it public) forces into the open the fact that public corporations almost inevitably have multiple goals. It is this phenomenon more than anything else which must be clarified in the discussion and measurement of efficiency and effectiveness. 1

Conventional measures of commercial performance, such as profit, rate,

of return on invested capital, or some measurement of productivity, fail to tap the social benefits dimension insisted on by Langford. In order to evaluate the non-commercial side of corporate performance (i.e. social returns), whether for a wholly state-owned corporation or a mixed enterprise, one must identify the state investor's policy expectations for the firm.

These expectations may include profitable performance, so that public policy effectiveness and commercial effectiveness are not mutually exclusive. The direct investment record of the Caisse affords ample proof of this co-existence of profitability and the social returns which Langford argues are not measured by conventional standards of commercial performance. These social returns may involve such public policy goals as regional or sectoral economic development, reducing national dependence on foreign sources of supply for some commodity or, generally, goals which would not be pursued (or at least not to the same degree) by private capital because of the opportunity cost involved.

However, the conditions determining the public policy effectiveness of the mixed ownership corporation are not uniform across the cases examined in this study. Telesat, the CDC, and the private sector investments of the Caisse de dépôt et placement vary in terms of, inter alia, the combination of state and private sector actors, the sector(s) of economic activity, and state expectations for the corporation in which it holds an important ownership share. In the case of both the CDC and the equity holdings of the Caisse de dépôt, judgements have been passed by others on the effectiveness of these institutions as policy instruments. Less attention has been paid to Telesat, because of the comparatively uncontroversial character of the corporation's purposes and decision-making, the smaller scale of its operations, and the fact that a modus vivendi between the state shareholder and its private sector equity partners was confirmed with Telesat's 1977 entry into the industry's vehicle for organizing unity among telecommunications carriers, the TCTS (now Telecom Canada).

From the standpoint of both their scale of operations and the issues raised by the partnership of private and public equity, the CDC and the Caisse are incontestably of greater significance than Telesat. For this reason the subsequent analysis of public policy effectiveness concentrates on the performance of the former two organizations.

In addition, the dearth of English-language analyses of the Caisse represents a serious lacuna in the literature on the state and economic policy in Canada; an omission which this chapter is intended to correct. Aside from fairly brief analyses of the Caisse by Posgate and McRoberts in the context modernization of the Quebec state,² and both Pierre Pournier³ and Jorge Niosi⁴ in their respective attempts to explicate the concept of a Quebec bourgeoisie, the English-language work on the Caisse is extremely thin. Journalistic accounts have tended to be shrill, providing only a crude caricature of the Caisse's relationship to the provincial government.⁵

In evaluating the performance of the CDC and the Caisse as instruments of public policy, the necessary starting point in each case is the original expectations which the federal and Quebec governments, respectively, held for these organizations. These were identified in examining the origins of the CDC and the Caisse, and are simply restated in this section. However, expectations may change over time. As stated earlier, the factors underlying a revision in state expectations may include a change in government, altered circumstances in the sector in which the organization operates, the "learning" which the state experiences based upon the operation of the corporation(s) in which it holds equity, and development in the broader pattern of public policy and the state's interventionist role. It is both unrealistic and unfair to maintain, as have many critics of the Caisse and of the federal government during the latter's 1980-81 conflict with CDC management, that change in the state's expectations for a policy instrument constituted a breach of the original conditions of the state's association with affected private sector interests. As Gerard Dusart

observes of France's Caisse des dépôts et consignations:

Placed in a key position at the heart of the nation's great public institutions, the Caisse des dépôts has seen its goals modified profoundly, in direct relation to a movement of ideas which has progressively given to public authorities an increasing role in the control of the nation's economic and social development. 6

The fact that such development may require statutory revision either to legitimize or to facilitate change in the objectives pursued by an organization is a separate issue.

Comparison of various objective measures of performance against the original and evolving expectations held by the Quebec and federal governments for the Caisse and the CDC, respectively, provides a basis upon which to assess the performance of these organizations as policy instruments. With regard to the subjective dimension of effectiveness, i.e., the degree of convergence/divergence in the expectations of the state and its private sector partners in the mixed ownership corporation, inferential measures are available for both the CDC and the Caisse. These include survey data on the perceptions held by private sector actors (shareholders in the case of the CDC; private sector CEOs for the Caisse, including the managers of corporations with a financial relationship to that state investment agency) with respect to the relationship of the CDC and the Caisse to public policy. While no proposition is tested in this section, the analysis of public policy effectiveness provides a basis for a comparative assessment against recent European experience with mixed ownership corporations, and for the development of conclusions regarding the prospects for this policy instrument in Canada.

Telesat

Telesat represents a successful partnership of private and public

capital, satisfying the federal government's goal of nurturing a high technology manufacturing capacity in satellites, management's goal of business-like operation (the main obstacle to which, according to Telesat officials, has been the rate decisions of the CRTC), and the industry's concern that the domestic satellite system not develop into a competitive threat to the heavily-capitalized terrestrial system.

There is considerable truth in Doern and Brother's judgement that

Telesat Canada is a "holding" company, not in the traditional corporate sense of that word but in the political sense. It exists to secure a modicum of predictability among economic and political interests uncertain about exactly what to do about the future in a technologically complex field, but otherwise determined that if someone was going to lose from these developments, it would not be them. 7

The fact that Telesat has been able to accommodate these various goals in its corporate operations can be attributed to two main factors:

1) a limited set of shareholders (i.e., the federal government, the members of Telecom Canada, and CN/CP Telecommunications) with clearly discernible interests in the corporation; and 2) the federal government's evident lack of concern that satellite communications develop in competition with the terrestrial system of east/west telecommunications. The importance of the first factor can be inferred from the experience of the CDQ, whereby status as a public company with thousands of private shareholders has been used as a shield by management in resisting the imposition of public policy goals which, arguably, would compromise management's fiduciary duty to conduct the corporation's business, "in anticipation of profit and in the best interests of the shareholders as a whole".⁸ With the set of shareholders limited to the federal government and organizations in the telecommunications industry, none of whom maintain a stake in Telesat out of an expectation

of a competitive return on their invested capital,⁹ the corporation's decision-making is not complicated by the demands of the private equity market. Indeed, whatever pressures for competitive performance and expansion Telesat is subject to are generated internally, and represent management's own preferences for corporate development.¹⁰

With respect to the state shareholder's disinterest in Telesat as either an instrument for promoting competition in domestic telecommunications or extending federal control in a sector characterized by divided federal provincial jurisdiction,¹¹ one can only speculate as to how different Telesat's history would have been if the federal government had used the various levers of control available to it in order to pursue such a project.¹² It is certainly the case that the terrestrial carriers would have withdrawn from Telesat under such a scenario, thus eliminating the mixed dimensions of the corporation's ownership structure.¹³ Precisely how the pattern of competition in telecommunications would have developed with a wholly state-owned satellite corporation, would have depended upon the federal government's willingness to finance the capital costs of a more extensive satellite system, as well as the government's readiness to subsidize the corporation's operating budget in the event that the user-cost of satellite communications was found to be uncompetitive with the terrestrial service. Assuming the state's willingness to absorb the costs of developing a satellite system which would be able to compete head-to-head with the terrestrial carriers, industry duopoly, placing the Bell-dominated Telecom Canada group against Telesat and CN/CP Telecommunications, seems the most probable scenario. However, technical considerations (i.e., limited geo-stationary satellite slots and the limits

on the volume of traffic which even the largest satellite can carry) render the size of the market share which even a heavily-subsidized satellite system could capture moot.

If Telesat's actual performance is assessed against the federal government's goal, expressed through DOC, of helping to develop a domestic manufacturing capacity in satellites and establishing a workable relationship between public and private capital (the mixed enterprise condition), the corporation must be judged a qualified success.

While the state shareholder is not called upon to subsidize the operating costs of the satellite company, the increasing proportion of Canadian content in Telesat's satellite acquisitions (ranging from approximately 20 per cent in ANIK A, to 30 per cent in ANIK B, 40 per cent in ANIK C, and finally 50 per cent in ANIK D) is directly attributable to the federal government's expressed preference for Canadian suppliers (particularly Spar Aerospace), and its willingness to subsidize the costs of economic nationalism. The contracts for the ANIK C and ANIK D satellite programmes amounted to \$53.6 million and \$78.6 million, respectively, for a total of \$132.2 million. The federal government agreed to provide Canadian content premiums to a maximum of \$26.6 million (\$23.5 million of which had been paid out by the end of 1982) for these two series of satellites. This represents approximately 20 per cent of the total cost of these two satellite acquisitions, and close to 44 per cent of the value of all Canadian content (with the value of Canadian content calculated as approximately \$21.4 million for ANIK C, and \$39.3 million for ANIK D). However, in return for this considerable capital subsidy the federal government's goal of developing an indigenous manufacturing capacity in space communications (i.e., backward

backward industrial linkages¹⁴ is furthered.

This compensation principle allows for accommodation of the government's preferences while not compromising management's goal of business-like performance. As such it represents the keystone in the modus vivendi which has been arrived at between management and the state shareholder. Pulling together the various threads of Telesat's performance, the corporation has successfully joined private and public capital and business and public policy goals because of i) the ability to isolate social cost as a recompensable expense, and ii) the fact that the corporation has not had to consider the reaction of the private equity market in accommodating the state shareholder's preferences. However, Telesat's overall success as a mixed enterprise must be qualified by the observation that, despite several provisions of the corporation's charter which assign the federal government special privileges in corporate decision-making, and the fact that the federal government controls 50 per cent of Telesat's equity, the state shareholder's preferences are experienced as pressure external to the corporation and its main purposes. Thus, there is an evident inequality between the values represented by the state and private capital as this balance unfolds in the corporate behavior of this mixed ownership firm.

The CDC

The federal government's expectations for the CDC may be divided into three categories. In no order of precedence, these were

1) industrial policy expectations a. the corporation would achieve diversity in its holdings, and b. industrial activities would comprise a major part of the CDC's investment portfolio¹⁵

2) capital markets expectations through its role as a wholly Canadian-

owned investor, the CDC would contribute to increased Canadian control over economic decision-making in the domestic economy); and

- 3) government influence expectations (establishing the mixed ownership public company as a policy instrument).¹⁶

A fourth expectation held for the CDC by the government, the corporation's management and, from the time of the first public share offering, private sector investors, was that the corporation would operate at a profit. However, this was not, ipso facto, a public policy expectation, but rather a necessary condition for the CDC's acceptance by the private sector (and therefore its ability to raise debt and equity capital on competitive terms). While the government never justified public investment in the CDC on the basis of anticipated income returns, the size of the public's financial stake in the corporation warrants evaluation of the CDC against this standard as well.

1) INDUSTRIAL DEVELOPMENT

Considering first the corporation's contribution to diversified industrial development in Canada, it is fair to say that the CDC has never outgrown the formative years during which it acquired Polymer (renamed Polysar), a 20 per cent interest in Petrosar, and a 30 per cent interest in Texasgulf.¹⁷ The Texasgulf acquisition was crucial in that it provided the CDC with a large regular base of earnings which enabled the corporation to affirm its financial independence of the government. However, the overwhelming dominance of energy-related and mining investments in the corporation's balance of assets has been reinforced over time. This is demonstrated by the following figures.

TABLE 8.1: CDC assets by industry segment*

	(\$ millions)	(%)		
Oil and gas	2,918.4	38.8	] 69.0]	87.8
Petrochemicals	2,271.8	30.2		
Mining	1,415.3	18.8		
Office information products	689.5	9.2	] 11.6	
Industrial automation	38.7	.5		
Life sciences	108.6	1.4		
Venture and expansion capital	38.8	.5		
Fisheries	24.6	.3		
CDC Corporate	20.2	.3		
Total	7,525.9	100.0		

REVENUE DISTRIBUTION*

	(\$ millions)	(%)		
Oil and gas	567.0	14.0	] 68.1]	76.1
Petrochemicals	2,168.2	54.1		
Mining	322.1	8.0		
Office information products	636.2	16.9	] 21.2	
Industrial automation	30.2	0.8		
Life Sciences	139.5	3.5		
Interest and other income	148.1	3.7		
Total	4,011.3	100.0		

CONTRIBUTION TO NET INCOME*

	(\$ millions)	(% of net income loss)		
Oil and gas	-14.4	] 42.1]	71.8	
Petrochemicals	-38.6			
Mining	-37.3			
Office information products	-10.3	] 9.7		
Industrial automation	- 5.8			
Life Sciences	3.9			
Venture and expansion capital	-			
Fisheries	- 7.1			
CDC Corporate	-16.2			
Net Income	-125.8			

*Note: As of December 31, 1982.

Source: Canada Development Corporation, Annual Report, 1982.

The CDC's assets picture is dominated by energy-related investments, which accounted for 42.1 per cent of the net income loss which the corporation incurred in 1982. Polysar sells to both the European and North American markets, while Petrosar relies entirely upon the

North American market. Consequently, their performance and CDC's earnings hinge upon market conditions for petrochemical products. Including mining activities, the natural resource extraction and processing component of the corporation accounts for 87.8 per cent of total assets. By comparison, the manufacturing/high technology segment of CDC activities, comprising office information products, industrial automation systems, life sciences and venture capital, constitutes 11.8 per cent of the corporation's assets. In view of the preponderance of energy-related and mining activities, it must be questioned whether the corporation has made the contribution to diversified industrial development in Canada which was expected of it.

When the CDC's investments are broken down by location, one finds that at the time of the crisis in the corporation's relationship to the federal government (the period between the autumn of 1980 and the annual shareholders' meeting in May of 1981) a significant proportion of both the CDC's assets and income was generated by non-Canadian holdings. The fact of considerable overseas holdings is relevant in two respects: 1) the profitable operation of foreign subsidiaries makes a positive contribution to Canada's balance of trade; through the surplus value generated abroad and transferred to Canada in the form of dividends;¹⁸ and 2) investment in productive activity located outside of Canada does not contribute to industrial development of the domestic economy. The extent of the CDC's non-Canadian operations is demonstrated by the figures in Table 8.2.

At the time of the crisis in the relationship between the CDC and its major shareholder, roughly 30 per cent of the corporation's assets were located outside of Canada (principally in the United States

TABLE 8.2: CDC ASSETS, REVENUE, AND OPERATING PROFIT BY GEOGRAPHIC DIVISION (in millions of dollars)

	Canada	United States	Europe and rest of world	Eliminations*	Total
<u>Assets</u>					
1980	1,793.6 (73.4%)	254.3 (10.4%)	480.4 (19.7%)	[85.0] (3.5%)	2,443.3
1981	5,535.2 (83.8%)	664.2 (10.1%)	527.4 (8%)	[121.8] (1.8%)	6,605.0
1982	6,048.5 (83%)	1,027.4 (14.1%)	378.1 (5.2%)	[168.4] (2.3%)	7,285.6
1983	6,104.1 (83.2%)	937.3 (12.8%)	310.0 (4.2%)	[10.5] (0.1%)	7,340.9
<u>Revenue</u>					
1980	1,523.6 (64.6%)	362.2 (15.4%)	761.5 (32.3%)	[341.6] (14.5%)	2,359.2
1981	2,173.0 (69.3%)	522.4 (16.7%)	740.7 (23.6%)	[386.4] (12.5%)	3,136.4
1982	2,419.5 (61.2%)	993.2 (25.1%)	736.6 (18.6%)	[344.1] (8.7%)	3,953.3
1983	2,092.2 (54.6%)	1,266.3 (33.0%)	752.4 (19.6%)	[385.3] (10.0%)	3,834.7
<u>Operating Profit</u>					
1980	194.4 (75.6%)	6.7 (2.6%)	60.8 (23.7%)	[4.9] (1.9%)	257.0
1981	227.9 (83.0%)	10.1 (3.7%)	34.7 (12.6%)	[1.8] (0.7%)	274.5
1982	166.3 (80.3%)	7.2 (3.5%)	32.9 (15.9%)	[0.8] (0.4%)	207.2
1983	119.1 (48.9%)	8.4 (3.4%)	115.6 (47.5%)	[0.4] (0.2%)	243.5

*The eliminations category represents inter-corporate transfers between CDC holdings.

Source: Canada Development Corporation, Annual Report, 1981, 1982, 1983.

and the EEC) accounting for approximately 40 per cent of revenue and a quarter of the CDC's operating profit in 1980.¹⁹ While the balance between domestic and foreign operations changed dramatically in 1981,

due to the purchase of Aquitaine Company of Canada Limited from France's Société Nationale Elf-Aquitaine, and the acquisition of Texasgulf's Canadian assets, this shift was not a consequence of a deliberate policy to retrench the corporation's foreign operations. In fact the real value of the corporation's United States assets increased between 1980 and 1981, and remained constant in Europe. Provisions of the NEP favouring Canadian ownership were the key factor in the timing of the Aquitaine acquisition, an investment which doubled the size of the CDC's asset base.

A survey of the CDC's major acquisitions between the corporation's creation and the federal government's 1981 defeat on the control issue demonstrates the indifferent contribution which the CDC made during this period to industrial development in Canada. (See Table 8.3, following.) Only two of these major investments, Petrosar and Allelix, involved the generation of new productive capacity. All of the other transactions represented a transfer of ownership in already-existing assets.

2) INCREASED CANADIAN OWNERSHIP

In terms of expanding Canadian ownership of the domestic economy, Texasgulf, Tenneco, and AES Data represent the three cases where CDC investment displaced foreign capital in the Canadian economy (the 1981 acquisitions were consummated after management's successful assertion of independence from the federal government). Polysar, Connaught Laboratories, and Fishery Products involved the transfer of equity from Canadian owners (the crown in the case of Polysar) to the CDC, while A/S Dumex was based in Denmark with subsidiaries in several other countries. Therefore, from a qualitative standpoint the CDC's performance in patria-

TABLE 8.3: MAJOR CDC INVESTMENTS

<u>Year</u>	<u>Acquisition</u>
1972	Polysar (\$72 million)
1972	Connaught Laboratories (\$24 million)
1973	Texasgulf (30.4% at a cost of \$271.4 million)
1973	Petrosar (51% interest at a cost of \$25 million, through Polysar)
1973	A/S Dumex (75% interest at a cost of \$11.1 million)
1975	CDC Oil & Gas Limited (the Canadian assets of Tenneco Inc., for \$110.8 million)
1975-76	Petrosar (20% direct interest at a cost of \$9.9 million)
1978	AES Data Ltd. and Wordplex Corporation (initial payment of \$28.1 million)
1980	Fishery Products Ltd. (40.8% interest at a cost of \$34.4 million)
1980-81	Allelix (50% interest, along with John Labatt Ltd., and the Government of Ontario, in this biotechnology company)
1981*	Aquitsine Company of Canada Ltd. (from SNEA for \$1.6 billion)
1981*	Canadian assets of Texasgulf (in exchange for the CDC's 35% interest in that corporation, and \$536.7 million)
1981*	Séntrol Systems Ltd. (85% interest at a cost of \$20.9 million)
1981-82*	Savin Corporation (New York) (57% interest at a cost of \$75 million)

*The acquisition occurred after the control crisis.

Source: Canada Development Corporation, Annual Report, 1972-1982 (various years).

ting important production assets has been mixed. The corporation's 1973 investment in Texasgulf, and the 1975 acquisition of the Canadian assets of Tenneco, are the two cases most frequently cited as evidence that the CDC has satisfied the federal government's expectation that

it contribute to domestic ownership in sectors of the economy characterized by a low level of Canadian equity. But CDC management insists that in each case the Canadianization objective was incidental, and given that CDC management had identified a) petroleum and natural gas, and b) mining, smelting, and refining as two areas in which to concentrate the corporation's investment activity.²⁰ The principal factor determining the choice of Texasgulf in 1973 and Tenneco in 1975, rather than two different corporations, was the feasibility of acquiring control in each case.

In a study carried out for the Royal Commission on Corporate Concentration, Michael Graham has argued that the "Canadianization" role of the CDC is an impossible mandate. Writing in 1971, Graham observed:

(There) are practical limits to its growth which make it unlikely that CDC, as constituted, will become dominant enough to have more than a marginal impact on Canada's corporate sector.... Thus, even if CDC were to quintuple in size from its latest \$1.3 billion worth of assets and \$480 million worth of revenues it would only be approximately as large as Bell Canada was in 1975. ²¹

Since Graham's analysis the CDC has grown to become Canada's 10th largest corporation by assets (\$7,558 million: 1983).²² However, the quantitative contribution to Canadian ownership of the domestic economy remains marginal, as demonstrated by the fact that the corporation's assets amount to only a fraction (2.4%) of the combined assets of Canada's five largest banks (\$314 billion: 1983).²³

If there is nothing about the CDC's balance of investment activities which distinguishes it from such other large industrial holding companies as Noranda Mines and Power Corporation, one might at least expect that the corporation's shareholder population will differ from that of its wholly private enterprise counterparts. This expectation is based

upon the government's argument that a Canada Development Corporation would constitute "people's capitalism", providing ordinary citizens with an opportunity to invest directly in Canada's economic development. However, the government was thwarted by the opposition of investment dealers to share marketing through the chartered banks. In consequence, the CDC's first public offering of shares in the autumn of 1975 was handled entirely by investment dealers, thereby imposing the usual limitations on the range of persons likely to be aware of and disposed to purchase the share offering. By contrast, the first public offering of shares in the British Columbia Resources Investment Corporation (BCRIC), in May and June of 1979, was marketed through a range of financial institutions comprising the banks, trust companies, credit unions, and investment dealerships. The distribution of sales in the BCRIC case demonstrates the crucial role of the more "democratic" intermediaries in providing access to a wider investing public.

TABLE 8.4: SALE OF BCRIC SHARES BY DISTRIBUTION AGENCY

	(\$ millions)	(%)
Chartered banks	274.5	56.3
Credit unions	51.0	10.5
Trust companies	21.0	4.3
Investment dealers	<u>141.0</u>	<u>28.9</u>
Total	487.5	100.0

71.1

Source: T. M. Ohashi and T. P. Roth, Privatization: Theory and Practice (Vancouver: Fraser Institute, 1980), p. 53.

This figure of almost half a billion dollars represented direct investment by just under 170,000 Canadians of British Columbia residence. In comparison, the initial issue of CDC shares was purchased by approx-

imately 20,000 Canadian investors.

In terms of such distributional characteristics of the CDC shareholding population as geographic location, annual income, investment holdings, and socio-economic status, the corporation's shareholders were typical of that stratum of the population which invests directly in corporation stock.²⁴ Most revealing was the investment holding profile of CDC shareholders.

TABLE 8.5: INVESTMENT HOLDINGS OF ORIGINAL CDC SHAREHOLDERS

<u>Size of Portfolio*</u>	<u>Number of Shareholders</u>	<u>Percentage of Shareholders</u>
Under \$2,5000	412	9.5
\$2,500 - 5,000	392	9.0
\$5,000 - 10,000	530	12.2
\$10,000 - 15,000	416	9.6
\$15,000 - 20,000	340	7.8
\$20,000 - 30,000	407	9.4
\$30,000 - 50,000	521	12.0
Over \$50,000	1334	30.7
No response	114	-
Total	4466	100.0

*Excludes tangible property like real estate and businesses.

Adapted from Dr. R. F. Kelly, Shareholder Survey (Vancouver, 1976).

Clearly, the CDC did not succeed in attracting the savings of Canadians who typically would not be given to direct equity investment. In fact, 80 per cent of CDC shareholders were holders of common shares in other companies, with an equal proportion owning preferred shares of one or more corporations. This compared to a figure of under 10 per cent

for the population as a whole. These features of the corporation's shareholder population have persisted over time.

3) THE MIXED OWNERSHIP PUBLIC COMPANY AS A POLICY INSTRUMENT

Because the CDC represents an organizational anomaly in the Canadian political economy, the corporation has from the beginning been concerned with how the public, and particularly the investment community, perceives the relationship between the CDC and the government. As Eckel and Vining demonstrate, there is an unmistakable correlation between the market value of CDC shares and perceptions regarding the likelihood of government intervention in the management of the corporation.²⁵ Management's recognition of this relationship has resulted in regular avowals of corporate autonomy, and periodic assurances from the government (usually timed to coincide with a public share offering) that it will abstain from exercising its legitimate rights as the corporation's largest shareholder. Notwithstanding the regularity of attempts to clarify the role of the CDC and its relationship, or non-relationship, to public policy, confusion has persisted. A survey of CDC shareholders showed that this uncertainty was not restricted to the general population at the time of the corporation's first public share offering.

TABLE 8.6: SHAREHOLDERS' PERCEPTIONS CONCERNING THE CDC

<u>Statements concerning the CDC</u>	<u>Agree</u>	<u>Neither agree nor disagree</u>	<u>Disagree</u>
The CDC is designed to buy back Canada from foreign investors.	40.7	29.3	30.0
The CDC is no different than any other financial institution.	16.7	23.2	60.1

Adapted from Dr. R. Kelly, Shareholder Survey (Vancouver, 1976).

Evidently, the CDC was not entirely successful in trying to rest the perception that it was intended to be an instrument for the repatriation of economic decision-making. Only 30 per cent of the respondents disagreed with the suggestion that the CDC was intended to play a Canadianizing role, and fully 60 per cent of the surveyed shareholders considered that the corporation was somehow different from other financial institutions. At the same time a majority of respondents listed "Safe Investment" as either their first or second reason (from a list of nine alternative reasons) for investing in the CDC, a greater proportion than for any other investment rationale. The fact of widespread confidence in the soundness of the CDC as an investment, coincident with i) shareholder division over whether the CDC was intended to play a Canadianizing role, and ii) general agreement with the proposition that the CDC was somehow different from other financial institutions, is squared by consideration of two facts attendant upon the 1975 public share offering. First of all, the government's public assurance of non-involvement in the management of the corporation featured prominently in the share marketing. Second, and probably of greater significance, were the generous terms of the equity issue itself. These included a competitive dividend yield, buy-back and bonus share provisions, and an installment purchase plan. These conditions were sufficient to allay any uncertainty regarding the relationship between the corporation and the government.

While current information on shareholders' perceptions is not available, certain other indicators suggest that the tensions engendered by the CDC's mixed enterprise form continue unresolved. The negative correlation between the public's perception of increased government

intervention in the CDC and the market value of the corporation's stock, documented by Eckel and Vining, demonstrates the qualified character of the CDC's acceptance by the investment community. This was made especially clear during late 1980 when rumours (denied by the government, but since confirmed by CDC management) circulated to the effect that the government wished to see the corporation invest in the financially-ailing Massey-Ferguson Ltd. This was followed, in April and May of 1981, by an abortive attempt by the government to replace CDC chairman, Frederick Sellers, with Maurice Strong. As a result of investment community perceptions that the government intended to play a more active role in the direction of the CDC, the value of the corporation's shares dropped 8 per cent during the month of May 1981.

Clearly, the concept and practice of the mixed ownership public company as a vehicle for joint public sector/private sector decision-making in the economy was not advanced by the experience of federal government participation in the CDC. This is confirmed both by the private sector's ambivalence toward the CDC, evident from the 1976 shareholder survey and stock market reaction to the government's 1981 influence attempt, and by an examination of CDC decision-making. The analysis in the previous two chapters concluded that by the time vague expectations of influence, originally expressed by the government in establishing the CDC, congealed into concrete attempts to determine particular outcomes, the possibility of transforming the corporation into a policy instrument was ruled out by a structural condition (i.e., the existence of minority shareholders and their rights under the CBCA) and by the pattern of non-participation by the state shareholder in

corporate decision-making, which enabled management to consolidate its position of effective control.

4) INCOME RETURNS ON THE PUBLIC'S INVESTMENT

There remains the test of the CDC as an actionnariat de l'Etat. On this count the corporation has proven a failure, as the government has never received dividend income from its equity in the CDC. The government's 48 per cent equity consists entirely of common shares, of which the government holds 86.1 per cent of all shares in this category. The 51.8 per cent of private equity is concentrated in the preferred share classes, which yield regular annual dividends. In the absence of dividend payments the government's only means of receiving an income return from its investment is through divestiture. However, the currently depressed market value of CDC shares renders this option untenable. At the current (December 14, 1984) market value of \$5.75 for CDC common shares, the government would receive a return of \$176.6 million if it was able to find purchasers for all of the 30,711,990 common shares it holds. This must be considered against the fact of an initial government investment of \$250 million, in 1971 dollars.

One additional aspect of this question must be considered. This involves the transfer in 1972 of Polymer Corporation Limited, previously a crown corporation, to the CDC in exchange for \$72 million worth of common shares. Whether this represented the true market value of Polymer is moot, but it is worth noting that financial analysts were of the opinion that this was an unrealistically low transfer price. However, even if one assumes that the Canadian public received fair value in what amounted to the privatization of a crown corporation, there remains the fact of future income foregone through the transfer of Polymer

remained Polymer, a commercially successful operation throughout most of its history. The present and future value of the corporation, as realizable through dividend payments and/or appreciation in the market valuation of Polymer's operations, was lost to the general public in exchange for \$10 million of CDC shares which have never paid a dividend and which have depreciated over time and acquired by an organization serving a segment of the population which benefits through dividend payments from the contributions which Polymer makes to the CDC's profitability. Viewed from the standpoint of opportunity cost, the transfer of Polymer represented a loss to taxpayers, not less real for its difficulty of precise measurement.

SUMMARY: THE CDC AS AN INSTRUMENT OF PUBLIC POLICY

Measured against the public policy expectations expressed by the federal government in establishing the corporation, the CDC must be judged a failure as a policy instrument. In terms of normative effectiveness, the partnership of private and public capital embodied in the CDC broke down when the state shareholder demanded influence in the corporation's decision-making. This was viewed by private sector actors, i.e., CDC management, directors, and private investors, as a challenge to the commercial orientation of the corporation. Thus, from the normative standpoint of accommodating the preferences of both the state shareholder and its private sector partners, the CDC proved a public policy failure when the legitimacy of the federal government's participation in corporate decision-making was disputed by private sector actors.

With respect to the performance of the CDC in advancing expressed policy objectives of the federal government, there is some evidence

that the corporation has satisfied the Canadianization role which was at the centre of 1960s debates over the CDC, and which was identified by Finance Minister Edgar Benson as a principal raison d'être of the CDC.²⁷ However, the corporation's satisfaction of this expectation has been incidental to management's search for profitable investments in which effective control could be acquired. In regard to industrial development expectations and establishing the mixed ownership public company as a viable instrument of public sector-private sector cooperation in economic decision-making, the CDC has not met the expectations expressed by the government in creating the corporation, and from time to time subsequently. Finally, measured against the criterion of providing income returns on the public's original investment in the CDC, the corporation must be judged a failure.

The Caisse de dépôt et placement du Québec

Recent critical evaluations of the Caisse's relationship to the economic development goals of the Quebec government are guilty of two serious failures.²⁸ The first is a failure to recognize the essential continuity in the Caisse's role from the recommendations of the Dupont Commission (1964), and over the course of successive governments. The second failure is equally grievous, and involves criticism of the Caisse's investment policy without an understanding of broader developments in the investment role of pension funds, and in the structure of savings in the Canadian economy. In assessing the direct investment activity of the Caisse these contextual factors must be taken into account. An evaluation of the Caisse's performance solely against standards appropriate to a pension fund is misconceived, a point made by Douglas Pulleton in a recent retrospective appraisal.²⁹

The Caisse's role as a vehicle whereby the collective savings of Quebec citizens would be channelled to finance public sector development and simultaneously, reduce the political influence of the anglophone financial establishment in Quebec, particularly Amos Securities and the Bank of Montreal, was the most immediate expectation held by the Lesage government in establishing the investment agency. The Caisse's task of placing Quebec government bonds issued in 1967, at a time when Daniel Johnson's "égalité et indépendance" ultimatum had led to a boycott of the province's securities by the anglophone financial establishment, represented the first test of the agency's ability to increase the political latitude of the provincial government through reducing its dependence upon anglophone finance capital. The Caisse performed a similar stabilization function after the PQ's election in 1976, when private sector institutional investors once more were reluctant to purchase the province's securities. The significance of the Caisse in financing Quebec's public sector can hardly be overestimated. This is demonstrated in the proportion of the Caisse's total investments accounted for by bonds issued or guaranteed by the Quebec government, and its agents, and other public sector organizations in the province (see Table 8.7 following).

However, the contribution which the Caisse would make to the social and economic development of the province was not expected to stop at underwriting state expansion. Examination of the Caisse's origins and subsequent assessment of the agency's role, reveals a broad area in which the Caisse is free, within the limits imposed by management's fiduciary responsibility, to invest directly in private sector corporations with an eye to provincial economic development. While the Caisse

TABLE 8.7: THE CAISSE'S INVESTMENT IN PROVINCIAL SECURITIES,
AS A PROPORTION OF TOTAL INVESTMENTS

<u>Year</u>	<u>Percentage of total investment</u>	<u>Year</u>	<u>Percentage of total investment</u>
1966	75.7	1975	57.6
1967	67.7	1976	59.6
1968	67.6	1977	60.0
1969	65.9	1978	61.8
1970	64.3	1979	64.1
1971	61.6	1980	61.9
1972	60.3	1981	61.1
1973	60.4	1982	60.0
1974	57.6	1983	58.9

Source: Caisse de dépôt et placement, Annual Report, 1966-83.

is not precluded from direct investment in corporations without significant Quebec operations nor even from investing in non-Canadian equity, although there is a 10 per cent ceiling on the proportion of the Caisse's total assets which may be invested in foreign securities; there always has been a clear expectation that priority would be accorded "Quebec" corporations.

The economic development expectations originally held for the Caisse by the Lesage Government have not changed in any fundamental sense with the passage of time and governments. The more active role recommended for the Caisse in the PQ's 1972 manifesto, in the Tetley Report, and in Paurrier's study for the OPDQ called for an increased emphasis upon these development objectives, but did not involve a new formulation of the agency's purpose. In relation to the province's economic development, three expectations have remained constant over the two decades since creation of the Caisse was advocated by the Conseil

l'orientation économique du Québec and the Lapoint Commission. These expectations are:

1. the Caisse will invest one portion of its capital in the bonds and shares of Quebec-based corporations, so that savings generated in the province contribute to expansion of the indigenous economy;
2. with respect to other projects, the Caisse will participate in financing projects initiated by some other part of the state, or by the private sector.

In order to succeed in its interventions in the province's capital markets, the Caisse will require a position of moral authority, allowing for a certain restraint of criticism in the private sector of the Quebec economy.

Performance against the first two expectations - objective criteria - can be measured using financial information. The third expectation - subjective effectiveness - is properly understood as the legitimacy accorded the Caisse as an investor by the private sector. This subjective condition is assessed with the use of inferential data, primarily the results of a recent survey regarding CEOs' perception of the Caisse.

1) INVESTING IN THE QUEBEC ECONOMY

In 1967 the Caisse began to invest in the shares of private sector corporations. Since then, equities have accounted for between 11.4 per cent (1967) and 20 per cent (1983) of the agency's total investments, while the dollar value of this portion of the Caisse's portfolio has increased from \$47,551,487 (1967) to the current value of \$3,563.6 million. Corporation bonds constitute another area of private sector investment by the Caisse. While the purchase of debt instruments does not carry ownership prerogatives, corporate bond issues generally are used to finance capital projects, and therefore an investment in bonds

frequently will contribute more directly to economic development than would the purchase of a corporation's shares. Corporation bonds comprised an important part of the Caisse's investment portfolio until the late 1970s. However, over the past several years they have accounted for a declining share of total investments, and the absolute value of the Caisse's private sector debt assets has fallen dramatically. The pattern of change over time is demonstrated below.

TABLE 8.8: THE CAISSE'S INVESTMENT IN CORPORATION BONDS AND SHARES
(in millions of dollars, and as a percentage of total investment)

Year	Shares	Bonds	Total Investments
1983	\$3,563.6 (20.0%)	\$519.7 (2.9%)	\$17,851
1982	2,759.6 (17.3%)	746.6 (4.7%)	15,906
1981	2,316.7 (17.0%)	887.4 (6.5%)	13,639
1980	1,496.4 (13.0%)	964.3 (8.4%)	11,508
1979	1,105.7 (11.6%)	945.3 (9.9%)	9,555
1978	920.1 (11.8%)	677.8 (8.7%)	7,826
1977	842.4 (13.4%)	593.2 (9.4%)	6,288
1976	823.8 (15.8%)	534.5 (10.2%)	5,224
1975	721.5 (17.2%)	430.2 (10.2%)	4,230
1974	656.1 (18.8%)	361.6 (10.3%)	3,499
1973	518.6 (17.9%)	290.6 (10.0%)	2,901
1972	371.9 (16.9%)	264.0 (12.0%)	2,206
1971	295.2 (16.9%)	204.3 (11.7%)	1,743
1970	224.8 (16.5%)	108.0 (7.9%)	1,365
1969	156.6 (15.8%)	45.6 (4.6%)	990
1968	99.2 (14.5%)	37.6 (5.5%)	684
1967	47.6 (11.3%)	21.4 (5.1%)	418
1966	--	0.3 (0.2%)	183

Source: Caisse de dépôt et placement, Annual Report, 1966-1983.

Since 1982 the Caisse has published in its annual report a list of the private sector corporations in which the agency has investments.

in the form of shares and/or bonds. This information enables one to measure the extent to which the Caisse, through its investment behavior, contributes to the financing of Quebec-based corporations. The operational definition of a Quebec-based corporation, as employed here,³⁰ has two components: 1) majority control is held by residents of Quebec, and 2) the corporation's head office is located in the province.³¹ This definition of Quebec-based is certainly preferable to that used by Jorge Niosi in a recent analysis of the rise of French-Canadian capitalism. Using the location of a corporation's head office as his only criterion results in the rather misleading inclusion of such corporations as CP, Alcan, and the Royal Bank in Niosi's list of "Quebec Companies" in which the Caisse has an important ownership share.³²

Examination of the Caisse's equity portfolio as of 31 December, 1983,³³ reveals that 11.5 per cent of the Caisse's total investment in corporate shares was accounted for by Quebec-based corporations. This represented a dollar value of \$410 million. Shares in Domtar and Provigo together accounted for 6.5 per cent of the total value of the Caisse's equity portfolio, and 56.5 per cent of the dollar value of all shares held in the Quebec-based corporations listed in the Caisse's annual report. This list includes all corporations in which the market value of the Caisse's holding exceeds \$5 million, together with those enterprises in which the Caisse holds at least 10 per cent of voting rights. In the case of corporate bonds, Quebec-based businesses constitute 28.4 per cent of the value of those investments listed in the Caisse's 1983 breakdown. This should be viewed against the fact that a further 25.7 per cent of these aggregated investments is accounted for by the bonds of Bell Canada Enterprises alone. These figures are

summarized in Table 8.9.

TABLE 8.9: MAJOR CAISSE INVESTMENTS IN QUEBEC-BASED CORPORATIONS*
31 December, 1983. In thousands of dollars

Corporation	Value of shares held by the Caisse	Value of bonds held by the Caisse
Asbestos Corp.	2,688	2,532
National Bank of Canada	22,278	6,996
Bytec-Comers	10,002	---
Caisse Centrale Desjardins	---	8,108
Consolidated-Bathurst	10,946	---
Coopérative Pédérée	---	6,856
Corporation de gestion la verendrye	2,900	---
Domtar	133,214	---
Donohue	---	7,171
Gaz Métropolitain	15,356	3,566
Evaco	21,205	---
Logister	879	---
Marine Industries	---	8,353
Tapis Peerless	---	8,737
Prenor Group	5,434	---
Provigo	98,050	3,162
Reitman's (Canada)	15,847	---
Rolland	1,155	1,177
Sidbec-Normines	---	19,052
Société d'investissement Desjardins	11,456	---
Steinberg	20,263	793
Télé-Métropole	10,257	---
Trust General	14,178	8,315
Videotron	8,560	---
Sub-total	410,081	84,848
Total investment in each category	3,563,600	298,725**

*Note: These investments comprise all Quebec-based corporations in which the market value of the Caisse's holding exceeds \$5 million, together with those enterprises in which the Caisse holds at least 10 per cent of voting rights.

(continued on next page)

Table 8.9 (cont'd.)

- The discrepancy between this figure and the sum of \$519.7 million reported in Table 8.4 is accounted for by the aggregated investments in corporations in which the value of the Caisse's investment is less than \$5 million.

Source: Caisse de dépôt et placement, Rapport de gestion, 1983, tableau 10.

Review of the Caisse's shareholdings reveals that 65 per cent of the market value of the agency's equity portfolio is accounted for by shares held in twenty-five corporations, only two of which, Prologis and Brascade, generate the major part of corporate income from operations in Quebec. The latter corporation represents a partnership between the Caisse and Toronto capital, notably the Bronfman family which, through Brascan Ltd., controls 70 per cent of Brascade and does not satisfy the requirements of a Quebec-based corporation, as defined earlier. (See Table 8.10 following.)

The predominance of blue chip stocks in the Caisse's equity portfolio demonstrates that a competitive return on investment is the principal consideration determining the Caisse's direct investment behavior. It was this phenomenon of heavy investment in the shares of non-Quebec corporations which led Pierre Fournier to argue that the Caisse had contributed to the "haemorrhage" of Quebec savings.³⁴ But in fact, the size of the Quebec equity market represents a main limitation on the Caisse's purchase of shares in Quebec-based corporations. This was remarked upon several years ago by Marcel Cazavan, former president of the Caisse:

With regard to shares, Quebec corporations certainly are favoured. But the extent of the Caisse's purchases renders it impossible that these investments can be limited to Quebec without taking up everything that is issued. This would mean that the Caisse would take control of all Quebec corporations, which is neither allowed nor desirable. 35

TABLE 8.10: CAISSE SHAREHOLDINGS VALUED AT \$50 MILLION OR MORE

	As of 31 December, 1983		As of 31 December, 1982	
	(in thousands of shares)	(in millions of dollars)	(in thousands of shares)	(in millions of dollars)
1. Canadian Pacific	7,109	357	7,109	357
2. Alcan	7,054	349	6,997	347
3. Brascade Holdings	5,133	342	5,133	342
4. Royal Bank	5,385	329	5,536	304
5. Seagram	4,011	181	1,319	104
6. Imperial Oil	3,719	138	3,450	84
7. Bank of Nova Scotia	3,391	136	3,490	147
8. Domtar	4,385	135	4,385	88
9. Bell Canada	3,385	113	4,291	104
10. TransCanada Pipelines	3,591	112	1,098	72
11. Northern Telecom	2,292	112	1,502	74
12. Hiram Walker Resources	4,002	112	3,686	74
13. Provigo	5,447	98	5,787	69
14. Gulf Canada	5,181	90	4,730	69
15. Bank of Montreal	3,101	81	2,908	77
16. Canadian Imper Bank of Commerce	2,557	78	2,142	66
17. Toronto-Dominion Bank	4,652	76	1,746	69
18. Brascade Resources	2,758	75	---	---
19. Canadian Pacific Enterprises	2,902	70	2,910	52
20. John Labatt	2,892	69	1,151	41
21. Genstar	2,240	69	661	13
22. Thomson Newspapers	1,703	65	1,037	29
23. Moore Corporation	1,223	65	977	50
24. Dofasco	1,039	61	717	25
25. Bow Valley Industries	2,125	55	872	14

Source: Caisse de dépôt et placement du Québec, Rapport de gestion, 1982, 1983.

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Currently, 1971 data, only 22 of the 116 largest Quebec-based corporations (category which includes state enterprises) are publicly traded on the Montreal stock exchange. There are, therefore, important limits on the set of provincially-focused enterprises in which investors can invest directly. As for investment in non-Quebec corporations with substantial operations in the province, the experience of the Caisse suggests that although the capital is prepared to mobilize funds to obtain a significant ownership and influence, in the case of large corporations with operations in Quebec's manufacturing sector, corporations like General Motors, Ford Motor Company, and IBM, the scale of the investment which would be required to exercise influence as a shareholder precludes this possibility.

To summarize this section, the fact that a preponderance of the Caisse's private sector investments are placed in corporations with significant non-Quebec operations and in some cases with no Quebec operations whatsoever does not signify that the Caisse has failed to apply savings generated in the province to Québec-centred economic development. The opportunities for direct investment in Quebec-based corporations are limited both in number and by the fact that the Caisse's role as fiduciary eliminates the possibility of the agency operating as a source of risk capital for firms with uncertain prospects. As demonstrated in Table 8.9, the Caisse does have important holdings in dozens of Quebec-based corporations, so that the question is whether the agency contributes enough toward channelling savings generated in the province toward indigenous economic development. In answering this question quantitative measures of the Caisse's investment distribution provide only a partial picture. Specific cases illustrate the

catalytic role which the agency has played in Quebec's economic development.

2) THE CAISSE AS CATALYST

From the Caisse's creation in the mid-1960s there has been an expectation that the capital invested by the agency may in some circumstances be deployed in support of industrial transformation of the Quebec economy.³⁶ In other words, the Caisse should be prepared to act as a catalyst, an agent which is instrumental in effecting change while itself remaining unaltered, providing some part of the capital required for an undertaking directed by some other party(ies). Thus, the entrepreneurial function, involving effective control over the organization and execution of an economic project, would be vested elsewhere. Precisely whence the direction of such Caisse-supported projects would come has never been settled. Premier Lesage suggested that the Caisse might co-operate in projects initiated by the SGF, the government of the day, or the private sector, or some combination of these agents. Both the 1972 PQ manifesto and Fournier's 1979 study were more explicit in recommending that the Caisse's decision-making should be integrated within a regime of systematic economic planning. While the civil servants who authored the Tetley Report did not openly advocate a Plan à la française, their tacit criticism of the Caisse's passivity in relation to the reorganization and expansion of economic activity in Quebec reflected a similar concern that the process whereby the government's economic policy preferences were communicated to decision-makers at the Caisse was inadequate.

Suggestions that the catalytic role of the Caisse be more systematically linked to various state agencies of economic planning have

now",⁴⁴ the Caisse's market interventions would express the provincial interest in particular circumstances. Lesage suggested the scenario of a threatened takeover by foreign interests of an important Quebec-based corporation, in which case the investment resources of the Caisse could prove instrumental in preventing the alienation of control. More generally, the Caisse would express the provincial interest in its investment behavior through both the stabilization role which it was expected to play regarding the market for provincial securities, a role analogous to that played by the Bank of Canada at the national level, and by virtue of the sheer size which its assets were expected to reach over time.

The effectiveness of the Caisse as an instrument of public policy would require that its authority as an investor with a special relationship to the public interest be recognized as legitimate by the business community. Compelled to operate within investment markets dominated by the private sector (the stock exchanges, the corporate and government bond markets), the Caisse has had to achieve and maintain the acceptance of the financial and business sectors. That a failure to maintain this legitimacy, a subjective condition, has palpable consequences was demonstrated after the Domtar takeover (i.e., the suspension of the Caisse from trading on the TSE), and in the conflict between the Caisse and CP management over board representation (i.e., the mobilization of anglophone capital and the federal government in support of restrictions on the Caisse's investment capacity).

These particular cases of conflict between the Caisse and private sector actors raised to prominence the more general issue of the perceived legitimacy of Caisse participation in the private sector of

been heard less frequently over the past few years. This doubtless is due to a combination of factors, including the widespread disrepute into which planning has fallen after the equivocal experience of several Western countries with incomes policies and the management of aggregate demand, and a perception shared by many Quebecers, and expressed by the Quebec Liberal Party,³⁷ that the provincial state has become over-extended. In a recent study of business perceptions of the Caisse, Léon Courville and Marcel Côté found that 45 per cent of all CEOs surveyed, and 37 per cent of the francophone CEOs, agreed that the Caisse should be split up into several smaller bodies.³⁸ Not surprisingly, since coming to power the PQ Government has given no indication of being disposed toward the politically perilous exercise of reforming the Caisse's charter and the agency's formal relationship to state organs of economic planning.

While guarantees of independence contained in the Caisse's charter insulate the agency from political pressures, the Caisse's management has demonstrated on several occasions a sympathy with the catalytic role envisaged for the agency by successive governments. A foremost instance of this was the pivotal role played by the Caisse in the reorganization of Quebec's food distribution sector. Through financial support and pressure at the managerial level the Caisse facilitated the merger of three medium-sized food retailers into the Provigo chain during the late 1960s. The agency's involvement in Provigo's expansion continued into the 1970s. The Caisse acquired 24 per cent of the shares of M. Loeb Ltd., a competing food retailer, and representation on the board of directors of that corporation, providing leverage which facilitated Provigo's takeover of Loeb in the mid-1970s, despite opposition

from the existing controlling interest (i.e., the Loeb family). As the major shareholder in Provigo the Caisse rejected a 1977 takeover offer from Sobeys Stores, a retailing chain controlled by the Sobeys family of Halifax. Thus, the financial support of the Caisse has been instrumental, first in consolidating a francophone presence in Quebec's food distribution sector, and then in ensuring that control remained within the province.

More generally, the Tetley Report observed that during its first several years of operation the Caisse had played a supportive role in certain corporate mergers; assisting in the transition of closely-held businesses into public companies with shares traded on the stock exchange. Since the 1973 transformation of the SGP into a wholly state-owned enterprise, the industrial reorganization function largely has devolved upon this holding company. Caisse participation in the recently created Power Financial Corporation, and co-operation with a group of Quebec-based financial institutions in the takeover of Trust General, indicate that the Caisse's main reorganization objectives currently concern Quebec's financial sector.³⁹

In the case of venture capital, involving investment in enterprises which have a high growth potential but also carry higher risks than investment in long-established firms, the Caisse's charter permits up to 7 per cent of the agency's assets to be invested in the shares of corporations which have not yielded at least a 4 per cent annual return on common shares in each of the five years preceding their purchase. This so-called "basket clause" enables the Caisse to support the launching of new enterprises in the province, a role which was advocated for the agency by the authors of the Tetley Report.⁴⁰ To

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this point the Caisse's systematic participation in the area of venture capital has been limited to its 25 per cent ownership stake in Investissements Novacap, a venture capital firm of modest size (sales of \$5.99 million in 1982). However, what is most interesting about Novacap is that it constitutes a partnership between the Caisse and the SGP, each of which holds a 25 per cent ownership share (the remaining 50 per cent is divided between la Laurentienne and the National Bank of Canada). This relationship between functionally different organs of the Quebec state, the Caisse being a financier and the SGP an entrepreneur, along with francophone capital in the private sector, is significant primarily as an indication of the possibilities which exist for formal co-operation in financing economic development.

Compared to the mere possibilities prefigured in a formal relationship like Novacap, informal co-operation between the Caisse and other investors already has had important consequences for the Quebec economy, as shown in the case of Provigo's incorporation and subsequent expansion. The foremost illustration of an informal relationship between the Caisse and other principals to effect some specific change in the Quebec economy is, of course, the takeover of Domtar. In acquiring control over that public company there was orchestration between the highest levels of Caisse and SGP management,⁴¹ active co-operation on the part of Paul Desmarais, whose Power Corporation holdings sold large blocks of shares to the Caisse, and the prior knowledge and support of the PQ Government.

The circumstances of the Domtar takeover and its aftermath were described earlier.⁴² Suffice it to say that the pivotal role played by the Caisse, the only state organ which could have financed a takeover through purchases on the stock market, demonstrated that the agency

was prepared to co-operate in an acquisition project which was spawned out of the government's publicly-expressed dissatisfaction with Domtar's corporate behavior (particularly the relocation of Domtar's Sifto division headquarters from Montreal to Toronto, and major capital expenditures in the mid-American region at a time when the PQ government was intent on increasing salt mining within the province) and the SGP's search, on instructions from the Minister of Industry, for a large corporate holding in order to stabilize its revenue position. Certainly Domtar's decision to relocate Sifto headquarters, and to expand its Goderich operation instead of co-operating with the Quebec government in developing the salt deposits on the Magdalen Islands, did not threaten the value of the Caisse's investment. Together with Finance Minister Parizeau's acknowledgement of Paul Desmarais' complicity in the takeover, these factors render it implausible that the decision to acquire control of Domtar did not originate with the Quebec government. However, one must keep in mind that the Caisse was not called upon to bail out a money-losing corporation through its investment. Domtar was not Massey-Ferguson, and in financing a project which appears on the basis of overwhelming circumstantial evidence to have been initiated by the government, the Caisse was not placed in the position of sacrificing profitability (its fiduciary role) for public policy (its economic development role).

In playing a crucial supportive role in such projects as the consolidation of Provigo and the takeover of Domtar, the Caisse has satisfied the expectation that it will act as a catalyst for economic change in circumstances that do not compromise its fiduciary responsibility. Quantitative measures of Caisse investment in Quebec-based corporations

fail to disclose the qualitative contribution which the agency has made in restructuring either the ownership profile or scale of economic activity in particular sectors. The sensitivity of Caisse management to economic objectives which go beyond the mere growth of its invested assets recently was demonstrated when Jean Campeau went on record stating that the Caisse would consider investing in a Honda automobile plant if that automaker decided to locate in Quebec instead of Ontario.⁴³ While Honda ultimately chose the Ontario location for its \$100 million investment, Campeau's intervention confirmed that Caisse management understands the agency's potential as a lever of economic development, and is willing to act on this awareness.

3) THE CAISSE'S AUTHORITY AS AN INVESTOR

When Premier Lesage spoke of the "moral authority" which he expected the Caisse's market interventions to carry, he went to the heart of the Caisse's role. Indeed the whole point behind an investment agency, inspired by western European precedents, as opposed to the "pay as you go" fund first proposed by Ottawa in the pension plan negotiations, was to create a lever whereby the state could influence the province's capital markets. Of course the immediate goal was to reduce the dependence of the Quebec state on the financial syndicate which for years had controlled the placement of Quebec government bonds. But the remarks of Lesage, Kierans, Lévesque and others during debate on the legislation establishing the Caisse reflected the expectation that the agency's participation in the province's capital markets would carry consequences beyond the simple substitution of public for private capital in financing the state. As a public sector agent and, in Lesage's words, "a more powerful (economic) lever than any we have had" in the province up to

now",⁴⁴ the Caisse's market interventions would express the provincial interest in particular circumstances. Lesage suggested the scenario of a threatened takeover by foreign interests of an important Quebec-based corporation, in which case the investment resources of the Caisse could prove instrumental in preventing the alienation of control. More generally, the Caisse would express the provincial interest in its investment behavior through both the stabilization role which it was expected to play regarding the market for provincial securities, a role analogous to that played by the Bank of Canada at the national level, and by virtue of the sheer size which its assets were expected to reach over time.

The effectiveness of the Caisse as an instrument of public policy would require that its authority as an investor with a special relationship to the public interest be recognized as legitimate by the business community. Compelled to operate within investment markets dominated by the private sector (the stock exchanges, the corporate and government bond markets), the Caisse has had to achieve and maintain the acceptance of the financial and business sectors. That a failure to maintain this legitimacy, a subjective condition, has palpable consequences was demonstrated after the Domtar takeover (i.e., the suspension of the Caisse from trading on the TSE), and in the conflict between the Caisse and CP management over board representation (i.e., the mobilization of anglophone capital and the federal government in support of restrictions on the Caisse's investment capacity).

These particular cases of conflict between the Caisse and private sector actors raised to prominence the more general issue of the perceived legitimacy of Caisse participation in the private sector of

the economy. Survey data recently has become available, demonstrating the gulf which separates the perceptions of the anglophone business community (represented in the objections raised by CP, Alcan, and Dominion Textile to Caisse representation on their respective boards of directors) from those of both private sector clients of the Caisse and the francophone business community. Wide differences in perception exist with regard to the appropriate goals of the Caisse and its corporate behavior. However, these differences disappear when respondents are asked about the agency's relationship to the provincial government.

TABLE 8.11: BUSINESS COMMUNITY PERCEPTIONS REGARDING THE INVESTMENT ROLE OF THE CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC

The Economic Development Goal of the Caisse

Q.1 "The Caisse de dépôt should not have as part of its legislative mandate the promotion of economic development."

	<u>Clients</u>	<u>Francophones</u>	<u>Anglophones</u>	<u>Total</u>
Agree	415	44	64	56
Disagree	59	52	31	40
Yes	27	48	67	115

Q.2 "Through its investments, the Caisse has contributed significantly to the development of Quebec business."

	<u>Clients</u>	<u>Francophones</u>	<u>Anglophones</u>	<u>Total</u>
Agree	78	48	19	31
Disagree	0	38	45	42

The Corporate Behavior of the Caisse

Q.3 "All things considered, the Caisse de dépôt is one of the most respected investment institutions in Canada."

	<u>Clients</u>	<u>Francophones</u>	<u>Anglophones</u>	<u>Total</u>
Agree	67	58	30	42
Disagree	15	27	34	31

(continued)

Table 8.11 (cont'd.)

Q.4 "The Caisse should be able to enter takeover agreements with private interests (like Brascan)."

	<u>Clients</u>	<u>Francophones</u>	<u>Anglophones</u>	<u>Sympathizers***</u>	<u>Total</u>
Against	59	57	90	63	76

Q.5 "The Caisse should be able to enter takeover agreements with other state agencies (as in the case of Domtar)."

	<u>Clients</u>	<u>Francophones</u>	<u>Anglophones</u>	<u>Sympathizers</u>	<u>Total</u>
Against	89	85	91	78	89

Q.6 "The Caisse should be able to place its representatives on...

	<u>Clients</u>	<u>Francophones</u>	<u>Anglophones</u>	<u>Sympathizers</u>	<u>Total</u>
Boards of Directors."					

Agree	52	60	52	65	56
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Executive Committees."

Agree	15	23	15		
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The Caisse/Government Relationship

Q.7 "The Caisse is not sufficiently independent of the Quebec government."

	<u>Clients</u>	<u>Francophones</u>	<u>Anglophones</u>	<u>Sympathizers</u>	<u>Total</u>
Agree	78	81	82	76	82
Disagree	11	13	2	9	6

Q.8 "A dominant shareholding by the Caisse de dépôt constitutes, or may constitute, a step toward gradual nationalization."

	<u>Clients</u>	<u>Francophones</u>	<u>Anglophones</u>	<u>Sympathizers</u>	<u>Total</u>
Agree	78	77	85	78	82
Disagree	19	21	12	22	15

*Methodological details for the survey are provided in Appendix II.

**The sampling population is 115 for all of the tables. Column percentages may not total 100 because non-responses have been omitted. All the tables are adapted from Marcel Côté et Léon Courville, "La perceptions de la Caisse de dépôt et placement du Québec par les chefs d'entre-

(continued)

Table 8.11 (cont'd.)

prises", Tables 2, 3, 7, 9; in Claude E. Forget (ed.), La Caisse de dépôt et placement du Québec (Montreal: C. D. Howe Institute, 1984), pp: 74-84.

***The sympathizer category comprises those CEOs who support the Caisse's economic development mandate.

Whereas the anglophone business class overwhelmingly objects to the Caisse's economic development role, and does not consider that the Caisse has made a significant contribution to the development of Quebec businesses, the perceptions of francophone businessmen and clients of the Caisse are quite different. These latter groups support the economic development mandate of the Caisse, though not by wide margins, and agree that the investment activities of the Caisse have strengthened Quebec businesses. Similarly, while only 30 per cent of the anglophone respondents concur with the statement that the Caisse is one of the most respected investment institutions in Canada, 67 per cent of the Caisse's clients and 58 per cent of francophone respondents agree that the Caisse has this high respectability. Evidently, the perceived legitimacy of the Caisse's private sector investment activities is not shared by all segments of the business community. The difference of views between anglophone and francophone CEOs provides some confirmation of the thesis that the equity investment activities of the Caisse do not represent a challenge to private capital accumulation and corporate autonomy per se, but may in some cases challenge non-francophone control in the private sector of the Quebec economy.

Interestingly, there is an apparent convergence of views between the francophone and anglophone business communities in regard to the related questions of Caisse representation on the board of directors

of a private sector corporation, and the relationship of the Caisse to the provincial government. While a majority of respondents in each business category (francophone, anglophone, and clients of the Caisse) agree that the Caisse should be entitled to the normal prerogative of a major shareholder, viz. representation on the board of directors, only a third as many CEOs, whether francophone, anglophone or clients of the Caisse, consider that the Caisse should have representation at the executive committee level. Moreover, there is both a consensus that the Caisse is not sufficiently independent of the Quebec government, and a high level of agreement among francophones, anglophones and clients of the Caisse that a large ownership share held by that agency may represent a step toward gradual nationalization. Thus, even among francophone CEOs, who generally are sympathetic to the economic development role of the Caisse, there is strong opposition to co-operation between the Caisse and other organizations, whether public or private, where the objective is corporate control.

As interesting as the points of consensus and disagreement in the attitudes of anglophone and francophone CEOs is the fact that a considerable segment of the business community, the sympathizer category, expresses support for the economic development role of the Caisse (40 per cent; or 46 of 115 respondents) while objecting to certain of the instrumentalities through which this mandate has been pursued. The distribution of responses received for Q.4 through Q.6 indicates that sympathizers are not remarkably more likely than CEOs as a whole to support Caisse participation in the control of private sector corporations. Moreover, sympathizers are only marginally less likely than anglophone CEOs (the least sympathetic category of respondents) to

agree that the Caisse is not sufficiently independent of the Quebec government. Thus, the business community is able to divide on the question of whether the agency ought to operate as a tool of economic nationalism without a co-extensive division on the issue of Caisse participation in corporate decision-making. The fact that sympathizers are not significantly less likely than CEOs as a whole to have reservations regarding both Caisse control over private sector corporations and the agency's relationship to the provincial government is plausibly explained. The Caisse's sympathizers view it as a pool of capital which stands in a supportive relationship to the private sector of the provincial economy. But as Pierre Lortie made clear in his opposition to Bill S-31, this appreciation of the Caisse as financier does not signify approval of the agency as dirigeant.

In summary, the survey data reported above reflect a division between francophone and anglophone capital which was evident in the debate on Bill S-31. Twice as many francophone CEOs as anglophone CEOs in the Quebec economy agree that the Caisse is one of the most respected investment institutions in Canada (58% v. 30%), a difference which suggests the greater legitimacy accorded the Caisse's direct investment role by the francophone business community. At the same time there exists a consensus across language groups that the Caisse should not go beyond the role of passive investor, and that its investment behavior should be determined independent of the economic preferences of the current government. What emerges from the pattern of private sector attitudes is that the Caisse has achieved only a limited success in establishing for itself a position of authority on the province's capital markets. Even among francophone CEOs a signi-

ficant minority (44%) challenges the Caisse's role as an instrument of economic policy. Indeed, when client firms of the Caisse are excluded from the population of francophone CEOs the difference between the language groups is negligible (60% of francophones v. 64% of anglophones). The precariousness of the Caisse's acceptance as an investor with a special relationship to the provincial interest is likely to persist so long as the agency's investment policy is not formulated within a systematic regime of economic planning.

Summary: The Social Return on State Capital

Analysis of the corporate performance of Telesat, the CDC and the Caisse reveals a mixed record of successes and failures in pursuing state-defined public policy goals. With the integration of Telesat into Telecom Canada, the terrestrially-based carriers are assured of control over commercial competition from this competing technology.⁴⁵ The federal government's policy expectations for Telesat evidently are limited to the backward industrial linkages generated through the corporation's satellite acquisitions, and management has been able to treat this Canadian content expectation as a recompensable cost.⁴⁶

In the case of the CDC, the federal government's ill-defined policy objectives for the corporation were blocked by management's early assertion of decision-making autonomy (an autonomy supported by the Department of Finance) and the government's complete failure to systematically provide policy signals to the corporation (for example, through annual cabinet review of the CDC's corporate strategy and performance). On balance, the CDC experiment in mixed ownership has resulted in dollar costs to the taxpaying public (through a real loss on the federal government's original investment of \$250 million and the income foregone

with the transfer of Polymer to the CDC) and antagonism between the federal government and the business community over the corporation's role in Ottawa's episodic lurches in the direction of an industrial strategy, while providing very marginal social benefits in the form of some patriation of corporate ownership (though the most prominent case of this was an incidental consequence of the NEP, and not of unequivocal public policy signals embedded in the corporation's charter) and the development of a large pool of Canadian equity capital.

The Caisse's record of performance has been quite different. Through its equity investments in dozens of Quebec-based corporations the Caisse has channelled savings generated in the province toward indigenous economic development. Moreover, the Caisse has acted as a catalyst in specific instances of industrial reorganization in the Quebec economy. The agency's pivotal role in the consolidation of Provigo, and in financing the Domtar takeover, are the two most outstanding examples of this catalytic function. However, the Caisse has not compromised its fiduciary responsibility to the millions of Quebec citizens whose compulsory contributions it invests. As a proportion of total investments, its equity portfolio is heavily weighted toward blue chip stocks, representing shares in corporations with considerable operations outside of Quebec. And despite the criticisms of Marcel Bélanger, president of the Banque Nationale du Canada,⁴⁷ the Caisse's financial performance generally has been superior to that of the Canada Pension Plan and most other public pension investment agencies in Canada.⁴⁸

However, the Caisse has been less successful in establishing its legitimacy as an investor in the private sector of the economy. While the representatives of francophone capital tend to be more sympathetic

to the economic development role of the Caisse than their anglophone counterparts, there still is considerable opposition within Quebec's francophone private sector to the Caisse's role as an instrument of economic policy. Furthermore, the francophone business community is not significantly less wary of the links between the PQ Government and the Caisse's investment policy than are the representatives of anglophone capital. Thus, while the Caisse's investment record may indeed demonstrate that it stands in a supportive relationship to Quebec's francophone bourgeoisie, the members of this class show no more disposition than their anglophone counterparts to allow the Caisse a share in corporate decision-making.

On balance, there is little evidence that the investment behavior of the Caisse is influenced in a direct and systematic way by the political project of the PQ Government. Pierre Fournier has recently inferred on the basis of a few isolated cases (mainly Provigo, Bombardier, Gaz Metropolitain, and Domtar) that the Caisse has as its main objective to carve out an accumulation base for the emergent Quebec bourgeoisie. The alleged instrumental relationship between the PQ Government and the Caisse is, according to Fournier, an important means by which the "relative autonomization"⁴⁹ of the Quebec bourgeoisie is promoted. While there is a measure of truth in this interpretation, to the extent that the Caisse has both reduced the dependence of the Quebec state on non-francophone capital and contributed to provincial economic development through financing Quebec-based corporations, analysis of this investment agency's evolution over time and the practical significance of its recent demands for representation on the boards of public companies in which it holds a large ownership stake has disclosed that

the Caisse is more accurately characterized as a blunt tool of economic nationalism. To this point the PQ Government had given no indication of being disposed toward the politically perilous exercise of reforming the Caisse's charter and the agency's relationship to state organs of economic planning; steps which would be necessary to transform the agency into the government-directed tool of nationalism which the Caisse's more impassioned critics argue it has become.

In summary, the social returns on the public's invested capital vary across the three organizations examined in this study. Ranked according to their success in satisfying the public policy expectations held by the government, Telesat has come closest to operating as a policy instrument through its contribution to the growth of a domestic manufacturing capacity in satellites. In the case of Quebec's Caisse de dépôt et placement, the equity investment activity of this agency has been supportive of the province's francophone business community. But there is no evidence that the Caisse's equity investment policy is systematically related to the preferences of the Quebec government. Finally, the Canadian public (as distinct from private shareholders) has received no significant social returns on its investment in the CDC, unless one is prepared to count the development of a large Canadian-owned holding company as a significant public policy accomplishment. The reasons for the unequal performance of these organizations in their relationship to public policy will be elaborated on in the concluding chapter.

Footnotes

- 1 John Langford, "Public Corporations in the 1980s", Canadian Public Administration, vol. 25, no. 4 (Winter, 1982), p. 635.
- 2 D. Posgate and K. McRoberts, Quebec: Social Change and Political Crisis (Toronto: McClelland and Stewart, 1981).
- 3 Pierre Fournier, "The New Parameters of the Quebec Bourgeoisie", in A. Gagnon (ed.), Quebec: State and Society (Toronto: Methuen, 1984), pp. 201-227.
- 4 Jorge Niosi, "The Rise of French-Canadian Capitalism", in ibid., pp. 186-200.
- 5 See David Olive, "Caisse Unpopulaire", Canadian Business (May, 1982), pp. 94-101; and Heward Grafftey, "Government and Business: The Caisse de depot et placement du Quebec", Business Quarterly, vol. 48, no. 2 (July, 1983), pp. 19-22.
- 6 Gerard Dusart, La Caisse des dépôts et consignations (Paris: La documentation française, June 1980), p. 9 (author's translation).
- 7 G. B. Doern and J. Brothers, "Telesat Canada", in Doern and A. Tupper, Public Corporations and Public Policy in Canada (Montreal: IRPP, 1981), p. 244.
- 8 Telesat Act, s.6(1) (author's emphasis).
- 9 This is confirmed from personal interviews with industry principals, and from Telesat's signal record of commercial performance. Indeed, transfer payments under the Telecom membership agreement have represented a crucial contribution to Telesat's income since the recent collapse of several pay television networks which were customers of the satellite corporation.
- 10 Personal interview, 12 December, 1983.
- 11 The substitution of satellite for terrestrial carriage effectively changes jurisdiction from provincial to federal. See the discussion in chapter two.
- 12 These potential levers of control are listed at pages 68-69, in chapter two.
- 13 One industry principal on Telesat's board stated that it would be unreasonable to expect his company to participate in a venture with which it competes commercially. Personal interview, 9 December, 1983.
- 14 Using two rather different performance criteria, i.e., management's goal of commercial viability and the industry's goal of controlling competition between telecommunications technologies, Telesat's record is mixed. On the first count, transfer payments made under the Connec-

ting Agreement between Telesat and other member companies of Telecom Canada have comprised an important part of the corporation's earnings (\$1.8 million of operating revenues of \$51.25 million in 1981; \$5.2 million of \$59 million in 1982; and \$28 million of operating revenues of \$88.1 in 1983). Telesat principals admit that these industry payments have represented a vital supplement to the corporation's income, without which commercial viability would have been impossible. But of course the quid pro quo for the financial safety net and guaranteed market provided under the Telesat/Telecom Communications Agreement is the effective control which the Telecom group has over the competitive development of the satellite system. Thus, the industry's interest in controlling the development of a telecommunications technology which, in some markets, is a substitute for terrestrial carriage is satisfied by Telesat's performance.

15 See the discussion in chapter three.

16 The influence which the government expected to have on CDC decision-making was both poorly-defined and a subject of contention among state actors. In his statement to the House of Commons during second reading of the CDC legislation, the Minister of Finance observed:

Initially, the government will be the sole shareholder and it will always be the largest single shareholder. Because of the significant role the corporation has been given by its purpose and objects, the government will want to show a continuing interest in it and it is expected that the government will always want to hold at least 10 per cent of the voting shares. Thus it will always be in a position to exercise the degree of influence on the over-all policies of the corporation which would be appropriate to its shareholding.

A similar expectation of influence was expressed by Benson's parliamentary secretary, Patrick Mahoney, when he remarked: "We hope and intend it (CDC) will be able to act in whatever foreign ownership policy the government decides" (Globe and Mail, 29 November, 1971). However, the mechanisms of influence were never specified, and in practice the state shareholder was satisfied with the role of silent partner until the investment crisis of 1980, and the subsequent confrontation over the CDC chairmanship and board representation in 1981.

17 The CDC holds a further 40 per cent ownership in Petrosar through Polysar, for a combined interest of 60 per cent. Regarding Texasgulf, in June of 1981 the CDC sold its interest in this corporation to Société Nationale Elf-Aquitaine in exchange for SNEA's 75 per cent interest in Aquitaine Company of Canada Ltd., and the Canadian mining assets of Texasgulf.

18 Using neo-mercantilist criteria of effectiveness, i.e., export promotion and internationalization of production, Jeanne Laux argues that the CDC has been a successful instrument of economic policy. However, she identifies the paradox of the CDC's international trade success when she writes: "Yet the very success of the CDC created the basis for autonomous action by state enterprise managers and generated in-

increasingly incompatible perceptions of interest on the part of the corporation and the government. Not only has the CDC engaged in activities abroad which, unknown to government, contradicted established policy in the interest of competitive success, but the government has proven unable to exercise direction over the corporation's investment strategy". See Jeanne Kirk Laux, "State-Owned Enterprises and Foreign Economic Policy--the Limits of Neo-Mercantalism in Canada", Paper prepared for the Annual Meeting of the Canadian Political Science Association, Vancouver, B.C., June 6, 1983, p. 17.

19 These figures cannot be ascertained with greater precision because of the consolidated nature of the eliminations category in the CDC's publicly accessible records.

20 These investment priorities were first stated in the CDC's Annual Report for 1972.

21 M. Graham, Canada Development Corporation, a study conducted for the Royal Commission on Corporate Concentration (1977), p. 94.

22 Financial Post 500, Summer, 1984.

23 Financial Post 500, Summer, 1984; calculated from the figures provided at pages 146-147.

24 This analysis draws upon the information compiled by Dr. R. P. Kelly, from a survey of shareholders which he carried out for the CDC in 1976.

25 C. Eckel and A. Vining, "Toward a Positive Theory of Joint Enterprise", in W. T. Stanbury and P. Thompson (eds.), Managing Public Enterprises (New York: Praeger, 1982), especially pp. 217-218.

26 The CDC's consolidated loss of \$125.8 million in 1982 represented the first annual loss in the corporation's history. Polysar accounted for \$38.6 million of that loss. In 1983 the CDC's loss was reduced to \$45 million, and Polysar returned to profitability (\$2.1 million).

27 Department of Finance, News Release, Ottawa, 22 February, 1971.

28 See David Olive, op. cit.; and Heward Grafftey, op. cit.

29 D. H. Pullerton, "La Caisse de dépôt--Un regard en arriere", in C. Forget (ed.), La Caisse de dépôt et placement du Québec (Montreal: C. D. Howe Institute, 1984), pp. 21-34.

30 In its annual report the Caisse does not identify its investments in Quebec-based corporations separately from its general listing of equity investments.

31 A rank-ordering of the 150 largest (by assets) Quebec-controlled corporations is published annually by Finance, and this provides the basis for the population of businesses considered here. See François

Roberge, "Les 150 plus grandes entreprises à contrôle québécois en 1983", Finance (le 17 octobre, 1981), pp. 22-25.

32 See Jorge Noisi, "The Rise of French-Canadian Capitalism", in A. Gagnon (ed.), op. cit., Table 11-1, p. 188.

33 While the list of private sector investments published by the Caisse is extensive, it is not exhaustive. Included are all investments in shares and bonds with a market value exceeding \$5 million, as well as corporations in which the Caisse holds more than 10 per cent of voting rights.

34 Pournier, Les sociétés d'Etat, pp. 29, 40.

35 Quoted in ibid., p. 31 (author's translation).

36 See Premier Lesage's remarks to the National Assembly, 9 June 1965 (cited in chapter four).

37 See Denis Couture, "L'épuisement des coffres de l'Etat québécois force la réévaluation des sociétés d'Etat", Finance (29 août, 1983), pp. 2-3.

38 Courville and Côté, "La perception de la CDPQ par les chefs d'entreprises", in Forget (ed.), op. cit., p. 83.

39 See "Le Trust Général", Finance (27 février, 1984); "The Power link to 'supermarket shopping'", Financial Post (21 April, 1984); and "Paul Desmarais entre par la grande porte en créant le n° 2 canadien", Finance (4 juin, 1984).

40 Tetley Report, pp. 154-155.

41 Personal interview, 2 February, 1984.

42 Refer to the discussion in chapter six.

43 Amy Booth, "Caisse's role as investor ruffles some feathers", Financial Post (19 May, 1984).

44 Quebec, Débats de l'assemblée législative, 9 juin, 1965, p. 3311 (author's translation).

45 Recognition of this fact led the CRTC to remark: "As a member of TCTS, decisions about satellite system design, capital costs and performance requirements as well as proposed terms, conditions and rates for satellite services would be subject to the unanimous approval of TCTS members and hence the veto of any one of them". See CRTC, Telecom Decision CRTC 77-10, Telesat Canada, Proposed Agreement with Trans-Canada Telephone System, reported in the Canada Gazette, Part I, Sept. 3, 1977, pp. 4848-4883.

46 See the discussion in chapter six, pages 179-183.

47 See Bélanger's comments in C. Forget (ed.), La Caisse de dépôt et placement du Québec (Montreal: C. D. Howe, 1984), p. 150.

48 Comparative figures are provided in Finance (9 avril, 1984), p. 8; and in C. Forget, op. cit., p. 110.

49 Pierre Fournier, "The New Parameters of the Quebec Bourgeoisie", in Gagnon, op. cit., p. .

PART V

CONCLUSION

CHAPTER NINE

CONCLUSION

In examining the partnership of public and private capital in the mixed ownership corporation this study has had two objectives. The first and narrower objective has been to determine the tractability of mixed enterprise as an instrument of public policy. Thus, chapters five through eight considered the selected cases of mixed ownership from various standpoints, including: i) the organizational features of a mixed ownership firm which limit state control; ii) decision-making in circumstances of conflict between the expectations held by the state and corporate management; iii) the scope of conflict, whereby the resolution of divergent state and management expectations for the firm is affected by the way an issue is defined and, therefore, by the larger configuration of interests which become engaged in the conflict; and iv) the performance of Telesat, the CDC, and the direct investments of the Caisse, in terms of the social return on state capital.

In the introductory chapter it was argued that the partnership of public and private capital in the mixed ownership corporations provides an empirical test of the state's ability to substitute its own public policy preferences for those of the private sector. Thus, a second and broader objective of this study has been to develop insights into the relationship between the state and private capital in Canada, based upon these cases of mixed enterprise. This was done most explicitly in analysing the origins of Telesat, the CDC, and the Caisse, and in the chapter on the scope of conflict and the effectiveness of these mixed enterprises as instruments of public policy (chapters seven and eight, respectively). After reviewing the principal findings of the case studies, the way will be clear for an integrated assessment

of the larger implications for state entrepreneurship which follow from the mixed ownership experience.

In their origins, each of the organizations studied involved the deliberate selection by government of joint public/private ownership, and an expectation (variable across the cases) of influence on corporate behavior. But despite this expectation of influence, ownership participation by the federal government in Telesat and the CDC was in neither case intended to challenge the principle of private capital accumulation. Business values were given clear expression in the charter of each corporation, in the fact of private sector shareholders, and, in the case of the CDC, through repeated government assurances of non-intervention in corporate decision-making. Mixed enterprise was expected to provide a middle ground between total state ownership, through a crown corporation, and other less direct forms of economic intervention. The private sector investments of the Quebec state through the Caisse require a slight qualification to the above proposition in that, to the extent that the Caisse's investment policy sought to enlarge the space available to "francophone capital", this could be seen to challenge non-francophone capital. But the challenge would be directed at non-francophone control rather than at private capital accumulation per se.

Government's original expectations of unobtrusive influence have run up against organizational features of the mixed enterprise that involve a mobilization of bias in favour of business values, which places the state shareholder at a disadvantage vis-a-vis private capital in corporate decision-making. This study found no evidence to support the cognitive dissonance thesis, i.e., that managers of a mixed ownership

corporation occasionally experience role ambivalence in consequence of the divergent expectations of the state shareholder and private capital. Trade-offs between business and political values do not occur as a psychological balancing act, but by treating the public policy expectations of the state as intrusions upon corporate autonomy, to be resisted as far as possible or accommodated with compensation. In other words, where management has been responsive to the state's social goals for the corporation, this has not been due to the partial assimilation of a state agent role. Rather, it has been due to either coercion or management's perception that the costs of complete resistance exceed those which accommodation would carry.

Moreover, interviews with managers and directors of Telesat and the CDC provided some support for Feigenbaum's argument that the commercial firm is ill-suited as a policy instrument in a liberal capitalist society. The values which appertain to the firm, particularly profitability and organizational autonomy, constitute important limits on the state's ability to act through a mixed ownership corporation in pursuit of public policy goals when these are in conflict with management's preferences for corporate action. Business values are invoked as defenses against state control, a function which was clear in private sector support for the investment limits proposed by Bill S-31.

The limits on the state shareholder's capacity to pursue social goals through the mixed ownership corporation are understood more concretely from examination of several decision situations where the preferences of the state and private capital are in conflict. In each case a perceived attempt by the state to influence corporate behavior in a way considered by management to prejudice the commercial competitiveness or corporate autonomy of the firm was opposed

as an illegitimate intrusion into corporate decision-making. Thus, the hypothesized relationship between the private sector's perceptions of the state's expectations for the mixed enterprise, and the state's ability to influence corporate behavior, is confirmed. In those cases where the state shareholder was successful in influencing corporate behavior along lines opposed by management and private shareholders, success came at a price. Indeed, the price of forced compliance (coercion) with the state's preferences is crisis in the relationship between the state and private capital in the mixed enterprise, while the price of induced compliance (suasion) is compensation.

These conflictual decision situations demonstrated that there typically exists a triadic relationship between the state shareholder, private capital and management of the mixed enterprise. In other words, it is somewhat misleading to view the decisions of a mixed ownership firm in light of the tension between the public policy goals of a government and the profitability goals of private capital. The interests of private capital (which, as the case of Telesat showed, may not involve maximum growth and competitiveness of the mixed enterprise) are refracted through management's goal of maintaining corporate autonomy. This was evident from interviews with managers of both Telesat and the CDC. However, there existed an important difference between the two sets of actors in that CDC managers alluded regularly to their fiduciary responsibility to the corporation's shareholders as a whole (signifying the profitability concern of private investors), while Telesat actors defended corporate autonomy from government intervention by reference to the business values expressed in the corporation's charter. In other words, management's resistance to government influence may be

based on different reference points, but in each of the conflict cases examined business values were invoked in defense of corporate autonomy.

Although the findings of three case studies do not provide conclusive evidence for valid generalizations about this triadic relationship, it does appear that management's fiduciary responsibility to take all reasonable care to protect the invested capital of the firm's shareholders operates as the most effective check on government control. This check is largely absent in the case of Telesat, whose corporate charter assigns the federal government a privileged role in the capital expenditure decisions of the firm, the selection of the corporation's CEO, and the transfer of ownership shares. Moreover, Telesat's ownership structure is unlike that of either the CDC or the equity holdings of the Caisse in that it involves a small number of shareholders and the firm's equity is not traded publicly. This means that, practically, Telesat represents a partnership of state capital and several commercially oriented telecommunications firms (but particularly Telecom Canada), and thus management's fiduciary responsibility to its shareholders is significantly different from what would be the case were Telesat a public company. The ownership rights of thousands of private shareholders in a mixed ownership firm confronts a government which has non-commercial goals for the firm with the general interest of private capital. At least in the case of the CDC (and the debate over Bill S-31, and the Caisse would seem to confirm this), this general interest proved an effective shield against state intervention. Incorporation under general business legislation or, if created by a special act, ambiguity in regard to the relationship of the mixed enterprise to public policy reinforce the position of business values in the firm's

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operations.

One can only speculate as to how the firm's receptivity to state influence might vary with different management actors. In other words, given some degree of ambiguity in the corporation's mandate, how far are decisions on whether to attend to political or business signals determined by the personal orientations of managers, and how far by structural features of the corporation and its relationship to markets (i.e., the market for its product and the market for financing)? The main thrust of this study has been the examination of these structural limits on state control of the mixed ownership firm. However, based upon the analyses of Telesat and the CDC, it was observed that the federal government's initial selection of senior managers reinforced the business values expressed in the charter of each corporation. It is at least arguable that the public policy goals set out in the charter of these firms, and which can be discerned from the respective origins of Telesat and the CDC, might have been given greater emphasis by different managers. Certainly the resistance which greeted the federal government's abortive effort to install Maurice Strong as chairman of the CDC demonstrated that all parties considered that the individuals involved in the corporation's decision-making made a difference in terms of corporate behavior. Similarly, the conflict between CP management and the Caisse was based on private sector concern that even a corporation with no statutory relationship to public policy could find itself subject to political pressures expressed internally (i.e., through the board of directors).

The sources of resistance to state control which inhere within the mixed ownership firm point to a contradiction between state entre-

preneurship and capitalist business norms. This contradiction becomes particularly clear when conflict spills over from the mixed ownership corporation to engage a larger configuration of interests on the issue of the proper balance between the state and private capital in the economy. The decision cases examined in this study were characterized by a tendency toward the spillover of conflict, with the resolution of divergent preferences for the firm influenced by the scope of conflict. Failure to contain conflict within the mixed ownership firm has meant broader private sector opposition to state control of the firm, and in some cases has involved division within the state (as the Telesat/TCTS Membership Agreement placed the CRTC in conflict with the federal cabinet, and the issue of the CDC's relationship to public policy was a source of division within the federal government throughout the 1970s). Thus, the state's ability to pursue public policy goals through the mixed ownership corporation appears to be limited by this observed tendency for conflict to spread beyond the bounds of the firm, mobilizing a wider set of interested parties around an issue with higher stakes for business/state relations than those attendant upon the immediate cause of dispute.

In view of the apparent limits on the state's ability to influence decision-making in the mixed ownership corporation, one is entitled to ask what are the social returns on the public's invested capital. These vary across the three organizations examined in this study, from the relative success of Telesat in promoting the growth of a domestic manufacturing capacity in satellites, through the supportive relationship of the Caisse to Quebec's francophone business community, to the nebulous social returns which the Canadian public has received on its investment

in the CDC. Based upon the three cases studied, the factors determining the effectiveness of the mixed enterprise as a policy instrument can be summarized as follows:

- 1) the scale of the firm's operations (state influence on the corporate behavior of a small firm is likely to mobilize less private sector opposition than in the case of a nationally important corporation);
- 2) the pattern of private sector shareholding (a public company, with shares held by the general investing public, is more resistant to state control than a joint-stock company with ownership divided between the state and a small set of private shareholders);
- 3) the existence of a clearly defined mandate (incorporation under special legislation does not necessarily render an organization more amenable to state influence, but specification of the state's relationship to the decision process facilitates accommodation of the state's public policy goals for the mixed enterprise);
- 4) the degree of agreement within the state on the relationship of the organization to public policy (division within the government, or between parts of the state ensemble representing divergent policy views, reduces the likelihood of state influence on corporate behavior); and
- 5) the degree to which state preferences for the mixed enterprise are integrated into a grander system of policy goals in the affected economic sector, or for economic development as a whole. While a coherent regime of state economic planning is not a sine qua non of state influence at the level of the mixed ownership corporation, a larger framework of policy goals, understood and accepted as legitimate by important parts of the business community, increases the probability

of state influence at the level of the firm.

The contribution of each of these five factors to the policy effectiveness of the three cases studies is assigned a value in Table 9.1

TABLE 9.1: FACTORS DETERMINING POLICY EFFECTIVENESS

<u>Factor</u>	<u>Telesat</u>	<u>CDC</u>	<u>Caisse</u>
1	P	N	N
2	P	N	N
3	P	N	N
4	V	N	N
5	N	N	P

Legend: P - positive contribution
N - negative contribution
V - variable contribution

- ^a The pattern of ownership referred to here is that of the Caisse's private sector investments, not the Caisse itself.

- ^b The legislation referred to here is that under which the Caisse's investments operate, not the Caisse's charter.

In the case of Telesat, the state's relative success in pursuing policy goals through the satellite corporation can be ascribed to the small scale of the firm's operations, the fact of a limited number of other shareholders, whose interests are in controlling telecommunications competition rather than earning a profit on their investment in Telesat, and a corporate charter which provides the state shareholder with potential levers of influence in corporate decision-making. The social returns on the Caisse's equity investments have been based upon a different combination of factors. These are, principally, the consensus within Quebec's state elite on the province-building project in which the Caisse is a key engine of economic development, and the support

of a significant segment of Quebec's francophone bourgeoisie (including prominent individuals like Paul Desmarais, Yves Pratte, Roland Peladeau, and Pierre Lortie) for the general framework of nationalist goals in which the Caisse's investment role is situated.¹ Finally, the complete imperviousness of the CDC to the influence attempts of the federal government resulted from a negative loading on each of the factors listed in Table 4.1. Robert Couzin's 1971 judgement that, "In the absence of policy, the CDC will remain a not-so-gratuitous curiosity",² has turned out to be remarkably accurate.

Given this mixed record of successes and failures in the partnership of public and private capital, the question arises whether the determinants of state influence identified in this study are similar in other capitalist societies. In order to answer this question a cross-national survey would be required. While this is beyond the scope of the present study, an examination of recent developments in western Europe provides some basis for more general speculation on the possibilities for, and future of, mixed enterprise.

Western Europe: Privatisation and State Control

1) Privatisation: The British Model

One of the most significant recent changes in the industrial structures of western Europe has been the complete or partial sale of several billion dollars worth of equity in state enterprises. The phenomenon has spawned the neologism "privatisation", a term which usually is associated with the British government of Margaret Thatcher. However, state divestiture has taken place in a number of other countries as well, notably West Germany, Italy, and even in France under the socialist government of François Mitterand. The ideological overtones of this

phenomenon vary from the U.K., where privatisation represents the main component in the Conservative government's avowedly free enterprise industrial policy, to France where the sale of equity to private investors has been an expedient whereby profitable state enterprises have raised capital that, because of the socialist government's concern with controlling France's budget deficit, would not be provided by the state. Despite differences in the political justification for privatisation, and the relationship of such measures to a government's industrial policy, the sale of equity to the private sector is in each national case partially a response to the fiscal crisis of the state.

The example of Britain most clearly demonstrates how privatisation may be used as an instrument of fiscal policy in a capitalist society.

Between 1979 and 1983, the sale of crown shareholdings raised nearly \$4 billion for the British treasury.³ The Government's programme for the next few years projects divestitures expected to bring in approximately the same amount (\$2 billion) in each year; revenue which can be (and has been) used for current spending. Broken down by corporation, the Government's privatisation plan is as follows:

TABLE 9.2: PRIVATISATION TARGETS BY EXPECTED CONTRIBUTION TO THE BRITISH TREASURY

<u>Year</u>	<u>Corporation</u>	<u>Planned divestiture as a percentage of total equity</u>	<u>Expected value to the treasury*</u>
1984	Enterprise Oil	100%	450
1984	British Telecom	17%	1,300
1985	British Airways	100%	500
1985	British Telecom	17%	1,300
1985	British Airports	100%	400
1986	British Telecom	17%	1,300
Candidates for later sale:			
	Sealink		100
	National Bus		100
	Jaguar		100
	British Nuclear Fuels		300
	Royal Ordnance		300
	Naval Shipyards		100

(continued)

Table 9.2 (cont'd.)

*Million pounds sterling.

Adapted from The Economist, January 7, 1984, p. 43.

Thus, the British model involves the creation of mixed enterprise when state divestiture is incomplete (as is expected to be the case with British Telecom).⁴ In this model there is no question of state investment displacing private capital, nor of the state's ownership share being used as a lever of influence on corporate behavior. The sale of state shareholdings represents a source of revenue for a financially-strapped government, and, under an ideologically conservative party, may also be a fundamental part of industrial policy.

The British model of mixed ownership as a result of state divestiture has been followed less systematically by several other governments in the EEC. In West Germany, the Christian Democratic government of Helmut Kohl announced in January, 1984, its intention to reduce its shareholding in Veba, the country's largest industrial firm. Under the federal government's plan, the state's ownership share would be reduced from 43.8 per cent to a maximum of 30 per cent; in the process raising at least \$300 million to reduce the government's debts and, therefore, its future borrowing requirements.⁵ An important feature of this divestiture plan is that low to medium income earners and Veba's 80,000 employees are being given first priority for the purchase of shares.⁶ Thus, privatisation is primarily an instrument of fiscal policy (as in the British model) but is secondarily a means of corporatist redistribution.

State divestiture in Italy also bears the marks of the British

model. The losses incurred by Italy's enormous state holding companies (ENI, U.S. \$981 million, 1983; IRI, U.S. \$1,655 million, 1982) translate into a considerable burden on national indebtedness. In response to what has been aptly characterized as the crisis in Italy's system of state shareholdings,⁷ the state has begun to sell equity in some of its commercially viable holdings, particularly in energy, chemicals and banking. Both IRI and ENI have plans to sell equity in a number of corporations. In the case of IRI, the Institute's chairman, Mr. Romano Prodi, has compiled a list of thirty subsidiaries considered saleable. Moreover, IRI's divestiture plans include the sale of part of its equity in three of Italy's largest commercial banks (though retaining control).⁸ The revenue raised from this programme of divestitures is expected to reduce the borrowing requirements of the state holding companies, as well as the amount of subsidies transferred to them from the state. In addition to this fiscal policy dimension, privatisation in Italy is an instrument of industrial policy insofar as the capital raised from the sale of equity in profitable state holdings helps to finance unprofitable, but politically important, nationalized industries.

Finally, the pressure of deficit financing has led to privatisation in France as well. With the Socialist government intent on controlling its budget deficit, and given that the two state-owned steel corporations, Usinor and Sacilor, account for approximately half of the total subsidy to all state enterprises, other nationalized firms are compelled to find alternative sources of capital.⁹ Several corporations have resorted to the sale of equity, including la Compagnie Générale d'Electricité, Saint-Gobain, and Renault.¹⁰ In the latter two cases, the

equity sold has not carried voting rights, so that the partnership of public and private capital has not involved the alienation of state control. In this regard, inviting private participation in French state enterprises has not been part of a policy of reducing state intervention in the economy (a main feature of the British model), but has been an expedient means of raising capital under a tight fiscal regime.

11) State Control: The French Model

The most prominent of France's mixed ownership corporations are in the petrochemicals sector. The state owns 67 per cent of Elf Aquitaine, and controls roughly 45 per cent of the equity of Compagnie Française des Pétroles.¹¹ Historically, the management of these two firms was allowed to operate relatively free of state control, responding to market signals and their own preferences for corporate behavior.¹² A recent conflict between the Ministry of Industry, the state shareholder in Elf, and management of that corporation demonstrated that the Socialist administration is prepared to bear the costs of imposing its policy preferences over those of management and private capital.

Over the past three years, the French government has been active in reorganizing the country's unprofitable petrochemicals industry. This reorganization began with the nationalization of Rhône-Poulenc and Péchiney-Ugine-Kuhlmann (PUK) under then Minister of Industry, Jean-Pierre Chevènement, raising the proportion of state control in the petrochemicals sector from approximately 16 per cent to just over 50 per cent.¹³ In 1982, the Government indicated to the management of Elf-Aquitaine (67 per cent owned by the state) that Elf was expected to purchase a majority shareholding in the chemical operations of PUK,

an investment which accorded not at all with management's own plans for corporate development.¹⁴ Negotiations between Elf and the Government culminated in an April, 1983, announcement by Albin Chalandon, chairman of the corporation, stating that the Government had agreed to assume PUK's debts of U.S. \$400 million in compensation for Elf's investment in the petrochemicals group.¹⁵

This solution to the conflict between Elf management and the Government was undermined as a result of the preferences of la Compagnie Française des Pétroles (CFP), France's other mixed ownership petroleum corporation. Elf and CFP were the joint owners of Ato Chimie and Chloé Chimie, two money-losing chemical firms. Arguing that Elf had been designated the instrument for reorganization of the petrochemicals sector, the management of CFP proposed that Elf buy out CFP's interest in Ato and Chloé at a cost of FF 500 million (approximately U.S. \$174 million).¹⁶ Predictably, Elf balked at the additional burden, but the Government supported CFP's position and instructed Elf accordingly. Elf's chairman responded to the Government's directive by proposing that CFP, as the commercially less successful of the two companies (with losses of roughly U.S. \$180 million in 1982, compared to profits of U.S. \$530 million for Elf), should be assigned the financial burden of restructuring the chemicals industry. The Government's response to management's recalcitrance was to remove Elf's chairman, an action which coincided with a 4.7 per cent fall in the market value of Elf's shares on the day that it was announced.¹⁷ Elf was compelled to act as an instrument of state policy, notwithstanding the opposition of management and the predictably adverse reaction of private capital. In using coercion to impose its policy preferences on this mixed owner-

ship corporation, the Government demonstrated, and not for the first time,¹⁸ its readiness to challenge the values of private capital when these came in conflict with state-determined objectives for industrial development. The assertion of state control was a practical consequence of the Government's plans for restructuring France's unprofitable chemicals industry, plans which were set under way with the 1981 nationalizations. Thus, the case of Elf suggests that the state is able to act autonomously through the mixed ownership corporation when: 1) state preferences for the corporation are part of a coherent economic development plan; and 2) the ideological cast of the government provides a basis for the substitution of political values for business values. These conditions have existed under the Socialist government in France.¹⁹

The Possibilities for Mixed Ownership in a Capitalist Economy

...(The orthodox view of public investment in the advanced industrial societies of the West) permit public enterprise to be compatible with a fundamentally capitalist economy, economies that fall occasionally under the stewardship of governments that are nominally socialist or overtly conservative. Once the profit motive is rejected in one sector of the economy (in which public enterprise operates) it is a short step in applying the logic to other sectors where public firms do not yet exist. In this sense the doctrines of managerial autonomy and profit-maximization act as limits on the power of the state.²⁰

Feigenbaum's analysis of state enterprise in western Europe leads him to conclude that there is a critical disjunction between conventional structures of economic activity in a capitalist society and the conditions for effective state control at the level of the commercial firm. Confirmation of this proposition is provided by the three cases of mixed enterprise examined in the present study. In each case state influence on corporate behavior was resisted for precisely the reasons identified by Feigenbaum: protection of management's decision-making autonomy

and, relatedly, the exclusion of non-market values from corporate choice. Where the policy preferences of the state were accommodated in the behavior of the mixed ownership corporation, this was a result of either compensation paid by the state or coercion. This raises the question of whether, without incurring these financial and/or political costs, the state's investment in a commercial firm can be more than a support for private capital accumulation. If the answer is no, this argues against the investment of state capital in partnership with private investors unless the object is in fact to provide passive financial support for the private sector, or simply to earn a competitive return on public savings (i.e. an actionnariat d'etat).

However, the recent experience of France suggests conditions in which the state is able to act autonomously in pursuing policy goals through the mixed enterprise. These conditions include: i) an apparatus of economic planning, so that the state's preferences for its shareholding(s) are based upon a grander system of goals for social and economic development; ii) an interventionist ideology which recognizes that the modern corporation is a social institution in terms of the far-reaching consequences of its employment, investment, pricing, and production decision, and which therefore is prepared to substitute a state-determined conception of the public interest for the right of control which generally attaches to private property; and iii) the support of politically important constituencies (e.g., a broadly-based acceptance of dirigisme in France).

While these conditions increase the probability that mixed enterprise will be a tractable instrument of public policy, they do not eliminate the financial costs of state control. The private sector's

reaction to the French Government's intervention in Elf was immediately registered by a decline in the market value of the corporation's shares. Thus, the mobility of private capital is a factor which must be considered in any decision to either expand the state's shareholding or to intervene in the business affairs of the mixed ownership corporation.

In view of the conditions for effective state influence, identified from the recent French experience, the probability of governments in Canada being able to pursue non-market values through the mixed ownership corporation is extremely low. A sophisticated apparatus of state economic planning, whereby all of the state's investments are integrated into a larger system of goals for social and economic development, exists in none of Canada's political jurisdictions.²¹ Saskatchewan's Crown Investment Corporation came closest to this sort of regime, but its central purpose was to ensure political accountability, not to facilitate planned development of the provincial economy.

Moreover, the social democratic values which comprise the ideological basis for state intervention in France are comparatively weak in Canadian society. Nor is organized labour strong enough to provide the political support which a government might require as a counter to the financial costs which state intervention carries. However, this support could come from other quarters. In Canada, the regionally fragmented structure of the economy and the federal political system make an alliance between a regionally based bourgeoisie and a provincial government committed to province-building the most likely basis for a challenge to private capital. This describes the mutually supportive relationship of the Caisse, the Quebec government, and the province's francophone bourgeoisie. But the fact that this bourgeoisie is divided

on the economic development role of the Caisse, and expresses clear reservations regarding the relationship between the PQ Government and this investment agency, demonstrates that the support of private capital for state intervention in the economy is not based upon an objective sympathy with statism.

The political support of classes with an organic interest in economic development that is informed by social goals (e.g., redistribution between regions and/or classes, sectoral development in accordance with government-determined objectives for the economy), is a firmer basis for state investment that challenges business values of corporate autonomy and profitability. It may be that this support can be cultivated by the state, in the way that the Department of Regional Economic Expansion attempted to develop regional support for the federal state's interventionist role. However, in the absence of a strong social democratic tradition or a broadly-based consensus among business and political elites that the state has a legitimate directive role in the economy (as in France), the partnership of private and public capital would seem to involve mainly public support for private accumulation. This is not insignificant from the standpoint of economic policy. In deciding where state capital should be invested, whether in a particular sector of the economy (Telesat), the national economy (CDC), or a province (Caisse), governments can affect the distribution and possibly the level of economic activity.²²

However, whether a government can control developments after its initial capital investment, without recourse to coercive measures, is a separate question. Based on the respective experiences of Telesat and the CDC, the prospects for state control appear slender. For the

Caisse control is not the central issue, but rather how the accumulated savings under the QP and other public funds should be invested so as to both reap a competitive return and support provincial economic development (which includes capital support for Quebec-based business). Nonetheless, this economic development role has involved the Caisse in control-related controversies, which this study has examined. In view of the demonstrated limits on state influence in the decision-making of a mixed ownership corporation, one is led to question whether government's original expectations in creating the CDC and Telesat, i.e., not simply joint ownership but also some degree of joint influence, were not based upon a misunderstanding of the market-responsive firm. Certainly William Dimma's 1975 prognostication that "(the) CDC may very well be an early prototype of a model to which all but the most doctrinaire capitalist or socialist economies may turn",²³ must be viewed with some scepticism based on the cases considered in this study.

Footnotes

- 1 The fact that this generally supportive orientation does not necessarily extend to a loyalty toward the PQ, much less to agreement with all of the main policies of the PQ Government, was demonstrated by the almost unanimous opposition of the francophone bourgeoisie to the indépendantiste option in the 1979 Referendum.
- 2 Robert Couzin, "The Canada Development Corporation: A Comparative Appraisal", McGill Law Journal (1971), p. 429.
- 3 "Privatisation: now the government's troubles begin", The Economist, 7 January, 1984, p. 43.
- 4 Several of the targeted privatisations are likely to result in partial rather than complete private ownership, if only because of the limited capacity of the investment community to absorb these huge divestitures. The Economist writes: "The (Government's) £2 billion annual target compared with a record £2.4 billion raised in new equity issues by the City (in 1983), excluding the privatisation share sales of about £900 m." (7 January, 1984, p. 43.)
- 5 Gerald Stewart, "German giant shares sold", The Financial Post, 28 January, 1984.
- 6 Ibid.
- 7 Duccio Cavalieri, "The Crisis in the System of State Share Holdings in Italy", Annals of Public and Co-operative Economy (October/December, 1977), pp. 435-449.
- 8 "ENI offers", The Economist, 24 March, 1984, p. 76.
- 9 "Reprivatisation", The Economist, 8 October, 1983, p. 86.
- 10 See ibid., and "Spring sale", The Economist, 17 March, 1984, p. 83.
- 11 "Adieu, Monsieur Chalandon", The Economist, 25 June, 1983, p. 71.
- 12 This managerial autonomy was remarked upon by the Rapport de la commission d'enquête parlementaire, Sur les sociétés pétrolières opérant en France (Paris, 1975); cited in Harvey Feigenbaum, "Public Enterprise in Comparative Perspective", Comparative Politics, vol. 15, no. 1 (October, 1982), p.
- 13 "Dirigisme waxes and wanes in Socialist France", The Economist, 27 November, 1982, p. 78.
- 14 Elf had acquired the American assets of Texasgulf from the CDC in 1981, and management's development plans lay primarily in gas and oil exploration and production, rather than downstream operations. See "Who is in charge here?", The Economist, 26 March, 1983, pp. 66-68.
- 15 The Economist, 25 June, 1983, p. 71.

16 The events summarized here are described in The Economist, 25 June, 1983, pp. 71-72.

17 Ibid., p. 72.

18 The 1981 nationalization of nine large manufacturing firms and 36 small banks, at a total cost of U.S. \$6.3 billion, had provided an earlier indication of the Government's interventionism.

19 More recently the Mitterand government's concern with controlling France's budget deficit has led to an increased concern that state enterprises operate profitably in the short term. Thus, it appears that the earlier emphasis on industrial restructuring has waned as the country approaches a parliamentary election in 1985.

20 Harvey Feigenbaum, op. cit., pp. 117-118.

21 The piece-meal approach of Canadian governments toward economic planning is discussed in Hugh G. Thorburn, Planning and the Economy (Ottawa: Canadian Institute for Economic Policy, 1984).

22 To date no attempt has been made to measure the contribution of Caisse investments to the Quebec economy. This doubtless would prove a difficult task, and one suspects that the conclusion reached by mainstream economists would be that the capital transfers effected through Caisse investment of QPP funds and other savings contributes nothing to allocative efficiency.

23 William Dinna, "The Canada Development Corporation", Ph.D. dissertation, Harvard University, p. 10 (chapter one), mimeo.

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APPENDIX ICorporate Charters

- 1 Telesat Canada
- 2 The Canada Development Corporation
- 3 The Caisse de dépôt et placement du Québec

CHAPTER T-4

An Act to establish a Canadian corporation
for telecommunication by satellite

SHORT TITLE

Short title

1. This Act may be cited as the *Telesat Canada Act*, 1968-69, c. 51, s. 1.

INTERPRETATION

Definitions

"approved
telecommuni-
cations common
carrier"

"entreprise ...

"Board of
Directors"

"charte ...

"by-laws"

"règlements ...

"charter"

"charte"

"commercial
radio station"

"station ...

"company"

"société"

"Minister"

"ministre"

"persons who
fulfil the
statutory
conditions"

"personnes ...

2. In this Act

"approved telecommunications common carrier" means a corporation named in Schedule I;

"Board of Directors" or "Board" means the Board of Directors of the company;

"by-laws" means the by-laws of the company;

"charter", in relation to the company, means this Act and any letters patent issued pursuant to section 33;

"commercial radio station" means a radio station that is not exempted by subsection 3(3) of the *Radio Act* from the requirements of subsection 3(1) of that Act;

"company" means Telesat Canada incorporated by this Act;

"Minister" means the Minister of Communications;

"persons who fulfil the statutory conditions" means

(a) in the case of persons who are not holders of common shares of the company, persons to whom common shares of the company could be issued or transferred without a contravention of the statutory conditions resulting from such issue or transfer, and

CHAPITRE T-4

Loi créant une Société de télécommunications
par satellite pour le Canada

TITRE ABRÉGÉ

Titre abrégé

1. La présente loi peut être citée sous le titre: *Loi de la Télésat Canada*, 1968-69, c. 51, art. 1.

INTERPRÉTATION

Définitions

2. Dans la présente loi

"actions de la Société" ou, sauf si le contexte s'y oppose, «actions» désigne les actions du capital de la Société;

"charte", en ce qui concerne la Société, désigne la présente loi et toutes lettres patentes émises en conformité de l'article 33;

"conditions statutaires" désigne les conditions énoncées à l'annexe II;

"conseil d'administration" ou «Conseil» désigne le conseil d'administration de la Société;

"entreprise agréée d'exploitation de télécommunications" désigne une corporation dont le nom est inscrit à l'annexe I;

"Ministre" désigne le ministre des Communications;

"personnes qui satisfont aux conditions statutaires" désigne,

a) dans le cas de personnes qui ne sont pas détenteurs d'actions ordinaires de la Société, les personnes pour lesquelles des actions ordinaires pourraient être émises ou auxquelles elles pourraient être transférées sans qu'il résulte de cette émission ou de ce transfert une contravention aux conditions

"actions de la
Société" ou
«actions»
"shares..."

"charte"
"charter"

"conditions
statutaires"
"statutory..."

"conseil
d'administra-
tion"
"Board..."

"entreprise
agréée
d'exploitation
de
télécommuni-
cations"

"approved..."
"Ministre"
"Minister"

"personnes qui
satisfont aux
conditions
statutaires"
"persons..."

(b) in the case of persons who are holders of common shares of the company, persons who hold such shares without thereby contravening or causing a contravention of the statutory conditions;

but does not include, in either case, Her Majesty in right of Canada, corporations declared by statute to be agents of Her Majesty in right of Canada or approved telecommunications common carriers; and "persons who fulfilled the statutory conditions" has a corresponding meaning;

"satellite telecommunication system" means a complete telecommunication system consisting of two or more commercial radio stations situated on land, water or aircraft, hereinafter referred to as "earth stations", and one or more radio stations situated on a satellite in space, hereinafter referred to as "satellite stations", in which at least one earth station is capable of transmitting signs, signals, writing, images or sounds or intelligence of any nature to a satellite station which is in turn capable of receiving and retransmitting those signs, signals, writing, images or sounds or intelligence of any nature for reception by one or more earth stations;

"shares of the company" means shares in the capital stock of the company;

"statutory conditions" refers to the conditions set out in Schedule II;

"telecommunication" means any transmission, emission or reception of signs, signals, writing, images or sounds or intelligence of any nature by wire, radio, visual or other electromagnetic system. 1968-69, c. 51, s. 2.

statutaires, et

b) dans le cas de personnes qui sont détentrices d'actions ordinaires de la Société, les personnes qui détiennent de telles actions sans contrevenir de ce fait aux conditions statutaires, ou sans qu'il en résulte une contravention à ces conditions, mais ne comprend, ni Sa Majesté du chef du Canada, ni les corporations que la loi déclare mandataires de Sa Majesté du chef du Canada, ni des entreprises agréées d'exploitation de télécommunications, et «personnes qui satisfaisaient aux conditions statutaires» a un sens correspondant,

«règlements administratifs» désigne les règlements administratifs de la Société;

«Société» désigne la Télésat Canada constituée en corporation par la présente loi,

«station commerciale de radiocommunications» désigne une station de radiocommunications qui n'est pas exemptée par le paragraphe 3(3) de la Loi sur la radio des exigences du paragraphe 3(1) de cette loi,

«système de télécommunications par satellite» désigne un système complet de télécommunications composé de deux ou plusieurs stations commerciales de radiocommunications situées sur terre, sur mer ou dans un aéronef, ci-après appelées «stations terriennes», et d'une ou plusieurs stations de radiocommunications situées dans un satellite dans l'espace, ci-après appelées «stations spatiales», dont au moins une station terrienne peut transmettre des signes, signaux, écrits, images, sons ou renseignements de toute nature à une station spatiale laquelle, à son tour, peut recevoir et retransmettre ces signes, signaux, écrits, images, sons ou renseignements de toute nature pour la réception par une ou plusieurs des stations terriennes;

«télécommunication» désigne toute transmission, émission ou réception de signes, signaux, écrits, images, sons ou renseignements de toute nature par fil, par radio, par un procédé visuel ou par un autre procédé électromagnétique. 1968-69, c. 51, art 2.

"satellite telecommunication system"
"système"

"shares of the company"
"actions"

"statutory conditions"
"conditions"

"telecommunication"
"télécommunication"

Télésat Canada
incorporated

INCORPORATION

3. Such persons not exceeding seven as may be designated by the Governor in Council together with such persons as are shareholders

CONSTITUTION EN CORPORATION

3. Les personnes, au nombre de sept au plus, désignées par le gouverneur en conseil, ainsi que les personnes qui seront, à l'occasion,

Constitution

of the company from time to time are hereby incorporated as a company with share capital to be known as "Telesat Canada" in English and "Télésat Canada" in French 1968-69, c 51, s 3

actionnaires de la Société, sont par les présentes déclarées constituer une corporation sous forme de société par actions appelée «Télésat Canada» en français et «Telesat Canada» en anglais 1968-69, c 51, art 3

PROVISIONAL DIRECTORS

First directors

4. (1) The persons designated by the Governor in Council under section 3 are the provisional directors of the company and, each such person, while he remains in office, shall be deemed to be the holder of one common share of the company

Filling vacancies

(2) If a provisional director dies, resigns or becomes incapable of carrying out his duties, the Governor in Council may designate a person to replace him

Powers of provisional directors

(3) While the provisional directors hold office they have and may exercise all the powers and duties of the Board of Directors.

Termination of provisional directors

(4) The provisional directors cease to hold office when the Board of Directors takes office 1968-69, c 51, s 4

ADMINISTRATEURS PROVISOIRES

Premiers administrateurs

4. (1) Les personnes désignées par le gouverneur en conseil en vertu de l'article 3 sont les administrateurs provisoires de la Société. Pendant la durée de son mandat, chaque administrateur provisoire est censé détenir une action ordinaire de la Société.

Pouvoir de combler les vacances

(2) Si un administrateur provisoire décède, démissionne ou devient incapable d'exercer ses fonctions, le gouverneur en conseil peut désigner quelqu'un pour le remplacer.

Pouvoirs des administrateurs provisoires

(3) Pendant qu'ils occupent leur poste, les administrateurs provisoires assument les pouvoirs et fonctions du conseil d'administration.

Durée du mandat

(4) Les administrateurs provisoires sortent de charge dès que le conseil d'administration entre en fonctions 1968-69, c 51, art 4

OBJECTS OF THE COMPANY

Corporate objects

5. (1) The objects of the company are to establish satellite telecommunication systems providing, on a commercial basis, telecommunication services between locations in Canada.

Policy considerations

(2) The company shall utilize, to the extent practicable and consistent with its commercial nature, Canadian research, design and industrial personnel, technology and facilities in research and development connected with its satellite telecommunication systems and in the design and construction of the systems 1968-69, c 51, s 5.

OBJET DE LA SOCIÉTÉ

Objet de la Société

5. (1) La Société a pour objet de créer des systèmes de télécommunications par satellite pouvant fournir, sur une base commerciale, des services de télécommunications entre des endroits situés au Canada.

Principes directeurs

(2) Dans la mesure où cela est possible et compatible avec son caractère commercial, la Société doit avoir recours à du personnel, à des techniques et à des installations canadiennes, pour tout ce qui a trait à la recherche, à la mise au point, à la conception et à la construction de son système de télécommunications 1968-69, c 51, art. 5.

POWERS OF THE COMPANY

Powers of the company

6. (1) The company, in carrying out the objects set out in its charter, may exercise any or all of the following powers, namely:

- (a) the power to design, construct, operate and maintain satellite telecommunication systems;
- (b) the power, subject to section 9, to negotiate and to enter into, under the direction of the Minister, suitable arrangements for the launching of satellites.

POUVOIRS DE LA SOCIÉTÉ

Pouvoirs de la Société

6. (1) La Société dispose, pour atteindre les buts indiqués dans sa charte, des pouvoirs suivants:

- a) le pouvoir de concevoir, de construire, d'exploiter et d'entretenir des systèmes de télécommunications par satellite,
- b) le pouvoir, sous réserve de l'article 9, de négocier et de conclure, sous la direction du Ministre, des arrangements appropriés pour le lancement de satellites.

(c) the power to enter into contracts on such terms and conditions as it considers reasonable for the provision of telecommunication services by satellite between locations in Canada;

(d) the power to conduct research and developmental work in all matters relating to telecommunication by satellite;

(e) the powers set out in subsection 16(1) of the *Canada Corporations Act*, except those powers mentioned in paragraphs 16(1)(b 1), (c) and (r) of that Act;

(f) the power to enter into arrangements, other than amalgamation arrangements, for sharing of profits, union of interests, cooperation, joint adventure, reciprocal concession or otherwise with any other company, firm or person as provided by paragraph 16(1)(b 1) of the *Canada Corporations Act*;

(g) the power, with the approval of the Governor in Council on the recommendation of the Minister, to take, or otherwise acquire and hold, shares, debentures or other securities of any other company having objects altogether or in part similar to those of the company, or carrying on any business capable of being conducted so as, directly or indirectly, to benefit the company, and to sell or otherwise deal with the same;

(h) the power, subject to this Act, to issue and allot fully paid-up shares of the company in payment or part payment for any property purchased or otherwise acquired by the company or any services rendered to the company;

(i) the power to carry out all or any of the objects of the company and to do all or any of the things authorized pursuant to paragraphs (a) to (g) of this subsection as principal, agent, contractor or otherwise, and either alone or in conjunction with others; and

(j) the power to do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the company.

(2) In order to effect its objects, the company may accept powers outside Canada from any authority lawfully competent to confer such powers. 1968-69, c 51, s 6.

Extra territorial capacity

c) le pouvoir de conclure des contrats, aux conditions qu'elle juge raisonnables, en vue d'assurer des services de télécommunications par satellite entre des endroits situés au Canada;

d) le pouvoir de faire des travaux de recherche et de mise au point dans tous les domaines relatifs aux télécommunications par satellite;

e) les pouvoirs indiqués au paragraphe 16(1) de la *Loi sur les corporations canadiennes* sauf ceux que mentionnent les alinéas 16(1)(b 1), c) et r) de cette loi;

f) le pouvoir de conclure, sauf aux fins de fusion, des conventions visant le partage des profits, la réunion des intérêts, la coopération, les risques communs, les concessions réciproques ou d'autres fins, avec toute autre compagnie, firme ou personne comme le prévoit l'alinéa 16(1)(b 1) de la *Loi sur les corporations canadiennes*;

g) avec l'approbation du gouverneur en conseil, et sur la recommandation du Ministre, le pouvoir de prendre ou autrement acquérir et détenir des actions, débetures ou autres titres d'une compagnie qui a des objets en tout ou partie semblables à ceux de la Société ou qui fait des affaires pouvant être faites de telle façon que la Société en bénéficie directement ou indirectement, et le pouvoir de les vendre ou d'en disposer autrement;

h) sous réserve des exceptions de la présente loi, le pouvoir d'émettre et d'attribuer des actions entièrement libérées de la Société en paiement partiel ou total de tout bien acheté ou autrement acquis par la Société, ou de tous services rendus à la Société;

i) le pouvoir de réaliser tout ou partie des objets de la Société et d'exercer tout ou partie des pouvoirs conférés par les alinéas a) à g) du présent paragraphe, à titre de commettant, de mandataire, d'entrepreneur ou autrement, soit seule, soit conjointement avec d'autres; et

j) le pouvoir de faire toutes les autres choses qui se rattachent ou conduisent à la réalisation des objets et à l'exercice des pouvoirs de la Société.

(2) Pour la réalisation de ses objets, la Société peut accepter que des pouvoirs lui soient conférés à l'étranger par toute autorité légalement compétente pour les lui conférer

Compétence extraterritoriale

Ultra vires doctrine modified

Personal liability of directors

Requests proposed submitted Minister

Certain proposed to accept

Certain

1968-69, c. 51, art. 6

Ultra-vires
doctrine
modified

7. (1) In favour of any person who purchases any securities of the company or contracts with the company, the company shall be deemed to have all the powers of a natural person

7. (1) La Société est considérée, à l'avantage de toute personne qui achète de ses valeurs ou qui contracte avec elle, comme ayant tous les pouvoirs d'une personne physique

Modification de
la théorie de
l'excess de
pouvoirPersonal
liability not
diminished

(2) Nothing in this section diminishes any personal liability of the directors to the company for acting in excess of the powers of the company under its charter 1968-69, c. 51, s. 7

(2) Aucune disposition du présent article ne diminue la responsabilité personnelle des administrateurs de la Société lorsque ceux-ci excèdent les pouvoirs qu'elle possède en vertu de sa chartre 1968-69, c. 51, art. 7

La
responsabilité
personnelle n'est
pas diminuée

DUTIES

DEVOIRS

Requests for
proposals to be
submitted to
Minister

8. (1) Each request by the company for a proposal for the construction of a satellite or earth station shall be submitted to the Minister, and no such request shall be issued, within thirty days of the submission thereof to the Minister, to a person qualified to submit a proposal in response thereto unless, within that time, the Minister indicates in writing to the company that he is satisfied that the request, by its terms, will result in proposals that specify a reasonable utilization of Canadian design and engineering skills and the incorporation of an appropriate proportion of Canadian components and materials

8. (1) Avant de faire un appel d'offres pour la construction d'un satellite ou d'une station terrienne, la Société doit soumettre cet appel d'offres au Ministre et elle ne peut, dans les trente jours de la présentation de l'appel d'offres au Ministre, faire un tel appel à une personne qualifiée pour y répondre valablement qu'après avoir reçu du Ministre, dans ce délai, un document dans lequel ce dernier se déclare satisfait que l'appel, en raison de ses modalités est de nature à susciter des offres stipulant un emploi raisonnable de compétences canadiennes en matière de conception ainsi que l'utilisation, dans une proportion acceptable, d'éléments et de matériaux canadiens

Les appels
d'offres doivent
être approuvésCertain
proposals not to
be accepted

(2) No proposal submitted to the company in response to a request for a proposal for the construction of a satellite or earth station shall be accepted by the company within thirty days after the proposal is submitted to it unless

(2) Pour qu'une offre reçue à la suite d'un appel d'offres fait par la Société pour la construction d'un satellite ou d'une station terrienne, puisse être acceptée par la Société dans les trente jours qui suivent la date à laquelle elle a reçu cette offre, il faut

Certaines offres
peuvent être
acceptées

- (a) the proposal is submitted in response to a request for a proposal that was approved by the Minister under subsection (1) and conforms with the terms of the request, or
- (b) the Minister, within the thirty-day period, indicates in writing to the company that he is satisfied that the proposal specifies a reasonable utilization of Canadian design and engineering skills and the incorporation of an appropriate proportion of Canadian components and materials

- a) que l'offre soit reçue en réponse à un appel d'offres approuvé par le Ministre en vertu du paragraphe (1) et qu'elle soit conforme aux modalités de l'appel, ou
- b) que le Ministre adresse à la Société, dans ce délai de trente jours, un document dans lequel il se déclare satisfait que l'offre stipule un emploi raisonnable de compétences canadiennes en matière de conception et de réalisation ainsi que l'utilisation, dans une proportion convenable, d'éléments et de matériaux canadiens

Certain
contracts void

(3) No contract for the construction of a satellite or earth station is of any force or effect unless the provisions of subsections (1) and (2) with respect to the request for a

(3) Un contrat pour la construction d'un satellite ou d'une station terrienne n'a de validité ni d'effet que si on s'est conformé aux dispositions des paragraphes (1) et (2) en

Certains
contrats sont
nuls

proposal and the proposal resulting in the contract have been complied with. 1968-69, c. 51, s. 8.

Negotiations
with foreign
states

9. The company shall not, except under the direction of the Minister, directly or indirectly negotiate with or enter into an arrangement or agreement with a foreign state, an organization composed of representatives of foreign states or a corporation acting as an agent for or on behalf of a foreign state; and the company shall, in all matters of concern to it in carrying out its objects, at the request of the Minister, assist in the conduct of any negotiations by or on behalf of Canada 1968-69, c. 51, s. 9.

ce qui concerne l'appel d'offres et l'offre sur lesquels se fonde le contrat. 1968-69, c. 51, art. 8.

9. La Société ne peut, directement ou indirectement, sauf sous la direction du Ministre, négocier, ou conclure un arrangement ou un accord avec un État étranger, une organisation formée de représentants d'États étrangers ou une corporation agissant à titre de mandataire d'un État étranger ou pour le compte d'un tel État, et la Société doit, à la demande du Ministre, pour toutes les questions susceptibles d'avoir une incidence sur la réalisation de ses objets, contribuer à la conduite de toutes négociations par le Canada ou pour le compte du Canada. 1968-69, c. 51, art. 9.

Negotiations
avec des États
étrangers

CAPITALIZATION

Authorized
capital

10. (1) The authorized capital of the company shall consist of

- (a) ten million common shares, without nominal or par value; and
- (b) five million preferred shares with a nominal or par value of ten dollars per share with such preferred, deferred or other special rights, restrictions, conditions or limitations attached thereto, including the right of the company to redeem them, as may be prescribed by the by-laws.

Distribution of
shares

(2) Subject to the *Canada Corporations Act*, the charter of the company and the by-laws, the shares of the company shall be issued, as fully paid and non-assessable shares,

- (a) at such times,
- (b) for such consideration, and
- (c) in such proportions among
 - (i) Her Majesty in right of Canada,
 - (ii) approved telecommunications common carriers, and
 - (iii) persons who fulfil the statutory conditions,

as the Board of Directors, with the approval of the Governor in Council, may determine.

Subsequent
offering of
preferred shares

(3) No offering of preferred shares of the

CAPITALISATION

10. (1) Le capital autorisé de la Société se compose de

- a) dix millions d'actions ordinaires sans valeur nominale ou sans valeur au pair; et
- b) cinq millions d'actions privilégiées ayant une valeur nominale ou une valeur au pair de dix dollars chacune et qui sont assorties des privilèges, des droits différés ou des autres droits spéciaux, restrictions, conditions ou limitations notamment le droit de rachat par la Société, tels que prescrits par les règlements.

(2) Sous réserve des exceptions prévues par la *Loi sur les corporations canadiennes* et par la charte et les règlements de la Société, cette dernière ne peut émettre que des actions entièrement libérées et non cotisables, qui doivent

- a) être émises aux époques,
- b) être émises pour la contrepartie, et
- c) être réparties, entre
 - (i) Sa Majesté du chef du Canada,
 - (ii) les entreprises agréées d'exploitation de télécommunications, et
 - (iii) les personnes qui satisfont aux conditions statutaires,

dans les proportions

que le conseil d'administration peut, avec l'approbation du gouverneur en conseil, déterminer.

(3) La Société ne peut, après l'émission

Offre
subéquente
d'actions
privilégiées

company shall be made after the initial issue of shares of the company to approved telecommunications common carriers or persons who fulfil the statutory conditions, unless the offering and the preferred, deferred or other special rights, restrictions, conditions or limitations attached to the preferred shares so offered have been authorized by by-law sanctioned by at least two-thirds of the votes of the shareholders cast at a special general meeting of shareholders called for the purpose

initiale de ses actions, offrir des actions privilégiées à des entreprises agréées d'exploitation de télécommunications ou à des personnes qui satisfont aux conditions statutaires que si l'offre de ces actions privilégiées et si les privilèges, les droits différés ou les autres droits spéciaux, restrictions, conditions ou limitations dont elles sont assorties ont été autorisés par règlement administratif sanctionné par les deux tiers au moins des voix des actionnaires exprimées à une assemblée générale extraordinaire convoquée à cette fin

No pre-emptive rights

(4) Subject to section 44, the holders of shares of the company are not entitled as of right to subscribe for or purchase or receive any part of any issue of shares or securities of the company but the company may, on any offering of any class of its shares after the first issue thereof, offer such shares pro rata to the holders thereof.

(4) Sous réserve de l'article 44, les détenteurs d'actions n'ont pas la faculté de souscrire, d'acheter ou de recevoir de plein droit une partie des actions ou des valeurs d'une émission, mais la Société peut, lorsqu'elle offre des actions d'une classe après la première émission d'actions de cette classe, offrir des actions auxdits détenteurs au prorata de celles qu'ils détiennent déjà.

Aucun droit de préemption

Preferred shares or securities not to be convertible

(5) Notwithstanding any other provision of this Act or of the *Canada Corporations Act*, no preferred shares or securities of the company may have attached thereto a special right, restriction, condition or limitation authorizing the conversion of such preferred shares or securities into common shares of the company. 1968-69, c. 51, s. 10.

(5) Nonobstant toute autre disposition de la présente loi ou de la *Loi sur les corporations canadiennes*, les actions privilégiées ou les valeurs de la Société ne peuvent être assorties d'un droit spécial, d'une restriction, condition ou limitation autorisant la conversion de ces actions privilégiées ou valeurs en actions ordinaires de la Société. 1968-69, c. 51, art. 10.

Actions privilégiées ou valeurs non convertibles

HEAD OFFICE

Head office

11. Subject to section 24 of the *Canada Corporations Act*, the head office of the company shall be in the National Capital Region described in the schedule to the *National Capital Act*. 1968-69, c. 51, s. 11.

SIÈGE SOCIAL

Siège social

11. Sauf modification apportée conformément à l'article 24 de la *Loi sur les corporations canadiennes*, la Société a son siège social dans la région de la Capitale nationale délimitée à l'annexe de la *Loi sur la Capitale nationale*. 1968-69, c. 51, art. 11.

BOARD OF DIRECTORS AND OFFICERS

Board of Directors

12. (1) The affairs of the company shall be managed by a Board of Directors consisting of seven members.

Appointment of directors

(2) Where, at any time, all of the outstanding common shares of the company are held by Her Majesty in right of Canada or by Her Majesty in right of Canada and corporations declared by statute to be agents of Her Majesty in right of Canada, the Board of Directors shall be appointed by the Governor in Council to hold office during pleasure or

CONSEIL D'ADMINISTRATION ET MEMBRES DE LA DIRECTION

Conseil d'administration

12. (1) La direction des affaires de la Société est confiée à un conseil d'administration formé de sept membres.

Nomination des administrateurs

(2) Si, à quelque moment, l'ensemble des actions ordinaires en circulation sont détenues soit par Sa Majesté du chef du Canada, soit par Sa Majesté du chef du Canada et par des corporations que la loi déclare mandataires de Sa Majesté du chef du Canada, le gouverneur en conseil nomme les membres du conseil d'administration qui exercent leur

until directors are elected or appointed in their stead under subsection (3); and in such a case, at least two members of the Board shall be appointed from among the members of the public service of Canada.

Appointment and election of directors

(3) Where subsection (2) does not apply to authorize the Governor in Council to appoint the Board of Directors, such number of directors as are, pursuant to a by-law of the company made under subsection (4), to be elected, shall be elected annually, and the remaining directors, at least two of whom shall be members of the public service of Canada, shall be appointed by the Governor in Council to hold office during pleasure

By-laws fixing number of directors and those elected and appointed

(4) Prior to the issue of common shares of the company to approved telecommunications common carriers or persons who fulfil the statutory conditions, the Board of Directors, by by-law made with the approval of the Governor in Council,

(a) may increase the number of directors fixed by subsection (1),

(b) may provide that, for the purpose of election of directors only, each shareholder entitled to vote at any such election shall have the right to vote, in person or by proxy, the number of common shares owned by him for as many candidates as there are directors to be elected by persons who fulfil the statutory conditions, if he is such a person, or by the approved telecommunications common carriers, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares, or by distributing such votes on the same principle among any number of candidates, and

(c) shall fix the number of directors

(i) to be elected annually by the holders of common shares of the company who are persons who fulfil the statutory conditions,

(ii) to be elected annually by the holders of common shares of the company who are approved telecommunications common carriers, and

(iii) to be appointed by the Governor in Council,

and the directors may, from time to time,

fonction à titre amovible ou jusqu'à ce que des administrateurs soient élus ou nommés à leur place en vertu du paragraphe (3); et dans ce cas, au moins deux membres du Conseil doivent être choisis parmi les fonctionnaires fédéraux du Canada.

(3) Lorsque les dispositions du paragraphe (2) n'autorisent pas le gouverneur en conseil à nommer le conseil d'administration, doivent être élus chaque année le nombre d'administrateurs dont un règlement de la Société établi en vertu du paragraphe (4) prévoit l'élection, et les autres administrateurs, dont au moins deux doivent être membres de la fonction publique du Canada, doivent être nommés à titre amovible, par le gouverneur en conseil.

Nomination et élection des administrateurs

(4) Avant l'émission d'actions ordinaires pour des entreprises agréées d'exploitation de télécommunications ou pour des personnes qui satisfont aux conditions statutaires, le conseil d'administration, par règlements administratifs établis avec l'approbation du gouverneur en conseil,

Règlements administratifs fixant le nombre des administrateurs et le nombre de ceux qui sont élus et qui sont nommés

a) peut augmenter le nombre d'administrateurs fixé par le paragraphe (1),

b) peut prévoir que, aux seules fins de l'élection d'administrateurs, chaque actionnaire ayant droit de vote à une telle élection peut exprimer, en personne ou par fondé de pouvoir, un nombre de voix égal au nombre d'actions ordinaires qu'il possède multiplié par le nombre des administrateurs que doivent élire les personnes qui satisfont aux conditions statutaires, s'il appartient à ce groupe, ou les entreprises agréées d'exploitation de télécommunications, et qu'il peut attribuer ces voix à un seul des candidats ou les répartir comme il lui plaît entre un nombre quelconque d'entre eux, et

c) doit fixer le nombre d'administrateurs

(i) devant être élus chaque année par les détenteurs d'actions ordinaires qui sont des personnes qui satisfont aux conditions statutaires,

(ii) devant être élus chaque année par les détenteurs d'actions ordinaires qui sont des entreprises agréées d'exploitation de télécommunications, et

(iii) devant être nommés par le gouverneur en conseil,

et les administrateurs peuvent, à l'occasion, avec l'approbation du gouverneur en conseil,

with the approval of the Governor in Council, amend, revise or repeal any by-law made under this subsection. 1968-69, c. 51, s. 12

modifier, réviser ou abroger tout règlement établi en vertu du présent paragraphe. 1968-69, c. 51, art. 12.

Qualifications

13. (1) Subject to subsection 88(4) of the *Canada Corporations Act*, any Canadian citizen ordinarily resident in Canada is qualified to be a director of the company elected by the approved telecommunications common carriers who are holders of common shares of the company, and any Canadian citizen ordinarily resident in Canada who is

13. (1) Sous réserve des exceptions du paragraphe 88(4) de la *Loi sur les corporations canadiennes*, tout citoyen canadien résidant ordinairement au Canada peut être élu administrateur de la Société par les entreprises agréées d'exploitation de télécommunications qui sont détenteurs d'actions ordinaires, et tout citoyen canadien résidant ordinairement au Canada qui n'est

- (a) not a member of the public service of Canada, and
- (b) not an officer or director of an approved telecommunications common carrier

- a) ni membre de la fonction publique du Canada,
- b) ni administrateur ou membre de la direction d'une entreprise agréée d'exploitation de télécommunications

is qualified to be a director of the company elected by the holders of common shares of the company who are persons who fulfil the statutory conditions.

peut être élu administrateur de la Société par les détenteurs d'actions ordinaires qui sont des personnes qui satisfont aux conditions statutaires.

Disqualification of directors

(2) An elected director ceases to be a director if he ceases to be qualified to be elected a director of the company by the shareholders of the company by whom he was so elected.

(2) Un administrateur élu cesse d'être administrateur dès qu'il n'a plus les qualités requises pour être élu à ce poste par les actionnaires qui l'y ont élu.

Filling of vacancy on Board

(3) A vacancy occurring among directors appointed by the Governor in Council shall be filled by appointment made by the Governor in Council; and a vacancy occurring among elected directors shall be filled, for the remainder of the term, by appointment made by directors

(3) Le gouverneur en conseil doit suppléer à toute vacance au sein du groupe d'administrateurs nommés par lui; les administrateurs

- (a) who were elected by the holders of common shares of the company who are persons who fulfil the statutory conditions, if the vacancy is among their numbers, or
- (b) who were elected by the holders of common shares of the company who are approved telecommunications common carriers, if the vacancy is among their numbers, and a person so appointed shall be a person qualified to be elected as such a director.

- a) qui ont été élus par les détenteurs d'actions ordinaires de la Société qui sont des personnes qui satisfont aux conditions statutaires, si la vacance survient au sein de leur groupe, ou
- b) qui ont été élus par les détenteurs d'actions ordinaires de la Société qui sont des entreprises agréées d'exploitation de télécommunications, si la vacance survient au sein de leur groupe

doivent suppléer à toute vacance au sein de leur groupe en nommant, pour terminer, le mandat, un administrateur intérimaire; toute personne ainsi nommée doit être une personne ayant qualité pour être ainsi élue administrateur.

Determining "ordinarily resident in Canada"

(4) The company may prescribe rules for determining for the purposes of this Act when a person ceases to be ordinarily resident in Canada. 1968-69, c. 51, s. 13.

(4) La Société peut prescrire des règles pour déterminer, aux fins de la présente loi, le moment où une personne cesse d'être une personne résidant ordinairement au Canada. 1968-69, c. 51, art. 13.

President

14. (1) The Governor in Council shall designate one of the provisional directors of

14. (1) Le gouverneur en conseil doit désigner l'un des administrateurs provisoires

the company to be the first president of the company to hold office until the Board of Directors takes office, and thereafter the Board shall, with the approval of the Governor in Council, annually elect a president from among its members.

à titre de premier président de la Société pour occuper cette charge jusqu'à ce que le Conseil entre en fonctions. Par la suite, le conseil d'administration doit, avec l'approbation du gouverneur en conseil, élire annuellement un président choisi parmi ses membres.

Chief executive officer

(2) The president shall be the chief executive officer of the company. 1968-69, c. 51, s. 14.

(2) Le président est le chef de la direction de la Société. 1968-69, c. 51, art. 14.

Chef de la direction

Vice-presidents

15. (1) The Board may appoint one or more vice-presidents who shall perform such duties as may be prescribed by the Board or by the by-laws.

15. (1) Le Conseil peut nommer un ou plusieurs vice-présidents qui exercent les fonctions prescrites par le Conseil ou les règlements administratifs.

Vice-présidents

Chairman of the Board

(2) The Board may elect from among its members a chairman who shall perform such duties as may be prescribed by the by-laws.

(2) Le Conseil peut élire parmi ses membres un président du Conseil qui exerce les fonctions prescrites par les règlements administratifs.

Président du Conseil

Executive committee

(3) The Board may, in accordance with section 96 of the *Canada Corporations Act*, elect and delegate powers to an executive committee. 1968-69, c. 51, s. 15.

(3) Le Conseil peut, conformément à l'article 96 de la *Loi sur les corporations canadiennes*, élire un comité exécutif et lui déléguer des pouvoirs. 1968-69, c. 51, art. 15.

Comité de direction

Officers of the company

16. (1) All officers of the company, including the president and any vice-presidents appointed pursuant to subsection 15(1), shall be Canadian citizens, and no such officer shall be in receipt of a salary from any source other than the company or be a director or shareholder of an approved telecommunications common carrier.

16. (1) Tous les membres de la direction, qui comprennent notamment le président et le ou les vice-présidents nommés conformément au paragraphe 15(1), doivent être citoyens canadiens et aucun d'eux ne doit recevoir de traitement provenant d'une autre source que la Société ni être administrateur ou actionnaire d'une entreprise agréée d'exploitation de télécommunications.

Membres de la direction

Disqualification of officers

(2) An officer of the company who contravenes subsection (1) thereupon ceases to be an officer of the company. 1968-69, c. 51, s. 16.

(2) Un membre de la direction qui contrevient aux dispositions du paragraphe (1) du présent article cesse immédiatement d'être membre de la direction de la Société. 1968-69, c. 51, art. 16.

Sortie de charge

Powers and duties of directors

17. The Board of Directors may administer the affairs of the company in all things and make or cause to be made for the company any description of contract that the company may, by law, enter into, and may from time to time make by-laws not contrary to law or to the charter of the company to regulate

17. Le conseil d'administration peut diriger toutes les affaires de la Société et conclure ou faire conclure, pour cette dernière, tous les contrats qu'elle est légalement habilitée à conclure. Il peut à l'occasion établir des règlements administratifs, conformes au droit en général et à la charte de la Société en particulier, sur les sujets suivants:

Pouvoirs et fonctions des administrateurs

(a) the time and place for the holding of meetings of the shareholders, the calling of meetings of the shareholders and of the Board, the quorum of any such meetings, the requirements as to proxies and the procedure in all things at such meetings;

a) les temps et lieux des assemblées d'actionnaires, la convocation des assemblées d'actionnaires et des réunions du Conseil, les quorums de ces assemblées et réunions, les modalités auxquelles sont assujetties les procurations et la procédure à suivre en toute matière lors de ces assemblées et

(b) the allotment of shares, the payment therefor, the issue and registration of

certificates for shares and the transfer of shares,

(c) the declaration and payment of dividends;

(d) the remuneration of directors;

(e) the management and administration of the company's property;

(f) the disposition of all moneys received in respect of the business of the company, the institutions in which the moneys are to be deposited, the manner in which the accounts for such deposits are to be kept and managed and the manner in which withdrawals are to be made from such accounts;

(g) the appointment, duties, functions and removal of the officers, employees and agents of the company, the security to be given by them to the company and their remuneration; and

(h) the conduct in all other particulars of the affairs of the company not otherwise provided for by its charter 1968-69, c. 51, s. 17

TRANSFER AND TRANSMISSION OF SHARES

Transferability of common shares issued to persons who fulfil statutory conditions

18. (1) Subject to the charter of the company, common shares of the company that were issued to persons who fulfilled the statutory conditions are transferable in accordance with subsection 39(1) and sections 42 and 43 of the *Canada Corporations Act* but no fraction of such a share is transferable

Declaration may be required

(2) A person subscribing for common shares of the company as a person who fulfils the statutory conditions or a transferee of any such shares that were issued to a person who fulfilled the statutory conditions shall, upon the request of the directors made in accordance with any by-laws, submit a declaration with respect to

(a) his ownership of any shares of the company;

(b) the place in which he and any person in whose right or for whose use or benefit the shares are or would be held by him are ordinarily resident;

(c) whether he is associated with any other subscriber for or holder of common shares of the company;

(d) whether he is an approved telecommunications common carrier, a director or

réunions,

b) la répartition des actions, leur paiement, l'émission et l'enregistrement de certificats d'actions ainsi que le transfert des actions,

c) la déclaration et le paiement des dividendes,

d) la rémunération des administrateurs,

e) la gestion et l'administration des biens de la Société,

f) la disposition de tous les deniers provenant des activités de la Société, les établissements dans lesquels les deniers doivent être déposés, la façon de comptabiliser et gérer ces dépôts et la façon d'effectuer des retraits sur ces dépôts,

g) la nomination, les fonctions et la révocation des membres de la direction, des employés et des mandataires de la Société, la garantie qu'ils doivent fournir à la Société et leur rémunération, et

h) la direction des affaires de la Société pour toutes les autres questions dont sa charte ne traite pas. 1968-69, c. 51, art 17

TRANSFERT ET TRANSMISSION DES ACTIONS

18. (1) Sous réserve des exceptions de la charte, les actions ordinaires qui ont été émises pour des personnes qui satisfaisaient aux conditions statutaires sont transférables en conformité du paragraphe 39(1) et des articles 42 et 43 de la *Loi sur les corporations canadiennes*, mais on ne peut transférer que des actions entières.

Possibilité de transférer les actions ordinaires émises pour des personnes qui satisfaisaient aux conditions statutaires

(2) Quiconque souscrit des actions ordinaires à titre de personne qui satisfait aux conditions statutaires ou est cessionnaire d'actions ordinaires qui ont été émises pour une personne qui satisfaisait aux conditions statutaires, doit, lorsque les administrateurs le lui demandent en conformité des règlements administratifs, leur remettre une déclaration,

Une déclaration peut être exigée

a) concernant sa qualité de propriétaire d'actions de la Société;

b) concernant son lieu de résidence ordinaire ainsi que celui de toute personne pour le compte ou l'usage de qui ou au profit de qui il détient ou détiendrait les actions,

c) indiquant s'il est associé avec un autre souscripteur ou détenteur d'actions ordinaires;

d) indiquant s'il est une entreprise agréée d'exploitation de télécommunications, un

officer of such a carrier or a corporation that is deemed for the purposes of the statutory conditions to be associated with such a carrier, and

(e) such other matters as the directors may deem relevant for the purposes of determining whether he fulfils the statutory conditions.

Submission of
declaration a
condition of
transfer or
subscription

(3) It is a condition of every transfer of common shares of the company that were issued to persons who fulfilled the statutory conditions, to be made or recorded in a register of transfers of the company, or of any subscription for such a share of the company by a person as a person who fulfils the statutory conditions, that the transferee or subscriber shall submit to the directors of the company any declaration that may be required by the directors under subsection (2). 1968-69, c. 51, s. 18.

Certain
subscriptions
and transfers to
be refused

19. (1) The company shall not accept a subscription for common shares of the company by any person as a person who fulfils the statutory conditions and shall refuse to allow any transfer of such shares that were issued to persons who fulfilled the statutory conditions to be made or recorded in a register of transfers of the company unless a declaration required by the directors under subsection 18(2) has been submitted to the company and the subscriber or transferee appears from the declaration to be a person who fulfils the statutory conditions.

Transactions in
limited numbers
of shares

(2) Notwithstanding subsection (1), where in the case of a subscription for or transfer of any common shares of the company by a subscriber or to a transferee in respect of whom that subsection would otherwise apply, it appears that the number of common shares of the company that would be held by the subscriber or the transferee, as shown by the records of the company, would not be more than five hundred if the subscription were accepted or the transfer allowed, the company is entitled to assume that the subscriber or the transferee is not and will not be associated with any other holder of common shares of the company that were issued to persons who fulfilled the statutory conditions and, unless the address to be recorded in the register of shareholders of the company for the subscriber or transferee is a place outside Canada, that he is a resident of Canada. 1968-69, c. 51,

administrateur ou un membre de la direction d'une telle entreprise ou une corporation qui, aux fins des conditions statutaires, est censée associée avec une telle entreprise; et
e) concernant les autres questions que les administrateurs peuvent juger pertinentes aux fins de déterminer s'il satisfait aux conditions statutaires.

(3) Le transfert d'actions ordinaires émises pour des personnes qui satisfaisaient aux conditions statutaires ne peut être effectué ni enregistré dans un registre des transferts de la Société et une telle action ne peut être souscrite par une personne à titre de personne satisfaisant aux conditions statutaires, si le cessionnaire ou le souscripteur n'a pas remis aux administrateurs la déclaration exigée par eux en vertu du paragraphe (2). 1968-69, c. 51, art. 18.

Le transfert ou
la souscription
ne peuvent se
faire sans
déclaration

19. (1) La Société ne doit pas accepter qu'une personne souscrive des actions ordinaires à titre de personne satisfaisant aux conditions statutaires ni permettre qu'un transfert d'actions ordinaires émises pour des personnes qui satisfaisaient aux conditions statutaires soit effectué ou enregistré dans un registre des transferts, si la déclaration exigée par les administrateurs, en vertu du paragraphe 18(2), ne lui a pas été remise et s'il ne ressort pas de cette déclaration que le cessionnaire ou le souscripteur est une personne qui satisfait aux conditions statutaires.

Refus de
souscriptions et
de transferts

(2) Nonobstant le paragraphe (1), lorsque, dans le cas d'actions ordinaires souscrites par une personne ou transférées à une personne à laquelle ce paragraphe s'appliquerait en d'autres circonstances, il ressort des registres que le nombre d'actions ordinaires qui seraient détenues par le souscripteur ou le cessionnaire ne dépasserait pas cinq cents si la souscription était acceptée ou le transfert autorisé, la Société a le droit de présumer que le souscripteur ou le cessionnaire n'est ni ne sera associé avec un autre détenteur d'actions ordinaires émises pour des personnes qui satisfaisaient aux conditions statutaires et, sauf s'il indique, à titre d'adresse à inscrire dans le registre des actionnaires, un lieu situé à l'étranger, elle a le droit de présumer que le souscripteur ou le cessionnaire est un résident du Canada. 1968-69, c. 51, art. 19.

Opérations
relatives à un
nombre restreint
d'actions

Transfer of
certain common
shares invalid
without entry

20. (1) Subject to subsection (3), no transfer of common shares of the company that were issued to Her Majesty in right of Canada or an approved telecommunications common carrier is, until entry thereof has been duly made in the register of transfers or in a branch register of transfers of the company, valid for any purpose whatever, save only as exhibiting the rights of the parties thereto toward each other, and if absolute, of rendering any transferee jointly and severally liable with the transferor to the company and to its creditors

Limitations on
entry of
transfers

(2) Subject to subsection (3), no transfer of common shares of the company that were issued to Her Majesty in right of Canada or to an approved telecommunications common carrier shall be entered in the register of transfers or in a branch register of transfers of the company unless,

(a) in the case of any such shares held by Her Majesty in right of Canada, the transfer is to a corporation declared by statute to be an agent of Her Majesty in right of Canada, and,

(b) in the case of any such shares held by an approved telecommunications common carrier, the transfer is to another approved telecommunications common carrier and has been approved by order of the Governor in Council

By-laws
authorizing
transfers

(3) The Board of Directors may, by by-law made with the approval of the Governor in Council, authorize any approved telecommunications common carrier named in the by-law to transfer common shares of the company held by it, up to a number of such shares specified in the by-law, to persons who fulfil the statutory conditions; and any such by-law shall provide that the approved telecommunications common carrier named in the by-law shall, prior to transferring any such shares to persons who fulfil the statutory conditions, offer a number of common shares of the company equal to the number of such shares specified in the by-law pro rata, or on any other basis agreed upon by the approved telecommunications common carriers and approved by the Minister, to the other approved telecommunications common carriers at a price that is not greater than what

20. (1) Sous réserve du paragraphe (3), un transfert d'actions ordinaires émises pour Sa Majesté du chef du Canada ou pour une entreprise agréée d'exploitation de télécommunications n'est valide, tant qu'il n'a pas été dûment enregistré dans le registre principal ou un registre annexe des transferts, qu'aux seules fins de constater les droits réciproques des parties à ce transfert et de rendre, si le transfert est absolu, tout cessionnaire solidairement responsable avec le cedant envers la Société et ses créanciers

L'enregistrement
est nécessaire
pour valider le
transfert de
certaines actions
ordinaires

(2) Sous réserve du paragraphe (3), nul transfert d'actions ordinaires émises pour Sa Majesté du chef du Canada ou pour une entreprise agréée d'exploitation de télécommunications ne peut être enregistré dans le registre principal ni dans un registre annexe des transferts,

Restrictions
relatives à
l'enregistrement
des transferts

a) dans le cas d'actions détenues par Sa Majesté du chef du Canada, que si les actions sont transférées à une corporation que la loi déclare mandataire de Sa Majesté du chef du Canada, et,

b) dans le cas d'actions détenues par une entreprise agréée d'exploitation de télécommunications, que si les actions sont transférées à une autre entreprise agréée d'exploitation de télécommunications et si le transfert a été approuvé par décret du gouverneur en conseil

(3) Le conseil d'administration peut, par règlement administratif établi avec l'approbation du gouverneur en conseil, autoriser toute entreprise agréée d'exploitation de télécommunications nommée dans le règlement, à transférer des actions ordinaires détenues par elle, jusqu'à concurrence d'un nombre de ces actions spécifié dans le règlement, à des personnes qui satisfont aux conditions statutaires, et tout règlement semblable doit prévoir que l'entreprise agréée d'exploitation de télécommunications nommée dans le règlement doit, avant de transférer de telles actions aux personnes qui satisfont aux conditions statutaires, offrir un nombre d'actions ordinaires de la société égal au nombre de ces actions spécifié dans le règlement au prorata ou sur toute autre base acceptée par les entreprises agréées d'exploitation de télécommunications et approuvée

Règlements
administratifs
autorisant les
transferts

the fair market value of such shares would be were they shares of the company issued to persons who fulfilled the statutory conditions, and any sale of such shares resulting from such an offer shall be deemed to have been approved by the Governor in Council under paragraph (2)(b)

par le Ministre, des autres entreprises agréées d'exploitation de télécommunications à un prix qui n'est pas supérieur à ce que serait la juste valeur marchande de ces actions si elles étaient des actions de la Société émises pour des personnes qui satisfaisaient aux conditions statutaires, et toute vente de ces actions découlant d'une telle offre est censée avoir été approuvée par le gouverneur en conseil en vertu de l'alinéa (2)b).

(4) If, when a reasonable time specified in a by-law referred to in subsection (3) has elapsed after the making of an offer under that subsection, all or any of the common shares of the company offered to approved telecommunications common carriers pursuant to that subsection have not been purchased by them, the offer in respect of the shares that have not been purchased shall be deemed to be withdrawn and a number of common shares of the company issued to the approved telecommunications common carrier named in the by-law, equal to the number of such shares that were so offered and not purchased, shall be deemed for the purposes of sections 18 and 19 and this section, to be common shares of the company that were issued to persons who fulfilled the statutory conditions 1968-69, c 51, s 20

(4) Si, lorsqu'un délai raisonnable spécifié dans un règlement mentionné au paragraphe (3) s'est écoulé après qu'une offre a été faite en vertu de ce paragraphe, tout ou partie des actions ordinaires de la Société offertes aux entreprises agréées d'exploitation de télécommunications en conformité de ce paragraphe, n'ont pas été achetées par elles, l'offre relative aux actions qui n'ont pas été achetées est censée être retirée et un nombre d'actions ordinaires de la Société émises en faveur des entreprises agréées d'exploitation de télécommunications nommées dans le règlement, égal au nombre de ces actions qui ont été ainsi offertes et non achetées sont considérées, aux fins des articles 18 et 19 et du présent article, comme des actions ordinaires de la Société qui ont été émises pour des personnes qui satisfaisaient aux conditions statutaires 1968-69, c 51, art 20.

Transferability
of preferred
shares

21. The preferred shares of the company are transferable in accordance with sections 39, 42, and 43 of the *Canada Corporations Act* but no fraction of such a share is transferable 1968-69, c 51, s 21

21. Les actions privilégiées sont transférables conformément aux articles 39, 42 et 43 de la *Loi sur les corporations canadiennes*, mais on ne peut transférer que des actions entières. 1968-69, c 51, art 21.

Possibilité de
transférer les
actions
privilégiées

REGISTER OF TRANSFERS

Register of
shareholders

22. (1) The company shall keep in Canada a register of shareholders recording the names and post office addresses of its shareholders and the number of common or preferred shares held by each

22. (1) La Société doit tenir, au Canada, un registre des actionnaires indiquant le nom et l'adresse postale de ses actionnaires et le nombre d'actions ordinaires ou d'actions privilégiées détenues par chacun d'eux.

Registre des
actionnaires

Register of
transfers

(2) The company shall keep one or more registers of transfers in Canada in which transfers of shares may be made or recorded and transmissions of shares may be recorded in accordance with such provisions in respect thereof as the Board may see fit to make and subject to the provisions of the charter

(2) La Société doit tenir, au Canada, un ou plusieurs registres des transferts dans lesquels elle peut effectuer ou enregistrer les transferts d'actions et enregistrer les transmissions d'actions conformément aux dispositions, compatibles avec sa charte, que son conseil d'administration juge utile de prendre à cet égard.

Registre des
transferts

Inspection of
registers

(3) The register of shareholders and any register of transfers may, during the business

(3) Tout actionnaire ou administrateur de la Société peut consulter, aux heures d'ouver-

Consultation des
registres

hours of the company, be inspected by any shareholder or director of the company

Discontinuing
register of
transfers

(4) Subject to subsection (2), the Board may discontinue any register of transfers

Appointment of
transfer agents

(5) The company may appoint agents for the keeping of the register of shareholders and any register of transfers. 1968-69, c. 51, s. 22.

ture des bureaux de la Société, le registre des actionnaires et tout registre des transferts

(4) Sous réserve du paragraphe (2), le Conseil peut clore un ou plusieurs registres des transferts

Closure d'un
registre des
transferts

(5) La Société peut nommer des mandataires pour tenir le registre des actionnaires et tout registre des transferts. 1968-69, c. 51, art. 22

Nomination de
mandataires
pour les
transferts

VOTING OF SHARES

Voting rights

23. (1) Subject to the charter of the company and any by-law enacted pursuant to subsection 12(4), each issued and allotted common share of the company carries voting rights and entitles the shareholder to one vote for each such share held by him.

Idem

(2) Preferred shares of the company do not carry voting rights. 1968-69, c. 51, s. 23

Voting rights on
election of
directors

24. For the purpose of election of the directors of the company,

- (a) the holders of common shares of the company who fulfil the statutory conditions may exercise their voting rights only for the election of the number of directors to be elected by them under a by-law in force at the time of the election and enacted pursuant to subsection 12(4);
- (b) approved telecommunications common carriers that are holders of common shares of the company may exercise their voting rights only for the election of the number of directors to be elected by them under a by-law described in paragraph (a); and
- (c) Her Majesty in right of Canada and any corporation declared by statute to be an agent of Her Majesty in right of Canada may not exercise the voting rights carried by common shares held by them. 1968-69, c. 51, s. 24.

Voting rights
not to be
exercised in
certain cases

25. (1) The voting rights pertaining to any shares of the company shall not be exercised when the shares are held in contravention of the charter of the company.

Shares held in
contravention of
charter

(2) Shares are held in contravention of the charter of the company when such shares are held contrary to any provision of this Act or the by-laws.

DROIT DE VOTE AFFÉRENT AUX ACTIONS

Droits de vote

23. (1) Sous réserve des exceptions de la charte et de tout règlement administratif établi en conformité du paragraphe 12(4), toute action ordinaire émise et répartie comporte des droits de vote et un actionnaire a droit à une voix par action ordinaire qu'il détient.

(2) Les actions privilégiées ne comportent pas de droit de vote. 1968-69, c. 51, art. 23.

Idem

24. Lors des élections d'administrateurs,

- a) les détenteurs d'actions ordinaires qui satisfont aux conditions statutaires ne peuvent exercer leurs droits de vote que pour élire le nombre d'administrateurs devant être élus par eux en vertu d'un règlement administratif édicté en conformité du paragraphe 12(4) et en vigueur au moment de l'élection;
- b) les entreprises agréées d'exploitation de télécommunications qui sont detentrices d'actions ordinaires ne peuvent exercer leurs droits de vote que pour élire les administrateurs devant être élus par eux en vertu d'un règlement administratif visé à l'alinéa a); et
- c) Sa Majesté du chef du Canada et toute corporation que la loi déclare mandataire de Sa Majesté du chef du Canada ne peuvent exercer les droits de vote afférents aux actions ordinaires qu'elles détiennent. 1968-69, c. 51, art. 24.

Droits de vote
pour l'élection
des
administrateurs

25. (1) Il est interdit d'exercer les droits de vote afférents à des actions détenues en contravention de la charte.

Interdiction
d'exercer des
droits de vote
dans certains cas

(2) Est détenue en contravention de la charte, toute action détenue en contravention d'une disposition de la présente loi ou des règlements administratifs.

Actions détenues
en contravention
de la charte

Exception

(3) Notwithstanding any other provision of this Act, where it appears from the register of shareholders of the company that not more than five hundred common shares of the company are held by a shareholder, a person acting as proxy for that shareholder at a general meeting of the company is entitled to assume that the shares are not held in contravention of the charter, unless the knowledge of the person acting as proxy is to the contrary. 1968-69, c. 51, s. 25

Effect of holding shares in contravention

26. (1) The validity of a transfer of shares of the company that has been made or recorded in a register of transfers of the company, or the validity of the acceptance of a subscription for shares of the company is not affected by the holding of such shares in contravention of the charter of the company.

Effect of voting shares held in contravention

(2) If the voting rights pertaining to any shares of the company that are held in contravention of the charter of the company are exercised at a general meeting of the shareholders of the company, no proceeding, matter or thing at that meeting is void by reason thereof, but any such proceeding, matter or thing is, at any time within one year from the day of commencement of the general meeting at which such voting rights were exercised, voidable at the option of the shareholders by a resolution passed at a special general meeting of the shareholders. 1968-69, c. 51, s. 26.

SHAREHOLDERS

Persons authorised to hold common shares

27. Persons who fulfil the statutory conditions set out in Schedule II, Her Majesty in right of Canada, corporations declared by statute to be agents of Her Majesty in right of Canada and approved telecommunications common carriers may hold common shares of the company. 1968-69, c. 51, s. 27.

Certain allotments to be approved

28. The proportions in which the company allots any of its common shares among approved telecommunications common carriers shall be such as are approved by the Minister after consultation with the approved telecommunications common carriers. 1968-69, c. 51, s. 28.

Exception

(3) Nonobstant toute autre disposition de la présente loi, lorsqu'il ressort du registre des actionnaires qu'un actionnaire ne détient pas plus de cinq cents actions ordinaires, un fondé de pouvoir de cet actionnaire à une assemblée générale de la Société a le droit de présumer que les actions ne sont pas détenues en contravention de la charte sauf s'il sait qu'elles le sont. 1968-69, c. 51, art. 25

Effet de la détention en contravention de la charte

26. (1) Ni la validité d'un transfert d'actions effectué ou enregistré dans un registre des transferts, ni celle de l'acceptation d'une souscription d'actions ne sont affectées par la détention de ces actions en contravention de la charte.

Effet de la détention en contravention de la charte d'actions donnant droit de vote

(2) Aucune délibération ou décision d'une assemblée générale des actionnaires n'est invalidée par l'exercice, à cette assemblée, de droits de vote afférents à des actions détenues en contravention de la charte, mais une telle délibération ou décision peut être annulée, à la discrétion des actionnaires, dans un délai d'un an à compter de l'ouverture de ladite assemblée, par résolution adoptée à une assemblée générale extraordinaire des actionnaires. 1968-69, c. 51, art. 26.

ACTIONNAIRES

Personnes autorisées à détenir des actions ordinaires

27. Quiconque satisfait aux conditions statutaires énoncées à l'annexe II, Sa Majesté du chef du Canada, les corporations que la loi déclare mandataires de Sa Majesté du chef du Canada et les entreprises agréées d'exploitation de télécommunications peuvent détenir des actions ordinaires. 1968-69, c. 51, art. 27.

Certaines répartitions doivent être approuvées

28. Toutes les actions ordinaires qui sont réparties par la Société entre les entreprises agréées d'exploitation de télécommunications doivent l'être dans les proportions approuvées par le Ministre après consultation avec les entreprises susnommées. 1968-69, c. 51, art. 28.

APPLICATION OF STATUTORY PROVISIONS

Application of
Part IV of
Canada
Corporations Act c 51, s 29

29. Part IV of the *Canada Corporations Act* does not apply to the company 1968-69.

Construction
provisions of
Canada
Corporations Act

30. (1) Where a provision of the *Canada Corporations Act* that applies in respect of the company makes reference to letters patent, the reference shall be construed in relation to the company as a reference to this Act, and if any such provision makes reference to supplementary letters patent, the reference shall be construed in relation to the company as a reference to letters patent issued pursuant to section 33 of this Act.

Application of
Canada
Corporations Act

(2) Subject to any express provision of this Act with respect to the same matter, the following provisions of the *Canada Corporations Act* apply to the company with such modifications as circumstances require, namely:

- (a) subsections 13(9) to (16),
- (b) section 17 and sections 21 to 24,
- (c) subsections 25(2) and (3) and sections 26 and 27,
- (d) sections 34, 36 and 37,
- (e) sections 39, 42 and 43 to the extent provided in subsection 18(1) and section 21 of this Act,
- (f) sections 48 to 50,
- (g) sections 61 to 63 except that the reference to sections 52 to 60 in subsection 62(4) shall be deemed to be a reference to letters patent issued pursuant to section 33 of this Act,
- (h) sections 65 and 66 and subsection 67(4),
- (i) sections 68 to 73,
- (j) sections 74 to 84 except that an attempt or offer by or on behalf of the company to dispose of, or a solicitation of a subscription for, or a solicitation of an offer to subscribe or apply for common shares of the company or any interest therein, to the extent that it is directed to Her Majesty in right of Canada or one or more approved telecommunications common carriers, shall be deemed not to be an "offer to the public" within the meaning of paragraph 74(a),
- (k) section 85;
- (l) subsection 86(3);
- (m) subsection 88(4), subsection 90(2), section 91, section 92 except paragraphs (c) and (d) and section 93;

APPLICATION DES DISPOSITIONS LEGISLATIVES

29. La Partie IV de la *Loi sur les corporations canadiennes* ne s'applique pas à la Société 1968-69, c 51, art 29.

30. (1) Lorsqu'on applique à la Société une disposition de la *Loi sur les corporations canadiennes* qui lui est applicable, les mentions de lettres patentes et celles de lettres patentes supplémentaires que peut contenir cette disposition s'interprètent respectivement comme des mentions de la présente loi et des mentions des lettres patentes émises en conformité de l'article 33 de la présente loi.

(2) Sauf disposition contraire de la présente loi en la matière, les dispositions de la *Loi sur les corporations canadiennes* qui sont énumérées ci-après s'appliquent à la Société avec les modifications qu'exigent les circonstances:

- a) paragraphes 13(9) à (16),
- b) article 17 et articles 21 à 24,
- c) paragraphes 25(2) et (3) et articles 26 et 27,
- d) articles 34, 36 et 37,
- e) articles 39, 42 et 43, dans la mesure prévue au paragraphe 18(1) et à l'article 21 de la présente loi,
- f) articles 48 à 50,
- g) articles 61 à 63, la mention des articles 52 à 60 figurant au paragraphe 62(4) étant toutefois censée être une mention des lettres patentes délivrées en vertu de l'article 33 de la présente loi,
- h) articles 65 et 66 et paragraphe 67(4),
- i) articles 68 à 73,
- j) articles 74 à 84; toutefois, une tentative ou offre d'aliéner faite par la Société ou pour elle, ou une démarche faite en vue d'obtenir une souscription, une offre de souscription ou une demande de souscription d'actions ordinaires de la Société ou d'un droit afférent à ces actions, dans la mesure où elle s'adresse à Sa Majesté du chef du Canada ou à une ou plusieurs entreprises agréées d'exploitation de télécommunications, est censée ne pas être une «offre au public» au sens de l'alinéa 74(a),
- k) article 85;
- l) paragraphe 86(3),
- m) paragraphe 88(4); paragraphe 90(2), article 91, article 92 moins les alinéas c)

Application de
la Partie IV de
la Loi sur les
corporations
canadiennes

Interprétation
des dispositions
de la Loi sur les
corporations
canadiennes

Application de
la Loi sur les
corporations
canadiennes

- (n) sections 95 to 97 and section 99,
- (o) section 100 except that the reference in subsection (1) thereof to "ten per cent of the issued shares of the company" shall be read as though it referred to "one per cent of the total number of outstanding common shares of the company", and section 101,
- (p) sections 102 and 103 and sections 105 to 108,
- (q) sections 109 to 132 and section 133 except subsections (9) to (11) thereof,
- (r) sections 138 to 143,
- (s) sections 144 to 147 and section 149 and
- (t) subsection 151(3) 1968-69, c 51, s 30

Winding-up

31. No Act relating to the solvency or winding-up of a corporation applies to the company and in no case shall the affairs of the company be wound up unless Parliament so provides 1968-69, c 51, s 31

Application of section 18 of Canada Corporations Act

32. Section 18 of the *Canada Corporations Act* applies to the company except that subsection (1) does not apply in respect of subscriptions for common shares of the company by Her Majesty in right of Canada or an approved telecommunications common carrier and a reference to letters patent in paragraph 18(1)(a) of that Act shall be construed as a reference to the by-laws 1968-69, c 51, s 32

ALTERATION OF CAPITAL, OBJECTS AND POWERS

Alteration of objects, powers and share capital

33. (1) Subject to confirmation by letters patent in accordance with this section, the company may from time to time, when authorized by by-law sanctioned by at least two-thirds of the votes cast at a special general meeting of the shareholders called for the purpose,

- (a) extend the objects of the company to include any objects other than broadcasting for which a company may be incorporated under the *Canada Corporations Act*,
- (b) reduce, limit, amend or vary the objects or powers of the company,
- (c) reduce the number of shares authorized,
- (d) increase, decrease or otherwise alter the canceled capital of the company, or
- (e) cancel any shares of the company that at the date of the enactment of the by-law

et d) de cet article, et article 93,

n) articles 95 à 97 et article 99,

o) article 100, sauf les mots «dix pour cent des actions émises de la compagnie», au paragraphe (1) de cet article, que l'on doit remplacer par les mots «un pour cent du nombre total des actions ordinaires de la Société qui sont en circulation», et article 101,

p) articles 102 et 103 et articles 105 à 108,

q) articles 109 à 132 et article 133 moins les paragraphes (9) à (11),

r) articles 138 à 143,

s) articles 144 à 147 et article 149, et

t) paragraphe 151(3) 1968-69, c 51, art 30

31. Aucune loi relative à la solvabilité ou à la liquidation d'une corporation ne s'applique à la Société, et seul le Parlement peut décider de la liquider 1968-69, c 51, art 31

Liquidation

32. L'article 18 de la *Loi sur les corporations canadiennes* s'applique à la Société, toutefois son paragraphe (1) ne s'applique pas à la souscription d'actions ordinaires de la Société par Sa Majesté du chef du Canada ou par une entreprise agréée d'exploitation de télécommunications et la mention des lettres patentes faite à l'alinéa 18(1)a) de cette loi s'interprète comme une mention des règlements administratifs 1968-69, c 51, art 32

Application de l'art 18 de la Loi sur les corporations canadiennes

MODIFICATION DU CAPITAL, DES OBJETS ET DES POUVOIRS

33. (1) Sous réserve de ratification par lettres patentes conformément au présent article, la Société peut à l'occasion, lorsqu'elle y est autorisée par règlement administratif adopté à la majorité des deux tiers au moins des voix exprimées à une assemblée générale extraordinaire des actionnaires convoquée à cette fin,

- a) étendre ses objets afin d'y inclure des objets, autres que la radiodiffusion, pour lesquels une compagnie peut être constituée en corporation en vertu de la *Loi sur les corporations canadiennes*,
- b) réduire, limiter ou modifier ses objets ou pouvoirs,
- c) réduire le nombre des actions autorisées
- d) augmenter, diminuer ou autrement modifier le capital autorisé de la Société

Modification des objets, des pouvoirs et du capital-actions

have not been subscribed for or agreed to be issued, and diminish the amount of the authorized capital of the company by the amount of the shares so cancelled

ou

e) annuler les actions non encore souscrites ou dont l'émission n'a pas été convenue à la date d'établissement du règlement administratif et réduire le capital autorisé du montant des actions ainsi annulées

Confirmation of
letters patent

(2) The member of the Queen's Privy Council for Canada charged with the administration of the *Canada Corporations Act* may issue letters patent for the purpose of this section and the letters patent shall be laid before Parliament not later than fifteen days after their issue, or if Parliament is not then sitting, on any of the first five days next thereafter that Parliament is sitting, and the letters patent become effective on the thirtieth sitting day after they have been laid before Parliament unless before that day either House of Parliament resolves that the letters patent shall be annulled whereupon the letters patent are annulled and of no effect 1968-69, c 51, s 33

Ratification des
lettres patentes

(2) Le membre du Conseil privé de la Reine pour le Canada qui est chargé de l'application de la *Loi sur les corporations canadiennes* peut délivrer des lettres patentes aux fins du présent article. Ces lettres patentes doivent être déposées au Parlement dans les quinze jours de leur délivrance ou, si le Parlement n'est pas alors en session, l'un des cinq premiers jours de séance qui suivent, et, sauf si l'une ou l'autre des Chambres du Parlement décide entre-temps de les annuler, ce qui les rendrait nulles et de nul effet, elles entrent en vigueur le trentième jour de séance qui suit leur dépôt 1968-69, c 51, art 33

GENERAL

Not Crown
corporation

34. The company is not an agent of Her Majesty or a Crown corporation within the meaning of the *Financial Administration Act* 1968-69, c 51, s 34.

DISPOSITIONS GÉNÉRALES

34. La Société n'est ni un mandataire de Sa Majesté ni une corporation de la Couronne au sens de la *Loi sur l'administration financière* 1968-69, c 51, art 34.

La Société n'est
pas une
corporation de
la Couronne

Expropriation

35. (1) The company may, with the approval of the Governor in Council, take or acquire lands without the consent of the owner for the purpose of carrying out its objects and, except as otherwise provided in this section, all the provisions of the *Expropriation Act*, with such modifications as circumstances require, are applicable to and in respect of the exercise of the powers conferred by this section and the lands so taken or acquired, as if the company were a department, the president of the company were the head of that department and earth stations constructed or to be constructed by the company were public works, all within the meaning of that Act

35. (1) Avec l'approbation du gouverneur en conseil, la Société peut, sans le consentement de leur propriétaire, prendre possession ou faire l'acquisition de terrains aux fins de réaliser ses objets, et, sauf dispositions contraires du présent article, toutes les dispositions de la *Loi sur les expropriations* s'appliquent, avec les modifications qu'exigent les circonstances, quant à l'exercice des pouvoirs conférés par le présent article et aux terrains dont la Société a ainsi fait l'acquisition ou pris possession, comme si, au sens de ladite loi, la Société était un ministère ou département dirigé par le président de la Société et si les stations terriennes édifiées ou devant être édifiées par la Société étaient des travaux publics au sens de ladite loi

Expropriation

Plan and
description

(2) For the purposes of section 9 of the *Expropriation Act*, the plan and description may be signed by the president or a vice-president of the company

(2) Aux fins de l'article 9 de la *Loi sur les expropriations*, le plan et la description peuvent être signés par le président ou un vice-président de la Société

Plan et
description

Compensation

(3) The compensation for lands taken or acquired under this section, or for damage to

(3) Il incombe à la Société de payer l'indemnité afférente aux terrains dont elle a

Indemnité

lands injuriously affected by the construction of any work by the company shall be paid by the company, and all claims against the company for such compensation or damages shall be heard and determined in the Exchequer Court of Canada in accordance with sections 46 to 49 of the *Exchequer Court Act* 1968-69, c 51, s 35

pris possession ou fait l'acquisition en vertu du présent article, ou aux dommages causés à des terrains du fait de la construction de quelque ouvrage par la Société. Toutes les réclamations faites contre la Société en vue d'obtenir de telles indemnités sont entendues et jugées par la Cour de l'Échiquier du Canada en conformité des articles 46 à 49 de la *Loi sur la Cour de l'Échiquier* 1968-69, c 51, art 35

Declarations

36. The company and any person who is a director, officer, employee or agent of the company may rely upon any information contained in any declaration required by the company pursuant to this Act and any information otherwise acquired in respect of any matter that might be the subject of such a declaration and no action lies against the company or any of its directors or employees for anything done or omitted in good faith in reliance upon any such information 1968-69, c 51, s 36.

36. La Société et tout administrateur, membre de la direction, employé ou mandataire de la Société peuvent se fier à tout renseignement contenu dans une déclaration exigée par la Société en conformité de la présente loi et à tout renseignement autrement obtenu sur toute question qui pourrait faire l'objet d'une telle déclaration. Il ne peut être intenté d'actions contre la Société ni contre l'un ou plusieurs de ses administrateurs ou employés pour une chose qu'ils ont, de bonne foi, faite ou omis de faire en se fiant à de tels renseignements 1968-69, c 51, art 36

Declarations

Copy of annual report to be tabled

37. The company shall, within seven days after mailing to its shareholders a copy of its financial statement for its last completed fiscal year and a copy of the auditor's report in accordance with subsection 128(1) of the *Canada Corporations Act*, submit to the Minister a copy of those documents together with such other information relating to the operations of the company during the fiscal year to which those documents relate as the Minister may direct, and the Minister shall cause those documents and such other information as is received by him pursuant to this section to be laid before Parliament within fifteen days after the receipt thereof or if Parliament is not then sitting, on any of the first five days next thereafter that Parliament is sitting 1968-69, c 51, s 37

37. Dans un délai de sept jours après avoir expédié par poste à ses actionnaires, en conformité du paragraphe 128(1) de la *Loi sur les corporations canadiennes*, copie de l'état financier de son dernier exercice et copie du rapport du vérificateur, la Société doit fournir au Ministre un exemplaire de ces documents et les autres renseignements éventuellement exigés par lui sur les opérations faites par la Société pendant ledit exercice financier. Le Ministre doit faire déposer ces documents et renseignements au Parlement dans les quinze jours de la réception ou, si le Parlement n'est pas alors en session, l'un des cinq premiers jours de séance suivants 1968-69, c 51 art 37

Dépôt d'un exemplaire du rapport annuel

FEDERAL GOVERNMENT PARTICIPATION

PARTICIPATION DU GOUVERNEMENT FÉDÉRAL

Shares may be acquired by Canada

38. (1) Subject to section 40 with the approval of the Governor in Council the Minister of Finance may from time to time

38. (1) Sous réserve de l'article 40 et de l'approbation du gouverneur en conseil, le ministre des Finances peut, à l'occasion,

Le Canada peut acquérir des actions

(a) subscribe for, acquire and hold common shares of the company for the Government of Canada,

a) souscrire, acquérir et détenir pour le gouvernement du Canada des actions ordinaires de la Société,

(b) acquire and hold for the Government of Canada at a price approved by the Governor in Council common shares of the

b) acquérir et détenir pour le gouvernement du Canada à un prix approuvé par le gouverneur en conseil des actions ordinaires

company acquired by any corporation declared by statute to be an agent of Her Majesty in right of Canada, and

(c) subscribe for, acquire and hold preferred shares of the company for the Government of Canada

de la Société qui ont été acquises par une corporation que la loi déclare mandataire de Sa Majesté du chef du Canada, et

c) souscrire, acquérir et détenir, pour le gouvernement du Canada, des actions privilégiées de la Société

Disposal of
common shares

(2) Any common shares of the company acquired by the Minister of Finance may, with the approval of the Governor in Council, be transferred to any corporation declared by statute to be an agent of Her Majesty in right of Canada

(2) Toutes actions ordinaires de la Société acquises par le ministre des Finances peuvent avec l'approbation du gouverneur en conseil être transférées à une corporation que la loi déclare mandataire de Sa Majesté du chef du Canada

Aliénation
d'actions
ordinaires

Disposal of
preferred shares

(3) Any preferred shares of the company acquired by the Minister of Finance may be disposed of in such manner, at such times and for such consideration as is approved by the Governor in Council

(3) Les actions privilégiées de la Société qui ont été acquises par le ministre des Finances peuvent être aliénées en totalité ou en partie de la manière, aux époques et en échange de la contrepartie qu'approuve le gouverneur en conseil

Aliénation
d'actions
privilégiées

Decisions

(4) Section 100 of the *Canada Corporations Act* is applicable with respect to any sale or purchase of shares of the company by or on behalf of the Government of Canada 1968-69, c 51, s 38

(4) L'article 100 de la *Loi sur les corporations canadiennes* s'applique à toute vente ou achat d'actions de la Société par le gouvernement du Canada ou pour le compte de ce dernier 1968-69, c 51, art 38

Décisions

How held and
voted

39. (1) Shares of the company acquired by the Minister of Finance for the Government of Canada shall be registered in the books of the company in the name of Her Majesty in right of Canada as represented by the Minister of Finance and common shares so acquired may be voted by the Minister or his duly authorized proxy on behalf of Her Majesty

39. (1) Les actions de la Société que le ministre des Finances acquiert pour le gouvernement du Canada sont enregistrées dans les livres de la Société au nom de Sa Majesté du chef du Canada représentée par le ministre des Finances. Les droits de vote afférents aux actions ordinaires ainsi acquises peuvent être exercés pour le compte de Sa Majesté, par le Ministre ou son fondé de pouvoir dûment autorisé

Enregistrement
et vote

Idem

(2) Shares of the company acquired by a corporation declared by statute to be an agent of Her Majesty in right of Canada shall be registered in the books of the company in the name of Her Majesty in right of Canada as represented by that corporation and common shares so acquired may be voted by the duly authorized proxy of that corporation 1968-69, c 51, s 39

(2) Les actions de la Société acquises par une corporation que la loi déclare mandataire de Sa Majesté du chef du Canada sont enregistrées dans les livres de la Société au nom de Sa Majesté du chef du Canada représentée par cette corporation. Les droits de vote afférents aux actions ordinaires ainsi acquises peuvent être exercés par le fondé de pouvoir dûment autorisé de cette corporation 1968-69, c 51, art 39

Idem

Extent of
holdings

40. The aggregate amount that the Government of Canada and corporations declared by statute to be agents of Her Majesty in right of Canada may at any one time have invested in the company or be committed to invest in the company by way of investment in the shares of the company shall not exceed thirty million dollars at the *bona fide*

40. Le total des placements que font ou s'engagent à faire, sous forme de souscription d'actions de la Société, le gouvernement du Canada et les corporations que la loi déclare mandataires de Sa Majesté du chef du Canada, ne doit à aucun moment dépasser trente millions de dollars calculés d'après le prix d'achat normal de ces actions au moment

Importance des
participations

acquisition price thereof 1968-69, c. 51, s. 40.

de leur acquisition 1968-69, c. 51, art. 40.

Authority to
lend money to
company

41. (1) Upon the recommendation of the Minister, the Minister of Finance may from time to time lend money to the company on terms and conditions approved by the Governor in Council and acquire and hold securities of the company therefor.

41. (1) Sur recommandation du Ministre et selon les modalités approuvées par le gouverneur en conseil, le ministre des Finances peut à l'occasion prêter de l'argent à la Société, et peut se faire remettre et détenir en garantie des valeurs de la Société.

Pouvoir de
prêter de
l'argent à la
Société

Guarantees

(2) Upon the recommendation of the Minister, the Governor in Council may authorize the guarantee by Her Majesty in right of Canada of the repayment of any moneys borrowed by the company and the payment of the interest thereon and may approve or decide the form, manner and conditions of such guarantees.

(2) Sur recommandation du Ministre, le gouverneur en conseil peut autoriser Sa Majesté du chef du Canada à garantir le remboursement d'emprunts de la Société et le paiement de l'intérêt y afférent et peut approuver ou déterminer la forme, le mode et les conditions de ces garanties.

Garanties

Signature of
guaranteees

(3) A guarantee under this section may be signed on behalf of Her Majesty by the Minister of Finance or by such other person as the Governor in Council may designate, and such signature is conclusive evidence for all purposes that the guarantee is valid and that the requirements of this section have been complied with.

(3) Une garantie prévue au présent article peut être signée au nom de Sa Majesté par le ministre des Finances ou par telle autre personne que le gouverneur en conseil désigne, et cette signature constitue, à toute fin, une preuve péremptoire de la validité de la garantie et de l'observation des exigences du présent article.

Signature des
garantiees

Idem

(4) The aggregate amount outstanding on
(a) loans made to the company under this section, and
(b) loans made to the company the repayment of which and the payment of interest on which is guaranteed by Her Majesty under this section,

(4) Le total impayé
(a) des prêts consentis à la Société en vertu du présent article, et
(b) des prêts consentis à la Société et pour lesquels Sa Majesté garantit le remboursement du principal et le paiement de l'intérêt en vertu du présent article,

Idem

shall not at any time exceed forty million dollars. 1968-69, c. 51, s. 41

ne doit à aucun moment dépasser quarante millions de dollars 1968-69, c. 51, art. 41

Cooperation in
research and
development

42. Any department or agency of the Government of Canada that is engaged in research or developmental work that is in any way related to the objects and responsibilities of the company may enter into contracts with the company, on terms and conditions approved by the Treasury Board,

42. Tout ministère, département ou organisme du gouvernement du Canada qui fait des travaux de recherche ou de développement ayant un rapport quelconque avec les objets et responsabilités de la Société peut, selon les modalités approuvées par le conseil du Trésor, conclure avec elle des contrats par lesquels il s'engage

Coopération à la
recherche et au
développement

(a) for the provision by the department or agency to the company of facilities, equipment or personnel for use in research, development or related work that is specified in the contract and that is being or is to be conducted by or on behalf of the company, and

a) à fournir à la Société des installations, du matériel ou du personnel pour les travaux de recherche ou de développement ou pour les travaux connexes spécifiés aux contrats et effectués ou devant l'être par la Société ou pour son compte, et

(b) for the conduct, for or in conjunction with the company or any other person or organization of research, development or related work that is specified in the contract and that is being or is to be conducted by

b) à effectuer, pour ou avec la Société ou quelque autre personne ou organisme, des travaux de recherche ou de développement ou des travaux connexes spécifiés aux contrats et qui ont été entrepris ou doivent

or on behalf of the company 1968-69, c 51, s 42

être effectués par la Société ou pour son compte 1968-69, c 51, art 42

Amendment of Schedule I

43. The Governor in Council may from time to time, on the recommendation of the Minister, by order amend Schedule I

43. Le gouverneur en conseil peut à l'occasion, sur recommandation du Ministre, modifier par décret l'annexe I

(a) by adding thereto the name of any corporation that carries on a telecommunication business substantially similar in nature to that carried on by each of the approved telecommunications common carriers, or

a) en y ajoutant le nom de toute corporation qui poursuit dans le domaine des télécommunications une activité d'une nature très semblable à celle que poursuit chacune des entreprises agréées d'exploitation de télécommunications, ou

(b) by deleting therefrom the name of any corporation that ceases to carry on a telecommunication business substantially similar in nature to that carried on by each of the other approved telecommunications common carriers 1968-69, c 51, s 43

b) en en retranchant le nom de toute corporation qui cesse de poursuivre dans le domaine des télécommunications une activité d'une nature très semblable à celle que poursuit chacune des autres entreprises agréées d'exploitation de télécommunications 1968-69, c 51, art 43

Effect of order

44. (1) Where the name of a corporation recognized by order to be or no longer to be an approved telecommunications common carrier is added to Schedule I or deleted from Schedule I, as the case may be, any common shares of the company held by approved telecommunications common carriers cease to be outstanding and are cancelled and the capital stock of the company is reduced accordingly.

44. (1) Lorsque le nom d'une corporation qu'un décret déclare être ou ne plus être une entreprise agréée d'exploitation de télécommunications est ajouté à l'annexe I ou en est retranché, selon le cas, toutes actions ordinaires de la Société détenues par des entreprises agréées d'exploitation de télécommunications sont retirées de la circulation et annulées et le capital de la Société est réduit en conséquence.

Additional shares to be issued

(2) The Board shall, forthwith upon the cancellation of common shares of the company pursuant to subsection (1), issue a number of common shares, equal to the number of such shares so cancelled, to the approved telecommunications common carriers named in Schedule I after the issuance of the order that resulted in such cancellation, and the capital stock of the company shall be deemed to be increased accordingly

(2) Le Conseil doit, immédiatement après l'annulation d'actions ordinaires de la Société en conformité du paragraphe (1), émettre des actions ordinaires, en nombre égal au nombre de ces actions ainsi annulées, pour les entreprises agréées d'exploitation de télécommunications nommées à l'annexe I après l'émission du décret dont a résulté cette annulation, et le capital de la Société est censé augmenté en conséquence

Allotments to be approved by the Minister

(3) Common shares of the company issued under subsection (2) shall be allotted among approved telecommunications common carriers in proportions approved by the Minister after consultation with the approved telecommunications common carriers

(3) Les actions ordinaires de la Société émises en vertu du paragraphe (2) doivent être réparties entre les entreprises agréées d'exploitation de télécommunications dans les proportions approuvées par le Ministre, après consultation avec les entreprises sus-nommées.

Allotments to and liability of approved telecommunications common carriers

(4) An approved telecommunications common carrier or a corporation that was an approved telecommunications common carrier whose holdings of common shares of the company are reduced or eliminated pursuant to this section shall be reimbursed therefor,

(4) Une entreprise agréée d'exploitation de télécommunications ou une corporation qui était une entreprise agréée d'exploitation de télécommunications dont le portefeuille d'actions ordinaires de la Société a été réduit ou supprimé en conformité du présent article

pro rata by the approved telecommunications common carriers whose holdings of common shares of the company are increased pursuant to this section, at a rate per share agreed upon by it and those approved telecommunications common carriers or, failing agreement within thirty days after the issue of shares under subsection (2), at a rate per share equal to what the fair market value of each such share would have been on the day the shares were so issued were they shares of the company issued to persons who fulfilled the statutory conditions.

Amount of
reimbursement
constitutes a
debt

(5) An amount to which a corporation is entitled as reimbursement under subsection (4) is a debt due to it by each approved telecommunications common carrier, to the extent of its liability therefor as determined in accordance with that subsection and is recoverable in any court of competent jurisdiction 1968-69, c 51, s 44

OFFENCES AND PENALTIES

Holding shares
in contravention
of Act

45. Every person who knowingly holds any shares of the company in contravention of any provision of this Act is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars for each day that the offence continues 1968-69, c 51, s 45.

doit être remboursée en conséquence, par chacune des entreprises agréées d'exploitation de télécommunications dont le portefeuille d'actions ordinaires de la Société est augmenté en conformité du présent article, au prorata de cette augmentation, au prix unitaire convenu entre l'entreprise ou corporation en question et ces autres entreprises agréées d'exploitation de télécommunications ou, à défaut d'accord dans un délai de trente jours après l'émission d'actions en vertu du paragraphe (2), à un taux par action égal à ce qu'aurait été la juste valeur marchande de chacune de ces actions le jour où les actions ont ainsi été émises si elles étaient des actions de la Société émises pour des personnes qui satisfaisaient aux conditions statutaires.

(5) Un montant auquel une corporation a droit à titre de remboursement en vertu du paragraphe (4) est une créance répartie entre les entreprises agréées d'exploitation de télécommunications et chacune d'elles est redevable envers ladite corporation de la fraction de ce montant qui correspond au prorata de sa responsabilité déterminé en conformité de ce paragraphe, et cette créance peut être recouvrée devant tout tribunal compétent 1968-69, c 51, art 44

Le montant à
rembourser
constitue une
créance de la
corporation

INFRACTIONS ET SANCTION

Détention
d'actions en
contravention de
la loi

45. Quiconque détient sciemment des actions de la Société en contravention de la présente loi est coupable d'une infraction et passible, sur déclaration sommaire de culpabilité, d'une amende ne dépassant pas cent dollars par jour pendant la durée de l'infraction. 1968-69, c 51, art 45.

SCHEDULE I

APPROVED TELECOMMUNICATIONS
COMMON CARRIERS

Alberta Government Telephones
Bell Canada
British Columbia Telephone Company
Canadian National Railway Company
Canadian Pacific Railway Company
The Island Telephone Company, Limited
The Manitoba Telephone System
Maritime Telegraph and Telephone Company, Limited
The New Brunswick Telephone Company, Limited
Newfoundland Telephone Company Limited
Québec-Téléphone
Saskatchewan Telecommunications
1968-69, c. 51, Sch. A

SCHEDULE II

CONDITIONS AFFECTING THE ACQUISITION AND HOLDING
OF COMMON SHARES BY PERSONS OTHER THAN HER
MAJESTY IN RIGHT OF CANADA, CORPORATIONS DE-
CLARED BY STATUTE TO BE AGENTS OF HER MAJESTY
IN RIGHT OF CANADA AND APPROVED TELECOMMU-
NICATIONS COMMON CARRIERS

1. 1. Not more than twenty per cent of the outstanding common shares of the company held by persons other than Her Majesty in right of Canada, corporations declared by statute to be agents of Her Majesty in right of Canada and approved telecommunications common carriers may be held by non-residents.

2. A resident shall not hold common shares of the company in the right of, or for the use or benefit of, a non-resident.

2. No common shares of the company shall be subscribed for, purchased or held in the name or right of, or for the use or benefit of,

a) a director or officer of an approved telecommunications common carrier,

b) a corporation that is deemed for the purposes of these statutory conditions to be associated with an approved telecommunications common carrier, or

c) the government of a foreign state or any political subdivision thereof or an agent of the government of a foreign state or any political subdivision thereof.

3. The number of common shares of the company held in the name or right of or for the use or benefit of a person or Her Majesty in right of any province, together with the number of such shares held in the name or right of or for the use or benefit of

a) each shareholder associated with that person or Her Majesty in right of that province, and

b) each person who would be deemed under these statutory conditions to be associated with that person or Her Majesty in right of that province if each of such persons and that person or Her Majesty in right of that province were shareholders

may not exceed two and one-half per cent of the outstanding common shares of the company

ANNEXE I

ENTREPRISES AGRÉÉES D'EXPLOITATION
DE TÉLÉCOMMUNICATIONS

Alberta Government Telephones
Bell Canada
British Columbia Telephone Company
Compagnie des Chemins de fer nationaux du Canada
Compagnie du Chemin de fer Canadien du Pacifique
The Island Telephone Company, Limited
The Manitoba Telephone System
Maritime Telegraph and Telephone Company, Limited
The New Brunswick Telephone Company, Limited
Newfoundland Telephone Company Limited
Québec-Téléphone
Saskatchewan Telecommunications
1968-69, c. 51, annexe A

ANNEXE II

CONDITIONS AUXQUELLES DES ACTIONS ORDINAIRES PEU-
VENT ÊTRE ACQUISES ET DÉTENUES PAR DES PERSON-
NES AUTRES QUE SA MAJESTÉ DU CHEF DU CANADA,
LES CORPORATIONS QU'ÉLA LOI DÉCLARE MANDATAIRES
DE SA MAJESTÉ DU CHEF DU CANADA ET LES ENTRE-
PRISES AGRÉÉES D'EXPLOITATION DE TÉLÉCOMMU-
NICATIONS

1. 1. Les non-résidents ne peuvent détenir plus de vingt pour cent des actions ordinaires en circulation, détenues par des personnes autres que Sa Majesté du chef du Canada, les corporations que la loi déclare mandataires de Sa Majesté du chef du Canada et les entreprises agréées d'exploitation de télécommunications.

2. Un résident ne peut détenir des actions ordinaires de la Société, en son nom ou pour l'usage ou au profit d'une personne

2. A) une action ordinaire ne peut être souscrite, achetée ou détenue au nom ou du chef de, pour l'usage ou au profit,

a) d'un administrateur ou membre de la direction d'une entreprise agréée d'exploitation de télécommunications,

b) d'une corporation qu'il, aux fins des présentes, on croit être censée associée avec une entreprise agréée d'exploitation de télécommunications, ou

c) du gouvernement d'un État étranger ou l'un de ses subdivisions politiques ou d'un de leurs mandataires.

3. Le nombre d'actions ordinaires de la Société détenues au nom du chef, pour l'usage ou au profit d'une personne ou de Sa Majesté du chef d'une province, ainsi que le nombre de ces actions détenues au nom du chef, pour l'usage ou au profit,

a) de chaque actionnaire associé avec cette personne ou Sa Majesté du chef de cette province, ou

b) de chaque personne qui serait censée, en vertu de ces conditions statutaires, être associée avec cette personne ou Sa Majesté du chef de cette province si chacune de ces personnes et cette personne ou Sa Majesté du chef de cette province étaient actionnaires

ne doit pas dépasser deux et demi pour cent des actions ordinaires de la Société qui sont en circulation

4 (1) For the purposes of these statutory conditions,

(a) "agent" means, in relation to the government of a foreign state or any political subdivision thereof, a person empowered to perform a function or duty on behalf of the government of the foreign state or political subdivision other than a function or duty in connection with the administration or management of the estate or property of an individual,

(b) "corporation" includes an association, partnership or other organization,

(c) "non-resident" means

(i) an individual who is not ordinarily resident in Canada,

(ii) a corporation incorporated, formed or otherwise organized elsewhere than in Canada,

(iii) the government of a foreign state or any political subdivision thereof, or an agent of either,

(iv) a corporation that is controlled directly or indirectly by non-residents as defined in any of subparagraphs (i) to (iii),

(v) a trust

(A) established by a non-resident as defined in any of subparagraphs (ii) to (iv) other than a trust for the administration of a pension fund for the benefit of individuals a majority of whom are residents, or

(B) in which non-residents as defined in any of subparagraphs (i) to (iv) have more than fifty per cent of the beneficial interest, or

(vi) a corporation that is controlled directly or indirectly by a trust defined in subparagraph (v) as a non-resident, and

(d) "resident" means an individual, corporation, trust or government that is not a non-resident

(2) For the purposes of these statutory conditions, a shareholder is, except as provided by section 5 of these statutory conditions, deemed to be associated with another shareholder if

(a) one shareholder is a corporation of which the other shareholder is an officer or director,

(b) one shareholder is a partnership of which the other shareholder is a partner,

(c) one shareholder is a corporation that is controlled directly or indirectly by the other shareholder,

(d) both shareholders are corporations and one shareholder is controlled directly or indirectly by the same government in Canada, foreign government or individual or corporation that controls the other shareholder,

(e) both shareholders are members of a voting trust where the trust relates to shares of the company,

(f) both shareholders are agents of Her Majesty in right of the same province or officials or corporations performing on behalf of Her Majesty in such right a function or duty in connection with the administration, management or investment of a fund established to provide compensation, hospitalization, medical care, annuity, pension or similar benefits to particular classes of individuals, or moneys derived from such a fund,

(g) both shareholders are associated within the meaning of paragraphs (a) to (f) with the same shareholder, or

4 (1) Aux fins des présentes conditions statutaires,

a) «mandataire» désigne relativement au gouvernement d'un État étranger ou d'une de ses subdivisions politiques, une personne habilitée à exercer une fonction ou attribution pour le compte du gouvernement de cet État ou d'une de ses subdivisions politiques, à l'exception d'une fonction ou attribution ayant trait à l'administration ou à la gestion de la succession ou des biens d'un particulier;

b) «corporation» comprend une association, une société ou un autre organisme,

c) «non-résident» désigne

(i) un particulier qui ne réside pas ordinairement au Canada,

(ii) une corporation constituée, formée ou autrement organisée ailleurs qu'au Canada,

(iii) le gouvernement d'un État étranger ou d'une de ses subdivisions politiques, ou un mandataire de l'un ou l'autre,

(iv) une corporation contrôlée directement ou indirectement par des non-résidents selon la définition qu'en donne l'un quelconque des sous-alinéas (i) à (iii),

(v) un trust

(A) créé par un non-résident selon la définition qu'en donne l'un quelconque des sous-alinéas (ii) à (iv) et qui n'est pas un trust créé en vue de l'administration d'une caisse de pension au profit de particuliers qui, en majorité, sont des résidents, ou

(B) dans lequel des non-résidents, selon la définition qu'en donne l'un quelconque des sous-alinéas (i) à (iv), ont plus de cinquante pour cent de l'intérêt bénéficiaire, ou

(vi) une corporation contrôlée directement ou indirectement par un trust que le sous-alinéa (v) définit comme étant non-résident, et

(d) «résident» désigne un particulier, une corporation, un trust ou un gouvernement qui n'est pas non-résident

(2) Aux fins des présentes conditions statutaires, et sauf dans la mesure prévue à l'article 5 desdites conditions, un actionnaire est censé associé avec un autre actionnaire si

a) l'un de ces actionnaires est une corporation dont l'autre est membre de la direction ou administrateur,

b) l'un de ces actionnaires est une société dont l'autre est un associé;

c) l'un de ces actionnaires est une corporation directement ou indirectement contrôlée par l'autre,

d) les deux actionnaires sont des corporations contrôlées directement ou indirectement par le même gouvernement au Canada, le même gouvernement étranger, le même particulier ou la même corporation,

e) les deux actionnaires sont membres d'un trust créé en vue d'exercer le droit de vote attaché aux actions de la Société,

f) les deux actionnaires sont soit des mandataires de Sa Majesté du chef de la même province, soit des dirigeants ou des corporations exerçant, pour le compte de Sa Majesté de ce chef, une fonction ou attribution ayant trait à l'administration, à la gestion ou au placement d'une caisse ou de fonds provenant d'une caisse établie pour le paiement d'indemnités de frais d'hospitalisation, frais médicaux, d'annuités, de pensions ou de prestations analogues à certaines catégories de gens,

g) les deux actionnaires sont, au sens des alinéas a) à f) associés avec le même actionnaire ou

both shareholders are associated in any other manner declared by the by-laws to constitute them associated shareholders.

3) For the purposes of these statutory conditions a "shareholder" is a person other than Her Majesty in right of Canada a corporation declared by statute to be an agent of Her Majesty in right of Canada or an approved telecommunications common carrier, who according to the books of the company is the holder of one or more common shares of the company and a reference in these statutory conditions to a share being held by or in the name of any person is a reference to his being the holder of the share according to the books of the company.

4) For the purposes of these statutory conditions a corporation is deemed to be associated with an approved telecommunications common carrier if, in circumstances where both the corporation and the approved telecommunications common carrier were shareholders, the corporation would be deemed to be a shareholder associated with the approved telecommunications common carrier.

5) For the purposes of these statutory conditions where a share of the company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident.

6) Where a corporation or trust that was at any time a resident becomes a non-resident any shares of the company acquired by the corporation or the trust while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of these statutory conditions, to be shares held by a resident for the use or benefit of a non-resident.

7) Notwithstanding paragraphs 4(2)(a) to (g) of these statutory conditions,

(a) where one shareholder who is a resident and who, but for this paragraph, would be deemed to be associated with another shareholder submits to the company a declaration stating that none of the shares of the company held by him or to be held by him is or will be, to his knowledge, held in the right of or for the use or benefit of himself or any resident with whom, but for this paragraph, he would be deemed to be associated, neither shareholder is deemed to be associated with the other so long as the shares of the company from time to time held by the shareholder who made the declaration are not held contrary to the statements made in the declaration;

(b) two shareholders that are corporations and residents shall not be deemed to be associated with each other by virtue of paragraph 4(2)(f) of these statutory conditions by reason only that each is deemed under paragraph 4(2)(a) to be associated with the same shareholder; and

(c) where it appears from the register of shareholders of the company that not more than five hundred common shares of the company are held by a shareholder, he shall not be deemed to be associated with any other shareholder and no other shareholder shall be deemed to be associated with him.

1968-69 c 51, Sch B

7) Les deux actionnaires sont associés de toute autre manière déclarée par les lois de la compagnie en vertu des règlements administratifs.

(3) Aux fins des présentes conditions statutaires, un actionnaire est une personne autre que Sa Majesté du chef du Canada qu'une corporation que la loi déclare mandataire de Sa Majesté du chef du Canada ou qu'une entreprise agréée d'exploitation de télécommunications qui, d'après les livres de la Société, détient une ou plusieurs actions ordinaires et lorsque les présentes conditions statutaires mentionnent une action détenue par une personne, ou en son nom, cette mention implique que la personne est détentrice de l'action d'après les livres de la Société.

(4) Aux fins des présentes conditions statutaires, une corporation est censée associée avec une entreprise agréée d'exploitation de télécommunications dans le cas où la corporation serait censée être un actionnaire associé avec la dite entreprise si la corporation et l'entreprise étaient toutes deux des actionnaires.

(5) Aux fins des présentes conditions statutaires, lorsqu'une action de la Société est détenue conjointement par deux ou plusieurs de ses co-détenteurs sont des non-résidents, l'action est censée détenue par un non-résident.

(6) Lorsqu'une corporation ou un trust qui était résident à un moment quelconque deviennent non-résidents, les actions de la Société acquises par la corporation ou le trust pendant qu'ils étaient résidents et détenues par eux pendant qu'ils sont non-résidents sont censées, aux fins des présentes conditions statutaires, être des actions détenues par un résident pour l'usage ou au profit d'un non-résident.

(7) Nonobstant les alinéas 4(2)(a) à (g) des présentes conditions statutaires,

(a) lorsqu'un actionnaire qui est un résident et qui n'eût été le présent alinéa, serait censé associé avec un autre actionnaire, remet à la Société une déclaration affirmant qu'aucune des actions de la Société qui sont ou seront détenues par lui n'est ni ne sera, à sa connaissance, détenues de son chef pour son usage ou à son profit ni du chef, pour l'usage ou au profit de tout résident avec qui n'eût été le présent alinéa, il serait censé être associé, aucun de ces actionnaires n'est censé être associé avec l'autre tant que les actions de la Société détenues à l'occasion par l'actionnaire qui a fait la déclaration ne sont pas détenues contrairement aux affirmations de cette déclaration;

(b) deux actionnaires qui sont des corporations et des résidents ne sont pas censés associés l'un avec l'autre en vertu de l'alinéa 4(2)(f) des présentes conditions statutaires, le seul fait que chacun d'eux est censé, en vertu de l'alinéa 4(2)(a), être associé avec le même actionnaire; et

(c) lorsqu'il ressort du registre des actionnaires de la Société qu'un actionnaire ne détient pas plus de cinq cents actions ordinaires cet actionnaire n'est censé être associé avec aucun autre actionnaire et aucun autre actionnaire n'est censé associé avec lui.

1968-69 c 51, annexe B

19-20 ELIZABETH II

19-20 ELIZABETH II

CHAPTER 49

CHAPITRE 49

An Act to establish the Canada
Development Corporation

Loi établissant la Corporation
de développement du Canada

[Assented to 30th June, 1971]

[Sanctionnée le 30 juin 1971]

Her Majesty, by and with the advice
and consent of the Senate and House of
Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et du consentement
du Sénat et de la Chambre des communes
du Canada, décrète:

SHORT TITLE

TITRE ABRÉGÉ

Short
title

1. This Act may be cited as the *Canada
Development Corporation Act*.

1. La présente loi peut être citée sous le Titre abrégé
titre: *Loi sur la Corporation de développe-
ment du Canada*.

PURPOSE OF ACT

OBJET DE LA LOI

Purpose
of Act

2. The purpose of this Act is to establish
a corporation that will help develop and
maintain strong Canadian controlled and
managed corporations in the private sector
of the economy and will give Canadians
greater opportunities to invest and partici-
pate in the economic development of
Canada.

2. La présente loi a pour objet d'établir une
corporation qui aidera à développer et à
maintenir des corporations fortes contrô-
lées et dirigées par des Canadiens dans le
secteur privé de l'économie et élargira, pour
les Canadiens, les possibilités d'investir
pour le développement économique du
Canada et de participer à ce développe-
ment.

INTERPRETATION

INTERPRÉTATION

Définitions

"Board of
Directors"
or "Board"

By-laws"

"Charter"

"Company"

3. (1) In this Act,
(a) "Board of Directors" or "Board"
means the Board of Directors of the com-
pany;
(b) "by-laws" means the by-laws of the
company;
(c) "charter", in relation to the com-
pany, means this Act and any letters
patent issued pursuant to section 30;
(d) "company" means the Canada De-
velopment Corporation incorporated by
this Act;

Définitions

3. (1) Dans la présente loi,
a) «conseil d'administration» ou «con-
seil» désigne le conseil d'administration
de la compagnie;
b) «règlements administratifs» désigne
les règlements administratifs de la com-
pagnie;
c) «charte», relativement à la compagnie,
désigne la présente loi et toutes lettres
patentes émises en application de l'ar-
ticle 30;
d) «compagnie» désigne la Corporation
de développement du Canada constituée
par la présente loi;

"Resident of Canada"

(e) "resident of Canada" means a resident as defined in the statutory conditions;

"Securities"

(f) "securities" means bonds, debentures or other evidences of indebtedness;

"Shareholder"

(g) "shareholder" means a person who, according to the register of shareholders or a register of transfers of the company, is the holder of a share of the company and a reference in this Act to the holding of a share by or in the name of a person or any description of person is a reference to his being the shareholder according to any such register;

"Shares of the company"

(h) "shares of the company" means shares in the capital stock of the company;

"Statutory conditions"

(i) "statutory conditions" refers to the conditions set out in Schedule I; and

"Voting share"

(j) "voting share" means a common share of the company and any preferred share of the company that has attached thereto any right to vote whether upon the happening of a stated event or otherwise.

Reference to statutory conditions

(2) A reference herein to this Act includes the statutory conditions unless expressly otherwise provided.

e) «résident du Canada» désigne un résident selon la définition qu'en donnent les conditions légales;

f) «valeurs» signifie les obligations, les débetures et les autres titres de créance;

g) «actionnaire» désigne une personne qui, conformément au registre des actionnaires ou à un registre des transferts de la compagnie, est le détenteur d'une action de la compagnie et lorsque, dans la présente loi, il est fait mention d'une action détenue par une personne ou un genre de personne, ou en son nom, cette mention indique que cette personne ou ce genre de personne est un actionnaire conformément à un tel registre;

h) «actions de la compagnie» désigne les actions du capital social de la compagnie;

i) «conditions légales» s'applique aux conditions énoncées à l'annexe I; et

j) «action donnant droit de vote» désigne une action ordinaire de la compagnie et toute action privilégiée de la compagnie à laquelle est attaché un droit de vote dans des circonstances déterminées ou autrement.

(2) Dans la présente loi, une mention de cette dernière couvre également les conditions légales, sauf disposition contraire expresse.

PART I

CANADA DEVELOPMENT CORPORATION

Incorporation

Canada Development Corporation incorporated

4. Such persons not exceeding eighteen as may be designated by the Governor in Council together with such persons as are shareholders of the company from time to time are hereby incorporated as a company with share capital to be known as the "Canada Development Corporation".

Provisional Directors

First directors

5. (1) The persons designated by the Governor in Council under section 4 are

PARTIE I

CORPORATION DE DÉVELOPPEMENT DU CANADA

Constitution

4. Les personnes, au nombre de dix-huit au plus, que peut désigner le gouverneur en conseil, ainsi que les personnes qui sont actionnaires de la compagnie, sont par les présentes constituées en corporation, à titre de compagnie ayant un capital-actions, appelée la «Corporation de développement du Canada».

Administrateurs provisoires

5. (1) Les personnes que le gouverneur en conseil désigne en vertu de l'article 4

the provisional directors of the company and each such person, while he remains in office, shall be deemed to be the holder of one common share of the company

sont les administrateurs provisoires de la compagnie et chacune d'elles, tant qu'elle reste en fonction, est censée être détentrice d'une action ordinaire de la compagnie

Exercice
des fonctions

(2) If a provisional director dies, resigns or becomes incapable of carrying out his duties, the Governor in Council may designate a person to replace him.

(2) Si un administrateur provisoire dé- Pouvoir de combler les vacances
cède, démissionne ou devient incapable d'exercer ses fonctions, le gouverneur en conseil peut désigner une personne pour le remplacer

Pouvoirs

(3) While the provisional directors hold office they have and may exercise all the powers and duties of the Board of Directors.

(3) Les administrateurs provisoires dé- Pouvoirs
tiennent et peuvent exercer tous les pouvoirs et fonctions du conseil d'administration

Tenure

(4) The provisional directors cease to hold office when the Board of Directors takes office

(4) Les administrateurs provisoires ces- Durée du mandat
sent d'occuper leur poste lorsque le conseil d'administration entre en fonctions.

Objects of the Company

Corporate
objects

6. (1) The objects of the company are:

(a) to assist in the creation or development of businesses, resources, properties and industries of Canada;

(b) to expand, widen and develop opportunities for Canadians to participate in the economic development of Canada through the application of their skills and capital;

(c) to invest in the shares or securities of any corporation owning property or carrying on business related to the economic interests of Canada; and

(d) to invest in ventures or enterprises, including the acquisition of property, likely to benefit Canada;

and shall be carried out in anticipation of profit and in the best interests of the shareholders as a whole.

Policy
considera-
tions

(2) In the furtherance of its objects and in carrying on its business generally, the company shall, so far as it is practicable and profitable to do so,

(a) invest in the shares or securities of corporations in which the company has or expects to have a substantial

Objets de la compagnie

6. (1) La compagnie a pour objets:

a) d'aider à la création ou au développement d'entreprises, de ressources, de biens et d'industries du Canada;

b) d'augmenter, d'élargir et de développer, pour les Canadiens, les possibilités de participation au développement économique du Canada, en utilisant leurs compétences et leurs capitaux;

c) d'investir dans les actions ou valeurs de toute corporation qui est propriétaire de biens au Canada ou qui fait des affaires se rattachant aux intérêts économiques du Canada; et

d) d'investir dans des initiatives ou entreprises qui profiteront vraisemblablement au Canada, entre autres choses par l'acquisition de biens;

la compagnie doit réaliser ces objets en vue d'un bénéfice et au mieux des intérêts de l'ensemble des actionnaires.

Objets de la
compagnie

(2) Dans la poursuite de ses objets et, Principes généraux
généralement, dans l'exploitation de son entreprise, la compagnie doit, dans la mesure où la chose est possible et profitable,

a) investir dans les actions ou valeurs des corporations dont la compagnie possède ou compte acquérir un important

holding of shares carrying voting rights;
and

(b) invest in the shares of corporations in each of which, in the opinion of the Board of Directors of the company, the real value of the shareholders' equity after investment by the company will be, or is likely to become, one million dollars or more.

Directory
only

(3) Subsection (2) is directory only and shall not be construed to limit or qualify the objects of the company under subsection (1) or to derogate from the powers of the company.

Powers of the Company

Powers of
company

7. (1) The company may, as ancillary and incidental to the objects set out in its charter, exercise any or all of the following powers, namely:

[16(1) (b) 1]
(f).
(r): C-32]

(a) the powers set out in subsection (1) of section 14* of the *Canada Corporations Act*, except those powers mentioned in paragraphs (d), (h) and (t)* of that subsection;

(b) the power, subject to this Act, to issue and allot fully paid-up shares of the company in payment or part payment for any property purchased or otherwise acquired by the company or any services rendered to the company;

(c) the power to invest its funds not otherwise being applied in the furtherance of its objects in

(i) investments that are authorized investments for the funds of an insurance company under subsection (1) of section 63 of the *Canadian and British Insurance Companies Act*, and

(ii) securities or shares of any class issued by any corporation with share capital incorporated under the laws of Canada or any province thereof;

(d) the power to enter into arrangements, other than amalgamation arrangements, for sharing of profits, union

portefeuille d'actions donnant droit de vote; et

b) investir dans les actions de corporations dont les actionnaires posséderont, dans chacune, un actif net dont la valeur réelle, après l'investissement fait par la compagnie, sera ou deviendra probablement, de l'avis du conseil d'administration de la compagnie, un million de dollars ou plus.

(3) Le paragraphe (2) est simplement indicatif et ne doit pas être interprété comme limitant ou restreignant la portée des objets de la compagnie aux termes du paragraphe (1), ni comme portant atteinte à ses pouvoirs.

Pouvoirs de la compagnie

7. (1) La compagnie peut exercer, à titre de pouvoirs auxiliaires et accessoires aux objets énoncés dans sa charte, tout ou partie des pouvoirs suivants, à savoir:

a) les pouvoirs énoncés au paragraphe (1) de l'article 14* de la *Loi sur les corporations canadiennes*, à l'exception des pouvoirs mentionnés aux alinéas d), h) et t)* de ce paragraphe;

b) sous toutes réserves de la présente loi, le pouvoir d'émettre et d'attribuer des actions entièrement libérées de la compagnie en paiement partiel ou total de tout bien acheté ou autrement acquis par la compagnie, ou de tous services rendus à la compagnie;

c) le pouvoir d'investir ceux de ses fonds qui ne sont pas autrement utilisés à la poursuite de ses objets dans

(i) des investissements qui sont des investissements autorisés pour les fonds d'une compagnie d'assurance en vertu du paragraphe (1) de l'article 63 de la *Loi sur les compagnies d'assurance canadiennes et britanniques*, et

(ii) des valeurs ou actions de toute catégorie émises par toute corporation, ayant un capital-actions, constituée en vertu des lois du Canada ou de l'une de ses provinces;

* Note explaining asterisk (*), on p. ix.

* Note expliquant l'astérisque (*), p. ix.

attainment of the objects and the exercise of the powers of the company

paragraphe comme consultant, mandataire, contractant ou à un autre titre et soit seule, soit conjointement avec d'autres et

pour faire toutes les autres choses nécessaires à la réalisation des objets de la compagnie et à l'exercice de ses pouvoirs et de toutes les facultés

extraordinary powers

(2) In order to effect its objects the company may accept powers outside Canada from any authority lawfully competent to confer such powers.

2 Afin de réaliser ses objets la compagnie peut accepter des pouvoirs étrangers de toute autorité compétente pour les lui conférer

incorporated in the United Kingdom

8. (1) In favour of any person who purchases any securities of the company or contracts with the company, the company shall be deemed to have all the capacity or power of a natural person.

8. (1) En faveur de toute personne qui achète les valeurs de la compagnie ou contracte avec elle, la compagnie est censée avoir la capacité ou les pouvoirs d'une personne physique

personal liability not diminished

(2) Nothing in this section diminishes any personal liability of the directors to the company for acting in excess of the powers of the company under its charter.

(2) Rien au présent article ne diminue la responsabilité personnelle des administrateurs envers la compagnie lorsqu'ils excèdent les pouvoirs que possède la compagnie en vertu de sa charte.

Capitalization

Capital social

Authorized capital

9. (1) The authorized capital of the company shall consist of

9. (1) Le capital autorisé de la compagnie est composé de

- (a) two hundred million common shares without nominal or par value; and
- (b) one thousand million dollars divided into preferred shares with a nominal or par value in any multiple of five dollars not exceeding the par value of one thousand dollars each, which may be issued in one or more series and with such designation, par value, preferred deferred or other special rights, restrictions, conditions or limitations attached thereto as may be prescribed by a by-law duly passed by the Board of Directors and sanctioned by at least two-thirds of the votes cast at a special general meeting of the shareholders called for the purpose; but a by-law made under this paragraph may authorize the Board of Directors to issue preferred shares up to an aggregate amount specified in such by-law, which may be

- a) deux cent millions d'actions ordinaires sans valeur nominale ou valeur au pair; et
- b) un milliard de dollars divisés en actions privilégiées dont chacune a une valeur nominale ou valeur au pair égale à un multiple de cinq dollars ne dépassant pas mille dollars, qui peuvent être émises en une ou plusieurs séries et portant la désignation, la valeur au pair, les privilèges, droits différés ou autres droits spéciaux, restrictions, conditions ou limitations y afférents qui peuvent être prescrits par un règlement administratif dûment adopté par le conseil d'administration et sanctionné par les deux tiers au moins des voix exprimées à une assemblée générale extraordinaire des actionnaires convoquée à cette fin; toutefois, un règlement administratif établi en vertu du présent alinéa peut autoriser le

1. Les statuts de la compagnie peuvent, par exemple, autoriser la compagnie à émettre des actions de préférence ou des actions de priorité, des actions de participation ou des actions de capital, des actions de réserve ou des actions de tout autre genre, et à les émettre en une ou plusieurs séries et portant à des degrés divers sur le paiement des dividendes, sur le droit de vote, sur le droit de participer aux bénéfices de la compagnie, ou sur d'autres conditions ou privilèges, et les actions ainsi émises peuvent être présentées par la compagnie à l'administration.

2. Les statuts de la compagnie peuvent, par exemple, autoriser la compagnie à émettre des actions de préférence ou des actions de priorité, des actions de participation ou des actions de capital, des actions de réserve ou des actions de tout autre genre, et à les émettre en une ou plusieurs séries et portant à des degrés divers sur le paiement des dividendes, sur le droit de vote, sur le droit de participer aux bénéfices de la compagnie, ou sur d'autres conditions ou privilèges, et les actions ainsi émises peuvent être présentées par la compagnie à l'administration.

3. Les statuts de la compagnie peuvent, par exemple, autoriser la compagnie à émettre des actions de préférence ou des actions de priorité, des actions de participation ou des actions de capital, des actions de réserve ou des actions de tout autre genre, et à les émettre en une ou plusieurs séries et portant à des degrés divers sur le paiement des dividendes, sur le droit de vote, sur le droit de participer aux bénéfices de la compagnie, ou sur d'autres conditions ou privilèges, et les actions ainsi émises peuvent être présentées par la compagnie à l'administration.

4. For the purposes of this Act the initial issue of shares of the company refers to the issue of common shares that first follows an offering by the company of such shares to the public of Canada at large.

Head Office

10. The head office of the company shall initially be at such place within Canada as may be designated by the Governor in Council and thereafter at such place in Canada as the Board of Directors may determine subject to section 21* of the *Canada Corporations Act*.

Board of Directors

11. Until otherwise determined by a by-law duly passed by the directors and

* Note explaining asterisk (*), on p. ix

1. Les statuts de la compagnie peuvent, par exemple, autoriser la compagnie à émettre des actions de préférence ou des actions de priorité, des actions de participation ou des actions de capital, des actions de réserve ou des actions de tout autre genre, et à les émettre en une ou plusieurs séries et portant à des degrés divers sur le paiement des dividendes, sur le droit de vote, sur le droit de participer aux bénéfices de la compagnie, ou sur d'autres conditions ou privilèges, et les actions ainsi émises peuvent être présentées par la compagnie à l'administration.

2. Les statuts de la compagnie et des Actions peuvent, par exemple, autoriser la compagnie à émettre des actions de préférence ou des actions de priorité, des actions de participation ou des actions de capital, des actions de réserve ou des actions de tout autre genre, et à les émettre en une ou plusieurs séries et portant à des degrés divers sur le paiement des dividendes, sur le droit de vote, sur le droit de participer aux bénéfices de la compagnie, ou sur d'autres conditions ou privilèges, et les actions ainsi émises peuvent être présentées par la compagnie à l'administration.

3. Les statuts de la compagnie peuvent, par exemple, autoriser la compagnie à émettre des actions de préférence ou des actions de priorité, des actions de participation ou des actions de capital, des actions de réserve ou des actions de tout autre genre, et à les émettre en une ou plusieurs séries et portant à des degrés divers sur le paiement des dividendes, sur le droit de vote, sur le droit de participer aux bénéfices de la compagnie, ou sur d'autres conditions ou privilèges, et les actions ainsi émises peuvent être présentées par la compagnie à l'administration.

4. Aux fins de la présente loi, l'émission initiale d'actions de la compagnie se réfère à l'émission d'actions ordinaires qui suit une offre de ces actions par la compagnie au grand public canadien.

Siège social

10. Le siège social de la compagnie doit être, à l'origine, situé à l'endroit du Canada que le gouverneur en conseil peut désigner et, par la suite, à l'endroit du Canada que le conseil d'administration peut choisir, sous réserve de l'article 21* de la *Loi sur les corporations canadiennes*.

Conseil d'administration

11. A moins qu'il n'en soit autrement décidé par un règlement administratif dû-

* Note expliquant l'astérisque (*), p. ix.

sanctioned by at least two thirds of the votes cast at a special general meeting of the shareholders called for the purpose, the affairs of the company shall be managed by a Board of Directors consisting of not less than eighteen or more than twenty-one members as may be fixed from time to time by the Board

ment adopté par les administrateurs et sanctionné par les deux tiers au moins des voix exprimées à une assemblée générale extraordinaire des actionnaires convoquée à cette fin les affaires de la compagnie sont gérées par un conseil d'administration composé d'au moins dix-huit et d'au plus vingt et un membres, leur nombre exact étant fixé à l'occasion par le conseil

Qualification
11.3.

12. (1) Subject to section 86* of the *Canada Corporations Act*, any Canadian citizen is qualified to be a director of the company if he otherwise qualifies under such by-laws as may be made in that regard.

12. (1) Sous réserve de l'article 86* de la *Loi sur les corporations canadiennes*, tout citoyen canadien est apte à devenir administrateur de la compagnie s'il remplit par ailleurs les conditions requises en vertu des règlements administratifs qui peuvent être établis à cet égard.

Disqualification
of directors

(2) A person ceases to be a director if he ceases to be a Canadian citizen.

(2) Une personne cesse d'être administrateur lorsqu'elle cesse d'être un citoyen canadien.

Majority
to be
resident

(3) The majority of the members of the Board referred to in section 11 shall at all times be residents of Canada

(3) La majorité des membres du conseil mentionnés à l'article 11 doit à tout moment être composée de résidents du Canada

Power to
appoint
directors

(4) The directors may from time to time appoint any other person as a director, either to fill a casual vacancy or as an addition to the Board, but the total number of directors subject to section 41, shall not at any time exceed the maximum number fixed under section 11.

(4) Les administrateurs peuvent, à l'occasion nommer toute autre personne à titre d'administrateur, soit pour combler une vacance accidentelle soit pour ajouter un membre au conseil, mais le nombre total des administrateurs, sous réserve de l'article 41, ne doit à aucun moment dépasser le chiffre maximum fixé par l'article 11.

Quorum

(5) Unless otherwise determined by the by-laws, eleven directors constitute a quorum of the Board.

(5) Sauf disposition contraire des règlements administratifs, onze administrateurs forment quorum.

Vacancies

(6) Where there are any vacancies in the Board of Directors, the remaining directors may exercise all the powers of the Board so long as a quorum of the Board remains in office.

(6) Lorsqu'il y a des vacances au conseil d'administration, les administrateurs restants peuvent exercer tous les pouvoirs du conseil aussi longtemps qu'ils forment quorum.

Removal of
directors

(7) The shareholders of the company may, from time to time, by at least two-thirds of the votes cast at a special general meeting of the shareholders called for the purpose, or the directors may, from time to time, by at least four-fifths of the votes cast at a meeting of the directors

(7) Les actionnaires de la compagnie, par décision prise aux deux tiers au moins des voix exprimées à une assemblée générale extraordinaire des actionnaires convoquée à cet effet, ou les administrateurs par décision prise aux quatre cinquièmes au moins des voix exprimées à une réunion

* Note explaining asterisk (*), on p. ix.

* Note expliquant l'astérisque (*), p. ix.

may, for the purpose, remove any director or directors before the expiration of his or their period of office and appoint any qualified person or persons in his or their stead for the balance of his or their term.

des administrateurs. À cet effet, peut, à l'occasion, destituer un ou plusieurs administrateurs avant l'expiration de leur mandat et nommer à leur place une ou plusieurs personnes qualifiées pour le reste de ce mandat.

13. (1) The Board shall from time to time elect a president from among its members.

13. (1) Le conseil doit, à l'occasion, élire Président un président parmi ses membres.

(2) The Board may elect one or more vice-presidents and such other officers as may be prescribed by the by-laws, who shall have such titles and perform such duties as may be prescribed by the Board or the by-laws.

(2) Le conseil peut élire un ou plusieurs vice-présidents et les autres membres de la direction de la compagnie que peuvent prescrire les règlements administratifs; ces derniers ont les titres et exercent les fonctions que peuvent prescrire le conseil ou les règlements administratifs.

(3) The Board may elect from among its members a chairman of the Board and a vice-chairman who shall perform such duties as may be prescribed by the by-laws.

(3) Le conseil peut élire parmi ses membres un président et un vice-président du conseil d'administration qui exercent les fonctions que peuvent prescrire les règlements administratifs.

Executive Committee
(4) The Board may, in accordance with section 94* of the *Canada Corporations Act*, elect and delegate powers to an executive committee.

(4) Le conseil peut, conformément à l'article 94* de la *Loi sur les corporations canadiennes*, élire un comité exécutif et lui déléguer des pouvoirs.

Powers and duties of directors

14. The Board of Directors may manage and administer the affairs of the company in all things and make or cause to be made for the company any description of contract that the company may, by law, enter into, and may from time to time make by-laws not contrary to law or to the charter of the company to regulate

14. Le conseil d'administration peut gérer et diriger les affaires de la compagnie en toutes matières et conclure ou faire conclure pour la compagnie tout genre de contrat que la compagnie peut légalement conclure et il peut, à l'occasion, établir des règlements administratifs non contraires au droit ou à la charte de la compagnie, afin de réglementer

Pouvoirs et devoirs des administrateurs

(a) the time and place for the holding of meetings of the shareholders, the calling of meetings of the shareholders and of the Board, notices of such meetings, the quorum of any such meetings, the requirements as to proxies and the procedure in all things at such meetings;

a) la date et le lieu des assemblées des actionnaires, la convocation des assemblées des actionnaires et des réunions du conseil, les avis y relatifs, les quorums de ces assemblées et réunions, les exigences relatives aux fondés de pouvoirs et la procédure à suivre en toutes choses, lors de ces assemblées et réunions;

(b) the allotment of shares, the payment therefor, the issue and registration of certificates for shares, the redemption or purchase of shares for cancellation and the transfer of shares;

b) l'attribution des actions, leur paiement, l'émission et l'enregistrement des certificats d'actions, le rachat ou l'achat des actions pour annulation et le transfert des actions;

(c) the declaration and payment of dividends;

* Note explaining asterisk (*), on p. ix

* Note expliquant l'astérisque (*), p. ix.

(d) the terms of service of the directors, the amount of the share qualification of the directors and the remuneration of the directors;

(e) the establishment of reserve funds and the control, management and disposition of the funds and the purposes for which payments are to be made out of the reserve funds;

(f) the management, administration and investment of the company's property;

(g) the disposition of all moneys received in respect of the business of the company, the institutions in which the moneys are to be deposited, the manner in which the accounts for such deposits are to be kept and managed and the manner in which withdrawals are to be made from such accounts;

(h) the appointment, duties, functions and removal of the officers, employees and agents of the company, the security to be given by them to the company and their remuneration; and

(i) the conduct in all other particulars of the affairs of the company not otherwise provided for by its charter.

c) la déclaration et le paiement des dividendes;

d) la durée du mandat des administrateurs, le montant d'actions que les administrateurs doivent posséder pour être éligibles et leur rémunération;

e) l'établissement de fonds de réserve et le contrôle la gestion et la disposition de ces fonds, ainsi que les fins pour lesquelles des paiements doivent être faits sur les fonds de réserve;

f) la gestion, l'administration et l'investissement des biens de la compagnie;

g) la disposition de tous les deniers reçus relativement aux opérations de la compagnie, les établissements dans lesquels les deniers doivent être déposés, la façon dont doivent être tenus et gérés les comptes pour ces dépôts et la façon dont doivent être opérés les retraits sur ces comptes;

h) la nomination, les fonctions et la destitution des membres de la direction, employés et mandataires de la compagnie, la garantie qu'ils doivent fournir à la compagnie et leur rémunération, et

i) la direction des affaires de la compagnie à tous autres égards, lorsque sa charte n'en dispose pas autrement.

Borrowing Powers

Borrowing powers

15. (1) When authorized by by-law, duly passed by the directors and sanctioned by at least two-thirds of the votes cast at a special general meeting of the shareholders called for the purpose of considering the by-law, the directors of a company may from time to time

(a) borrow money upon the credit of the company;

(b) limit or increase the amount to be borrowed;

(c) issue debentures or other securities of the company;

(d) pledge or sell such debentures or other securities for such sums and at such prices as may be deemed expedient; and

Pouvoirs d'emprunter

15. (1) Lorsqu'ils y sont autorisés par règlement administratif dûment adopté par les administrateurs et sanctionné par les deux tiers au moins des voix exprimées à une assemblée générale extraordinaire des actionnaires convoquée en vue de l'examen du règlement administratif, les administrateurs d'une compagnie peuvent, quand il y a lieu,

a) emprunter de l'argent sur le crédit de la compagnie;

b) limiter ou augmenter le montant à emprunter;

c) émettre des débentures ou autres valeurs de la compagnie;

d) donner en gage ou vendre ces débentures ou autres valeurs pour les sommes

(c) securer any such debentures, or other securities or any other present or future borrowing or liability of the company, by mortgage, hypothec, charge or pledge of all or any currently owned or subsequently acquired real and personal, movable and immovable property of the company, and the undertaking and rights of the company

et aux prix qui peuvent être jugés avantageux, et

e) garantir toutes débetures de ce genre ou autres valeurs ou tout autre emprunt ou toute autre obligation présents ou futurs de la compagnie par *mortgage*, hypothèque, charge ou nantissement de l'ensemble ou de l'un quelconque des biens mobiliers et immobiliers possédés à ce moment-là ou subseqüemment acquis, de la compagnie, ainsi que l'entreprise et les droits de la compagnie

(2) A by-law under subsection (1) may provide for the delegation of such powers by the directors to such officers or directors of the company to such extent and in such manner as may be set out in the by-law

(2) Un règlement administratif établi en vertu du paragraphe (1) peut prévoir la délégation de ces pouvoirs par les administrateurs aux membres de la direction ou administrateurs de la compagnie qui peuvent être indiqués dans le règlement administratif, dans la mesure et de la manière y indiquées

(3) Nothing in this section limits or restricts the borrowing of money by the company on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the company

(3) Rien au présent article ne limite ni ne restreint l'emprunt d'argent par la compagnie sur lettres de change ou billets à ordre établis, tirés, acceptés ou endossés par la compagnie ou pour son compte

Transfer of Shares

Transfert des actions

Transferability of shares [39, C 32] [42, 43, C 32]

16. (1) Subject to the charter of the company, the shares of the company are transferable in accordance with subsection (1) of section 36* and sections 39 and 40* of the *Canada Corporations Act* but no fraction of a share of the company is transferable.

16. (1) Sous réserve de la charte de la compagnie, les actions de la compagnie sont transférables en conformité du paragraphe (1) de l'article 36* et des articles 39 et 40* de la *Loi sur les corporations canadiennes*, C 32] mais aucune fraction d'action de la compagnie n'est transférable.

Declaration may be required

(2) A shareholder of the company shall, upon the request of the Board made in accordance with the by-laws, submit a declaration with respect to

(2) Un actionnaire de la compagnie doit, à la demande du conseil faite en conformité des règlements administratifs, présenter une déclaration

- (a) his direct or indirect ownership of any shares of the company;
- (b) whether he and any person in whose right or for whose use or benefit the share is held are residents of Canada or individuals who are Canadian citizens;
- (c) whether he is associated, within the meaning of the statutory conditions, with any other shareholder;

- a) ayant trait à son droit de propriété direct ou indirect d'actions de la compagnie;
- b) indiquant si lui-même et toute personne du chef, pour l'usage ou au profit de laquelle l'action est détenue sont des résidents du Canada ou des particuliers qui sont des citoyens canadiens;

* Note explaining asterisk (*), on p. ix.

* Note expliquant l'astérisque (*), p. ix.

(d) whether he is a Canadian citizen,
 (e) if the shareholder is a corporation or trust, information establishing that the shareholder is a resident of Canada, and
 (f) such other matters as the Board may deem relevant for the purposes of determining whether he complies with the statutory conditions.

ci) indiquant s'il est associé, au sens des conditions légales, avec un autre actionnaire;

d) indiquant s'il est un citoyen canadien;
 e) établissement que l'actionnaire est un résident du Canada, si l'actionnaire est une corporation ou un organisme de fiducie, et

f) ayant trait à telles autres questions que le conseil peut juger pertinentes aux fins de déterminer s'il satisfait aux conditions légales.

Declaration in default

(3) Where a declaration has been requested by the Board from a shareholder under this section and the shareholder fails or neglects to submit to the Board a declaration satisfactory to the Board within thirty days of the day that the declaration was requested by the Board, the shares of the company held by such shareholder shall be deemed to be held in contravention of the charter of the company until a declaration satisfactory to the Board has been submitted to it.

(3) Lorsqu'une déclaration a été demandée par le conseil à un actionnaire, en vertu du présent article, et que l'actionnaire omet ou néglige de présenter au conseil une déclaration jugée satisfaisante par celui-ci dans les trente jours qui suivent celui où la déclaration a été demandée par le conseil, les actions de la compagnie détenues par cet actionnaire sont censées être détenues en violation de la charte de la compagnie, jusqu'à ce qu'une déclaration jugée satisfaisante par le conseil, ait été présentée à ce dernier.

Submission of declaration a condition of transfer or subscription

(4) It is a condition of every transfer of a share to be made or recorded in a register of transfers of the company or of any subscription for a share of the company that the transferee or subscriber shall, at the request of the Board submit to the Board a declaration to the like effect as the declaration that may be requested by the Board under subsection (2).

(4) Tout transfert d'une action devant être fait ou inscrit dans un registre des transferts de la compagnie ou toute souscription d'une action de la compagnie, est assujéti à la présentation, au conseil, sur demande de ce dernier, par le cessionnaire ou souscripteur d'une déclaration dans le même sens que la déclaration que le conseil peut demander en vertu du paragraphe (2).

Certain subscriptions and transfers to be refused

(5) Subject to subsection (7), where the Board has requested a declaration pursuant to subsection (4), the Board shall not accept any subscription for a share of the company or allow any transfer to be made or recorded in a register of transfers of the company unless a declaration as required by subsection (4) has been submitted to the Board and it appears from the declaration that the subscriber or transferee would not, by the acceptance of the subscription for the shares being subscribed for or the entry in a register of transfers of the shares being transferred, hold those shares in contravention of the charter of the company.

(5) Sous réserve du paragraphe (7), lorsque le conseil a demandé une déclaration, en application du paragraphe (4), le conseil ne doit accepter aucune souscription d'une action de la compagnie ni permettre de faire ou inscrire aucun transfert dans un registre des transferts de la compagnie, à moins qu'une déclaration exigée par le paragraphe (4) n'ait été présentée au conseil et qu'il ne ressorte de la déclaration que le souscripteur, du fait de l'acceptation de la souscription des actions qu'il souscrit, ou le cessionnaire, du fait de l'autorisation de faire, dans un registre des transferts, l'inscription des actions transférées, ne dé-

la charte de la compagnie et le statut de la compagnie.

(6) Where, in the case of a subscription for or transfer of any shares of the company it appears that the number of shares that would be held by the subscriber or the transferee, as shown by the register of shareholders of the company, would not be more than two thousand shares if the subscription were accepted or the transfer allowed, the Board is entitled to assume that the subscriber or the transferee is not and will not be associated within the meaning of the statutory conditions, with any other holder of shares of the company and, unless the address to be recorded in the register of shareholders of the company for the subscriber or transferee is a place outside Canada, that the shares will not be held in contravention of the charter of the company.

offre
d'actions

(7) In the case of a subscription for shares of the company pursuant to an offer of shares described in subsection (3) of section 9, the company may count as shares issued and outstanding all the shares included in the offer.

Register of Transfers

Register
of share-
holders

17. (1) The company shall keep in Canada a register of shareholders recording the names and post office addresses of its shareholders and the number of shares held by each.

Register
of
transfers

(2) The company shall keep one or more registers of transfers in Canada in which transfers of shares may be made or recorded and transmissions of shares may be recorded in accordance with such provisions in respect thereof as the Board may see fit to make and subject to the provisions of its charter.

Inspection
of
registers

(3) The register of shareholders and any register of transfers may, during the business hours of the company, be inspected by any shareholder or director of the company.

(6) Lorsque, dans le cas d'une souscription pour ou d'un transfert de actions de la compagnie, il apparaît que le nombre d'actions que le souscripteur ou le transféré, tel qu'il est indiqué au registre des actionnaires de la compagnie, ne dépasserait pas deux mille actions si la souscription était acceptée ou le transfert permis, le conseil a le droit de presumer que le souscripteur ou le cessionnaire n'est ni ne sera associé au sens des conditions légales avec un autre détenteur d'actions de la compagnie, et, à moins que l'adresse de celui-ci n'apparaisse dans le registre des actionnaires de la compagnie pour le souscripteur ou le cessionnaire, ne soit un lieu situé à l'étranger, que les actions ne seront pas détenues en violation de la charte de la compagnie.

(7) Dans le cas d'une souscription d'actions de la compagnie à la suite d'une offre d'actions visée au paragraphe (3) de l'article 9, la compagnie peut compter, à titre d'actions émises et en circulation, toutes les actions comprises dans l'offre.

Registre des transferts

17. (1) La compagnie doit tenir au Canada un registre des actionnaires indiquant le nom et l'adresse postale de ses actionnaires et le nombre d'actions détenues par chacun d'eux.

(2) La compagnie doit tenir au Canada un ou plusieurs registres des transferts dans lesquels les transferts d'actions peuvent être effectués ou inscrits, et dans lesquels les transmissions d'actions peuvent être inscrites conformément aux dispositions relatives que le conseil peut juger utile de prendre et sous réserve des dispositions de sa charte.

(3) Tout actionnaire ou administrateur de la compagnie peut consulter le registre des actionnaires et tout registre des transferts, aux heures d'ouverture des bureaux de la compagnie.

Dis-
continuing
register of
transfers

(4) The Board may discontinue any register of transfers but shall keep at least one register of transfers in Canada.

(4) Le conseil peut cesser d'importe quel registre des transferts mais doit tenir au moins un registre des transferts au Canada.

Appoint-
ment of
transfer
agents

(5) The company may appoint agents for the keeping of the register of shareholders and any register of transfers.

(5) La compagnie peut nommer des mandataires pour tenir le registre des actionnaires et tout registre des transferts.

Registering
transfer

(6) Within sixty days after the purchase or other acquisition of any shares of the company by any person, the certificate representing such shares shall be presented to the company for transfer into the name of the beneficial owner, his designated nominee, trustee, executor or other personal representative; and shares not presented for transfer in accordance with this subsection shall be deemed to be held in contravention of the charter of the company.

(6) Dans les soixante jours qui suivent l'achat ou autre acquisition d'actions de la compagnie par une personne, le certificat représentant ces actions doit être présenté à la compagnie pour transfert au nom du propriétaire en equity, de son représentant désigné, fidéicommissaire, exécuteur testamentaire ou autre représentant personnel, et les actions non présentées pour transfert conformément au présent paragraphe sont censées être détenues en violation de la charte de la compagnie.

Voting of Shares

Common
shares

18. (1) Each issued and allotted common share of the company carries voting rights and entitles the holder thereof to one vote for each such share held by him.

Exercice du droit de vote afférent aux actions

18. (1) Chacune des actions ordinaires de la compagnie émises et attribuées comporte des droits de vote et donne une voix à son détenteur.

Preferred
shares

(2) In the absence of other provisions on that behalf in the by-laws, the preferred shares of the company do not carry voting rights.

(2) En l'absence d'autres dispositions à ce sujet dans les règlements administratifs, les actions privilégiées de la compagnie ne comportent pas de droits de vote.

Voting
rights
not to be
exercised
in certain
cases

19. (1) The voting rights pertaining to any shares of the company shall not be exercised when the shares are held in contravention of the charter of the company.

19. (1) Les droits de vote afférents à des actions de la compagnie ne doivent pas être exercés lorsque les actions sont détenues en violation de la charte de la compagnie.

Shares
held in
contraven-
tion of
charter

(2) Shares are held in contravention of the charter of the company when such shares are held contrary to any provision of this Act or the by-laws or are deemed under section 16 or 17 to be held in contravention of the charter of the company.

(2) Des actions sont détenues en violation de la charte de la compagnie lorsqu'elles sont détenues à l'encontre d'une disposition de la présente loi ou des règlements administratifs, ou sont censées détenues en violation de la charte en vertu de l'article 16 ou de l'article 17.

Effect of
holding
shares in
contraven-
tion

(3) The validity of a transfer of shares of the company that has been made or recorded in a register of transfers of the company or the validity of the acceptance of a subscription for shares of the company is not affected by the holding of such

(3) Le fait de détenir des actions de la compagnie en violation de la charte de cette dernière n'a pas d'incidence sur la validité d'un transfert de ces actions qui a été fait ou inscrit dans un registre des transferts de la compagnie ni sur la validité

shares in contravention of the charter of the company

(4) If the voting rights pertaining to any shares of the company that are held in contravention of the charter of the company are exercised at a general meeting of the shareholders of the company, no proceeding, matter or thing at that meeting is void by reason thereof, but any such proceeding, matter or thing is, at any time within one year from the date of commencement of the general meeting at which such voting rights were exercised, voidable at the option of the directors and shareholders by a by-law duly passed by the Board of Directors and sanctioned by two-thirds of the votes cast at a special general meeting of the shareholders called for the purpose

Shareholders

Voting
shares

20. (1) No person other than an individual who is a Canadian citizen or a person who is a resident of Canada may purchase, own or hold voting shares of the company

General's

(2) No person may hold shares of the company unless he is qualified to be a shareholder under this Act or the by-laws.

Determining
not
ordinarily
resident in
Canada

(3) The Board may prescribe rules for determining for the purposes of this Act when a person is not ordinarily resident in Canada.

Redemption of Shares

Disposition
of shares
held in
contraven-
tion of
charter

21. (1) Where any voting shares of the company are held in contravention of the charter of the company, the company may, upon such notice to such persons in such manner as may be prescribed by the by-laws, require the voting shares to be disposed of to a person who may hold voting shares of the company, within such period, not being less than sixty days, as may be limited therefor by the notice; and if after

de l'acceptation d'une souscription de ces actions

(4) Si les droits de vote afférents à des actions de la compagnie qui sont détenues en violation de la charte de la compagnie sont exercés lors d'une assemblée générale des actionnaires de la compagnie, aucune procédure ni rien de ce qui est fait à cette assemblée n'est nul de ce seul fait, mais une telle procédure ou toute autre chose faite à cette assemblée générale est, dans le délai d'un an à compter du premier jour de ladite assemblée, annulable à la discrétion des administrateurs et des actionnaires par un règlement administratif dûment adopté par le conseil d'administration et sanctionné par les deux tiers des voix exprimées à une assemblée générale extraordinaire des actionnaires convoquée à cette fin

Actionnaires

20. (1) Aucune personne, si elle n'est un particulier qui est un citoyen canadien ou une personne qui est un résident du Canada ne peut acheter, posséder, ni détenir des actions donnant droit de vote de la compagnie

(2) Nul ne peut détenir d'actions de la compagnie à moins d'avoir les qualités requises pour être actionnaire en vertu de la présente loi ou des règlements administratifs.

(3) Le Conseil peut prescrire des règles pour déterminer aux fins de la présente loi quand une personne ne réside pas ordinairement au Canada.

Rachat des actions

21. (1) Lorsque des actions donnant droit de vote de la compagnie sont détenues en violation de la charte de la compagnie, la compagnie peut, sur envoi à ces personnes de l'avis qui peut être prescrit par les règlements administratifs, de la manière ainsi prescrite, exiger que les actions donnant droit de vote soient cédées à une autre personne qui peut détenir des actions donnant droit de vote de la com-

the expiration of the period limited therefor by the notice such voting shares have not been disposed of to a person who may hold voting shares of the company, the voting shares may be redeemed for cancellation by the company at its sole option.

Redemption (2) Where the voting shares referred to in subsection (1) have not been disposed of within the time limited therefor under that subsection, the company may, at any time while those shares continue to be held in contravention of the charter of the company, redeem them for cancellation upon

(a) the deposit by the company of the amount of the redemption price thereof in a special account with a bank, and

(b) the giving of notice of redemption to such persons in such manner as may be prescribed by the by-laws, including notice of the deposit referred to in paragraph (a),

and thereupon the shares shall be deemed to be redeemed for cancellation and the rights of the holder and any beneficial owners thereof shall cease except the right of any beneficial owner to receive out of the amount so deposited, without interest, the redemption price payable with respect to the shares upon presentation and surrender of the certificates representing the shares; and any interest payable by the bank on the deposit shall be paid to the company.

No liability
to bene-
ficial
owner

(3) The company is not bound to see to the application of the amount deposited or to the execution of any trust, whether express, implied or constructive, in respect of any voting shares redeemed for cancellation under this section; nor is the company estopped by any certificates outstanding in respect of any voting shares redeemed for cancellation, notwithstanding section 33* of the *Canada Corporations Act*.

[36, C-32]

pagnie, dans le délai que peut fixer l'avis, délai qui ne doit pas être inférieur à soixante jours; et si, au terme de ce délai fixé par l'avis, ces actions donnant droit de vote n'ont pas été cédées à une personne qui peut détenir des actions donnant droit de vote de la compagnie, les actions donnant droit de vote peuvent être rachetées pour annulation par la compagnie, à sa seule discrétion.

(2) Lorsqu'il n'a pas été disposé des actions donnant droit de vote mentionnées au paragraphe (1) dans le délai fixé en la matière en vertu de ce paragraphe, la compagnie peut, pendant toute la période où ces actions continuent à être détenues en violation de la charte de la compagnie, les racheter pour annulation après

a) le dépôt par la compagnie du prix de leur rachat dans un compte bancaire spécial, et

b) l'envoi d'un avis de rachat aux personnes que peuvent prescrire les règlements administratifs et de la manière qu'ils peuvent prescrire, notamment avis du dépôt mentionné à l'alinéa a),

sur quoi, les actions sont censées être rachetées pour annulation et les droits du détenteur et de tous propriétaires en *equity* de celles-ci s'éteignent à l'exception du droit que possède un propriétaire en *equity* de recevoir sur le montant ainsi déposé, sans intérêt, le prix du rachat payable pour les actions sur présentation et remise des certificats, d'actions; et tout intérêt payable par la banque sur le dépôt est versé à la compagnie.

(3) La compagnie n'est pas tenue de veiller à l'emploi du montant déposé ou à l'exécution de toute fiducie (expresse, implicite ou présumée) relativement à des actions donnant droit de vote rachetées pour annulation en vertu du présent article; et nul certificat en circulation relatif à des actions donnant droit de vote rachetées pour annulation ne constitue un empêchement pour la compagnie, nonobstant l'article 33* de la *Loi sur les corporations canadiennes*.

Aucune
responsa-
bilité
envers le
propriétaire
en *equity*

* Note explaining asterisk (*), on p. ix.

* Note expliquant l'astérisque (*), p. ix.

55

OF / DE

Order of disposal

(4) Where the contravention in respect of which voting shares are required to be disposed of pursuant to subsection (1) concerns the holding by a shareholder and any associates of the shareholder, within the meaning of the statutory conditions, of a total number of voting shares in excess of three per cent of the issued and outstanding voting shares of the company, the voting shares of the company held by the shareholder and the associates for the least length of time shall, to the extent of such excess, be required to be disposed of first pursuant to this section unless the shareholder and the associates by agreement notified in writing to the company agree to dispose themselves of such number of voting shares of the company as may be sufficient to remove the contravention, in which case the voting shares as agreed upon shall be disposed of by the shareholder and associates.

Duty

(5) The powers of the company under this section may be exercised at the option of the company except that if any voting shares of the company have, to the knowledge of the company, been held in contravention of the charter of the company for ten years or such lesser period as may be fixed by the by-laws, the company shall redeem for cancellation such voting shares in the manner provided by this section.

Redemption price

(6) The redemption price of voting shares of the company for the purposes of this section is

- (a) in the case of a preferred share, the par value thereof; and
- (b) in the case of a common share, the lesser of
 - (i) the issue price on the initial issue of shares of the company, and
 - (ii) the closing sale price of the share on the principal stock exchange on the business day immediately preceding the date of the giving of notice of redemption or, if there is no sale thereof on that exchange on that business day, the average of the closing asked

(4) Lorsque des actions donnant droit de vote doivent être cédées en application du paragraphe (1) parce que l'actionnaire et des associés de celui-ci, au sens des conditions légales, détiennent un nombre total d'actions donnant droit de vote excédant trois pour cent des actions donnant droit de vote de la compagnie, émises et en circulation, l'actionnaire et les associés sont tenus de se départir d'abord, en application du présent article, jusqu'à concurrence de l'excédent, des actions donnant droit de vote de la compagnie qu'ils détiennent depuis le moins longtemps, à moins que l'actionnaire et les associés, par accord signifié par écrit à la compagnie, ne conviennent de se départir eux-mêmes du nombre d'actions donnant droit de vote de la compagnie suffisant pour remédier à la violation, auquel cas, l'actionnaire et les associés doivent se départir des actions donnant droit de vote comme convenu.

(5) La compagnie peut exercer à sa discrétion les pouvoirs que lui confère le présent article sauf que, si des actions donnant droit de vote de la compagnie ont été, à la connaissance de cette dernière, détenues en violation de sa charte pendant dix ans ou telle autre période moindre que peuvent fixer les règlements administratifs, la compagnie doit racheter pour annulation ces actions donnant droit de vote, de la manière prévue au présent article.

(6) Le prix de rachat d'actions donnant droit de vote de la compagnie, aux fins du présent article, est

- a) dans le cas d'une action privilégiée, sa valeur au pair; et
- b) dans le cas d'une action ordinaire, le moindre des deux montants suivants:
 - (i) son prix d'émission lors de l'émission initiale d'actions de la compagnie, ou
 - (ii) le prix de vente, en clôture, de l'action à la bourse principale, le jour ouvrable précédant la date d'envoi de l'avis de rachat ou, s'il n'y a pas de vente d'actions ordinaires ce jour-là à cette bourse, la moyenne en clôture

its shares if the company is insolvent or if such redemption or purchase for cancellation would render the company insolvent.

actions si elle est insolvable ou si ce rachat ou cet achat pour annulation la rendait insolvable.

Redemption, Purchase and Reissue

Rachat, achat et réémission

Effect of
redemption

25. (1) Shares of the company of any class redeemed or purchased for cancellation, or surrendered upon being converted into or exchanged for other shares of the company, cease to be issued and outstanding and the number of issued and outstanding shares of that class and the paid-up capital shall be reduced accordingly; and the shares so redeemed or purchased for cancellation or surrendered remain part of the authorized capital of the company, are restored to the status of unissued shares of the same class and may be reissued by the company.

25. (1) Les actions de la compagnie de toute catégorie rachetées, achetées pour annulation, ou remises lorsqu'elles sont converties en d'autres actions de la compagnie ou échangées contre d'autres actions de la compagnie cessent d'être émises et en circulation et le nombre d'actions émises et en circulation de cette catégorie et le capital versé sont réduits en conséquence; les actions ainsi rachetées ou achetées pour annulation ou remises font toujours partie du capital autorisé de la compagnie, redeviennent des actions non émises de la même catégorie et peuvent être réémises par la compagnie.

Reissue
of shares

(2) Common shares reissued in accordance with subsection (1) rank *pari passu* in all respects with the common shares then issued and outstanding and the number of issued and outstanding common shares and the amount of paid-up capital are thereby increased accordingly.

(2) Les actions ordinaires réémises conformément au paragraphe (1) prennent le même rang à tous égards que les actions ordinaires alors émises et en circulation et le nombre des actions ordinaires émises et en circulation et le montant du capital versé, sont, de ce fait, augmentés en conséquence.

Preferred
shares

(3) Preferred shares reissued in accordance with subsection (1) rank *pari passu* in all respects with preferred shares then issued and outstanding subject to the issuance of the said shares in one or more series and with such designation, par value, preferred, deferred or other special rights, restrictions, conditions or limitations attached thereto as may be prescribed by by-laws made under paragraph (b) of subsection (1) of section 9; and the number of issued and outstanding preferred shares and the amount of paid-up capital of the company are thereby increased accordingly.

(3) Les actions privilégiées réémises conformément au paragraphe (1) prennent le même rang à tous égards que les actions privilégiées émises et en circulation sous réserve de l'émission desdites actions en une ou plusieurs séries et avec la désignation, la valeur au pair, les privilèges, droits différenciés ou autres droits spéciaux, restrictions, conditions ou limitations y afférents que peuvent prescrire des règlements administratifs établis en vertu de l'alinéa b) du paragraphe (1) de l'article 9; et le nombre d'actions privilégiées émises et en circulation et le montant du capital versé de la compagnie sont, de ce fait, augmentés en conséquence.

Authorized
capital not
affected

(4) A reduction or increase of the number of issued and outstanding shares and paid-up capital of the company under this section does not affect the authorized capital of the company.

(4) Une réduction ou une augmentation du nombre des actions émises et en circulation du capital versé de la compagnie en vertu du présent article n'affecte pas le capital autorisé de la compagnie.

Limitation

(5) If the authorized capital of the company is reduced under section 30, no shares may be issued under this section in any amount or number or in respect of any class of shares that would have the effect of increasing or altering the authorized capital at the time of the issue.

(5) Si le capital autorisé de la compagnie est réduit en vertu de l'article 30, on ne peut émettre, en vertu du présent article, des actions qui, étant donné leur montant, leur nombre ou leur catégorie auraient pour effet d'augmenter ou de modifier le capital autorisé au moment de l'émission.

Application of Statutory Provisions

Application de dispositions législatives

Canada Corporations Act

26. (1) Subject to section 27 and to any provision of this Act relating to the same matter, Part I of the *Canada Corporations Act* applies to the company with such modification as circumstances require.

26. (1) Sous réserve de l'article 27 et de toute disposition de la présente loi relative à la même question, la Partie I de la *Loi sur les corporations canadiennes* s'applique à la compagnie avec les modifications que nécessitent les circonstances.

Part III
[IV, C-32]

(2) Part III* of the *Canada Corporations Act* does not apply to the company.

(2) La Partie III* de la *Loi sur les corporations canadiennes* ne s'applique pas à la compagnie.

Excluded provisions of Canada Corporations Act
[2, 4-9, 12, 13(1)-(8), 14-16, 20, 28-33, 35, 38, 39, 40-41.1, 44-47, 51-60, 61-64, 65, 67, 86, 87, 89, 92, 94, 104, 108, 133(9), (11.1), 134, 135, 137, 148, 150-152; C-32]

27. (1) The following provisions of Part I of the *Canada Corporations Act* do not apply to the company, namely: section 2,* sections 4 to 8, section 11, subsections (1) to (6) of section 12, sections 12A to 14, section 17, sections 25 to 30, section 32, section 35, subsection (2) of section 36, sections 37 to 38A, sections 41 to 44, sections 48 to 58, sections 60 to 62A, section 63, subsections (1) to (3) and subsection (5) of section 65, sections 84 and 85, section 87, paragraph (d) of section 90, section 92, section 102, subsection (1) of section 106, subsections (10) to (12a) of section 125, sections 126 and 127, section 128A, section 139 and sections 140A to 142.

27. (1) Les dispositions suivantes de la Partie I de la *Loi sur les corporations canadiennes* ne s'appliquent pas à la compagnie, à savoir: l'article 2,* les articles 4 à 8, l'article 11, les paragraphes (1) à (6) de l'article 12, les articles 12A à 14, l'article 17, les articles 25 à 30, l'article 32, l'article 35, le paragraphe (2) de l'article 36, les articles 37 à 38A, les articles 41 à 44, les articles 48 à 58, les articles 60 à 62A, l'article 63, les paragraphes (1) à (3) et le paragraphe (5) de l'article 65, les articles 84 et 85, l'article 87, l'alinéa d) de l'article 90, l'article 92, l'article 102, le paragraphe (1) de l'article 106, les paragraphes (10) à (12a) de l'article 125, les articles 126 et 127, l'article 128A, l'article 139, et les articles 140A à 142.

Saving
[10, 11; C-32]

(2) Sections 9 and 10* of the *Canada Corporations Act* apply in respect only of any letters patent issued pursuant to section 30 of this Act.

(2) Les articles 9 et 10* de la *Loi sur les corporations canadiennes* ne s'appliquent que relativement aux lettres patentes émises en application de l'article 30 de la présente loi.

Company deemed insider

(3) Where the company redeems or purchases for cancellation any shares of the company under section 21, 22, 23 or 36, any provisions of the *Canada Corporations Act* relating to insider trading by an insider

(3) Lorsque la compagnie rachète ou achète pour annulation des actions de la compagnie en vertu des articles 21, 22, 23 ou 36, toutes dispositions de la *Loi sur les corporations canadiennes* relatives aux opé-

* Note explaining asterisk (*), on p. ix.

* Note expliquant l'astérisque (*), p. ix.

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Limitation

(5) If the authorized capital of the company is reduced under section 30, no shares may be issued under this section in any amount or number or in respect of any class of shares that would have the effect of increasing or altering the authorized capital at the time of the issue.

(5) Si le capital autorisé de la compagnie est réduit en vertu de l'article 30, on ne peut émettre, en vertu du présent article, des actions qui, étant donné leur montant, leur nombre ou leur catégorie auraient pour effet d'augmenter ou de modifier le capital autorisé au moment de l'émission.

Application of Statutory Provisions

Application de dispositions législatives

Canada Corporations Act

26. (1) Subject to section 27 and to any provision of this Act relating to the same matter, Part I of the *Canada Corporations Act* applies to the company with such modification as circumstances require.

26. (1) Sous réserve de l'article 27 et de toute disposition de la présente loi relative à la même question, la Partie I de la *Loi sur les corporations canadiennes* s'applique à la compagnie avec les modifications que nécessitent les circonstances.

Loi sur les corporations canadiennes

Part III [IV, C-32]

(2) Part III of the *Canada Corporations Act* does not apply to the company.

(2) La Partie III de la *Loi sur les corporations canadiennes* ne s'applique pas à la compagnie.

Partie III [IV: C-32]

Excluded provisions of *Canada Corporations Act* [2.4-9, 12, 13(1)-(8), 14-16, 20, 28-33, 35, 38, 39, 40-41.1, 44-47, 51-60, 61-64, 65, 67, 68, 87, 89, 92, 94, 104, 106, 133(9)-(11.1), 134, 135, 137, 148, 150-152; C-32]

27. (1) The following provisions of Part I of the *Canada Corporations Act* do not apply to the company, namely: section 2,* sections 4 to 8, section 11, subsections (1) to (6) of section 12, sections 12A to 14, section 17, sections 25 to 30, section 32, section 35, subsection (2) of section 36, sections 37 to 38A, sections 41 to 44, sections 48 to 58, sections 60 to 62A, section 63, subsections (1) to (3) and subsection (5) of section 65, sections 84 and 85, section 87, paragraph (d) of section 90, section 92, section 102, subsection (1) of section 106, subsections (10) to (12a) of section 125, sections 126 and 127, section 128A, section 139 and sections 140A to 142.

27. (1) Les dispositions suivantes de la Partie I de la *Loi sur les corporations canadiennes* ne s'appliquent pas à la compagnie, à savoir: l'article 2,* les articles 4 à 8, l'article 11, les paragraphes (1) à (6) de l'article 12, les articles 12A à 14, l'article 17, les articles 25 à 30, l'article 32, l'article 35, le paragraphe (2) de l'article 36, les articles 37 à 38A, les articles 41 à 44, les articles 48 à 58, les articles 60 à 62A, l'article 63, les paragraphes (1) à (3) et le paragraphe (5) de l'article 65, les articles 84 et 85, l'article 87, l'alinéa d) de l'article 90, l'article 92, l'article 102, le paragraphe (1) de l'article 106, les paragraphes (10) à (12a) de l'article 125, les articles 126 et 127, l'article 128A, l'article 139, et les articles 140A à 142.

Dispositions de la *Loi sur les corporations canadiennes* qui sont exclues [2.4-9, 12, 13(1)-(8), 14-16, 20, 28-33, 35, 38, 39, 40-41.1, 44-47, 51-60, 61-64, 65, 67, 68, 87, 89, 92, 94, 104, 106, 133(9)-(11.1), 134, 135, 137, 148, 150-152; C-32]

Saving [10, 11; C-32]

(2) Sections 9 and 10* of the *Canada Corporations Act* apply in respect only of any letters patent issued pursuant to section 30 of this Act.

(2) Les articles 9 et 10* de la *Loi sur les corporations canadiennes* ne s'appliquent que relativement aux lettres patentes émises en application de l'article 30 de la présente loi.

Réserve [10, 11; C-32]

Company deemed insider

(3) Where the company redeems or purchases for cancellation any shares of the company under section 21, 22, 23 or 36, any provisions of the *Canada Corporations Act* relating to insider trading by an insider

(3) Lorsque la compagnie rachète ou achète pour annulation des actions de la compagnie en vertu des articles 21, 22, 23 ou 36, toutes dispositions de la *Loi sur les corporations canadiennes* relatives aux opé-

La compagnie est réputée être un dirigeant

* Note explaining asterisk (*), on p. ix.

* Note expliquant l'astérisque (*), p. ix.

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of a company apply in respect of the redemption or purchase for cancellation of such shares as though the company were an insider within the meaning of those provisions with respect to those shares.

Constructing provisions of Canada Corporations Act

(4) Where a provision of the *Canada Corporations Act* that applies in respect of the company makes reference to letters patent, the reference shall be construed in relation to the company as a reference to this Act, and if any such provision makes reference to supplementary letters patent, the reference shall be construed in relation to the company as letters patent.

rations boursières d'un dirigeant d'une compagnie s'appliquent au rachat ou à l'achat pour annulation de ces actions comme si la compagnie était un dirigeant au sens de ces dispositions relativement à ces actions.

(4) Lorsqu'une disposition de la *Loi sur les corporations canadiennes* qui s'applique en ce qui concerne la compagnie fait mention de lettres patentes, la mention doit être interprétée par rapport à la compagnie comme mention de la présente loi et, si une telle disposition fait mention de lettres patentes supplémentaires, la mention doit être interprétée, par rapport à la compagnie, comme une mention de lettres patentes.

Interprétation des dispositions de la Loi sur les corporations canadiennes

Winding-up

28. No Act relating to the solvency or winding-up of a corporation applies to the company and in no case shall the affairs of the company be wound up unless Parliament so provides.

28. Aucune loi relative à la solvabilité ou à la liquidation d'une corporation ne s'applique à la compagnie et la liquidation de la compagnie ne peut en aucun cas intervenir sans décision du Parlement.

Liquidation

Application of section 16 of the Canada Corporations Act
[18, C-32]

29. Section 16* of the *Canada Corporations Act* applies to the company except that subsection (1) does not apply in respect of subscriptions for shares of the company by Her Majesty in right of Canada and a reference to letters patent in paragraph (a) of that subsection shall be construed as a reference to the by-laws.

29. L'article 16* de la *Loi sur les corporations canadiennes* s'applique à la compagnie, sauf que le paragraphe (1) n'est pas applicable à la souscription d'actions de la compagnie par Sa Majesté du chef du Canada et qu'une mention des lettres patentes à l'alinéa a) de ce paragraphe doit s'interpréter comme une mention des règlements administratifs.

Application de l'article 16 de la Loi sur les corporations canadiennes
[18, C-32]

Alteration of Capital, Objects and Powers

Alteration of objects, powers and share capital

30. (1) Without derogating in any way from the powers of the company under sections 21, 22, 23, 25, 26 and 36, the company may from time to time, when authorized by by-law duly passed by the Board and sanctioned by at least two-thirds of the votes cast at a special general meeting of the shareholders called for the purpose, and confirmed by letters patent issued in accordance with this section,

(a) extend the objects of the company to include other objects for which a company may be incorporated under the *Canada Corporations Act*;

Modification du capital, des objets et des pouvoirs

30. (1) Sans que cela diminue en rien les pouvoirs de la compagnie en vertu des articles 21, 22, 23, 25, 26 et 36, cette dernière peut, à l'occasion, lorsqu'elle y est autorisée par règlement administratif dûment adopté par le conseil et sanctionné par les deux tiers au moins des voix exprimées à une assemblée générale extraordinaire des actionnaires convoquée à cette fin et confirmée par lettres patentes émises conformément au présent article,

a) étendre les objets de la compagnie afin d'y inclure d'autres objets en vue desquels une compagnie peut être cons-

Modification des objets, des pouvoirs et du capital social

* Note explaining asterisk (*), on p. ix.

* Note expliquant l'astérisque (*), p. ix.

(b) reduce, limit, amend or vary the objects or powers of the company;

(c) reorganize, change, alter, increase, reduce, subdivide, consolidate, classify or reclassify the authorized capital, the issued and outstanding shares of any class and the paid-up capital of the company in any way or manner whatever;

(d) alter or vary the provisions attached to any preferred shares if such provisions do not contain terms permitting such alteration or variation and prescribing the manner of making or approving such alteration or variation;

(e) cancel any shares of the company that at the date of the enactment of the by-law have not been subscribed for or agreed to be issued, and diminish the amount of the authorized capital of the company by the amount of the shares so cancelled; or

(f) change, amplify or revise the Schedules.

Rights of holders of a class or series of a class

(2) Where the holders of any class or series of a class of shares of the company would be adversely affected by any by-law made under subsection (1) concerning any matter set out in paragraph (c), (d) or (e) of that subsection, the by-law shall also be sanctioned by the holders of the shares adversely affected, in the manner provided by the provisions attaching to such shares or, in the absence of any such provisions, by at least two-thirds of the votes of the holders of each class of such shares cast at a special general meeting of the shareholders called for that purpose.

Confirmation by letters patent

(3) The member of the Queen's Privy Council charged with the administration of the *Canada Corporations Act* may issue letters patent for the purpose of this section and the letters patent shall be laid before Parliament not later than fifteen days after their issue, or if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is

tituée en corporation en vertu de la *Loi sur les corporations canadiennes*;

b) réduire, limiter, modifier ou changer les objets ou pouvoirs de la compagnie;

c) réorganiser, modifier, augmenter, diminuer, réduire, subdiviser, consolider, classer ou reclasser le capital autorisé, les actions émises et en circulation de toute catégorie et le capital versé de la compagnie de quelque façon que ce soit;

d) modifier ou changer les dispositions afférentes à des actions privilégiées si de telles dispositions ne contiennent pas de modalités autorisant ce changement ou cette modification et prescrivant la façon de faire ou d'approuver un tel changement ou une telle modification;

e) annuler des actions de la compagnie qui n'ont pas encore été souscrites ou dont l'émission n'a pas encore été convenue à la date de l'établissement du règlement administratif et réduire le capital autorisé de la compagnie du montant des actions ainsi annulées; ou

f) changer, élargir ou réviser les annexes.

(2) Lorsque les détenteurs d'une catégorie ou série d'une catégorie d'actions de la compagnie seraient lésés par un règlement administratif établi en vertu du paragraphe (1) concernant une question énoncée aux alinéas c), d) ou e) de ce paragraphe, le règlement administratif doit également être sanctionné par les détenteurs lésés de la manière prévue par les dispositions afférentes à ces actions ou, en l'absence de dispositions semblables, par les deux tiers au moins des voix exprimées par les détenteurs de chaque catégorie de ces actions à une assemblée générale extraordinaire des actionnaires convoquée à cet effet.

Droits des détenteurs d'une catégorie ou série d'une catégorie

(3) Le membre du Conseil privé de la Reine qui est chargé de l'application de la *Loi sur les corporations canadiennes* peut délivrer des lettres patentes aux fins du présent article et les lettres patentes doivent être déposées devant le Parlement dans les quinze jours qui suivent leur délivrance ou, si le Parlement ne siège pas à ce moment-là, l'un quelconque des quinze

Confirmation par lettres patentes

sitting; and the letters patent do not become effective until both Houses of Parliament by resolution affirm the letters patent whereupon the letters patent come into operation with effect from the date of the last such affirmation.

premiers jours où il siège par la suite; et les lettres patentes ne prennent effet que lorsque les deux Chambres du Parlement ont ratifié les lettres patentes, par résolution, sur quoi les lettres patentes entrent en vigueur avec effet à compter de la dernière en date de ces ratifications.

General

Not Crown corporation

31. The company is not an agent of Her Majesty or a Crown corporation within the meaning of the *Financial Administration Act*.

Insurance, trust and loan funds

32. The shares of the company are an authorised investment for the funds of a corporation to which the *Canadian and British Insurance Companies Act*, the *Loan Companies Act* or the *Trust Companies Act* applies.

Redemption price not profit

33. (1) Unless express provision to the contrary is made in the *Income Tax Act* by specific reference to the company;

(a) no part of the price paid upon a redemption or purchase for cancellation of any common shares of the company shall be deemed to be a distribution, allotment or division of the profits of the company; and

(b) in respect of the company and its shareholders, subsection (2) of section 81 of the *Income Tax Act* does not apply to any redemption or purchase for cancellation of common shares of the company;

nor shall any part of such price be deemed, for the purposes of that Act, to have been credited to shareholders' accounts or otherwise appropriated for or on account of shareholders, or to have been received as a dividend.

"Shareholders" defined

(2) For the purposes of this section, "shareholders" include shareholders within the meaning of the *Income Tax Act*.

Dispositions générales

31. La compagnie n'est ni un mandataire de Sa Majesté, ni une corporation de la Couronne au sens de la *Loi sur l'administration financière*. La compagnie n'est pas une corporation de la Couronne

32. Les actions de la compagnie font partie des placements autorisés pour les fonds d'une corporation à laquelle s'applique la *Loi sur les compagnies d'assurance canadiennes et britanniques*, la *Loi sur les compagnies de prêts*, ou la *Loi sur les compagnies fiduciaires*. Fonds d'assurance, de fiducie et de prêt

33. (1) A moins qu'une disposition prévoyant expressément le contraire ne figure dans la *Loi de l'impôt sur le revenu* en ce qui concerne la compagnie en particulier, Le prix de rachat n'est pas un bénéfice

a) aucune partie du prix payé lors d'un rachat, ou achat pour annulation, d'actions ordinaires de la compagnie n'est censée être une distribution, une affectation ou un partage des bénéfices de la compagnie; et

b) en ce qui concerne la compagnie et ses actionnaires, le paragraphe (2) de l'article 81 de la *Loi de l'impôt sur le revenu* ne s'applique pas à un rachat, ou achat pour annulation, d'actions ordinaires de la compagnie;

et aucune partie de ce prix n'est censée, aux fins de cette loi, avoir été créditée aux comptes des actionnaires ou autrement affectée aux actionnaires ou pour leur compte ou avoir été reçue à titre de dividende.

(2) Aux fins du présent article, «actionnaires» comprend les actionnaires au sens de la *Loi de l'impôt sur le revenu*. Définition de «actionnaires»

Conclusions
reached by
Board

34. In determining for the purposes of this Act whether any shares are held in contravention of the charter of the company, whether a person is or is not a resident of Canada, whether an individual is a Canadian citizen, whether a shareholder is associated with any other shareholder within the meaning of the statutory conditions, whether a corporation is directly or indirectly controlled by persons who are not residents of Canada or any other circumstances relevant to the performance of the duties of the Board under this Act, the company and any director, officer, employee or agent of the company may rely upon any statements made in any declaration submitted under section 16 or rely upon the knowledge of any of the directors of such circumstances; and the company, directors, officers, employees or agents are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.

34. En vue de déterminer, aux fins de la présente loi, si des actions sont détenues en violation de la charte de la compagnie, si une personne est ou n'est pas un résident du Canada, si un particulier est un citoyen canadien, si un actionnaire est associé avec un autre actionnaire au sens des conditions légales, si une corporation est directement ou indirectement contrôlée par des personnes qui ne sont pas des résidents du Canada ou toutes autres circonstances pertinentes à l'accomplissement des devoirs du conseil en vertu de la présente loi, la compagnie et tout administrateur, membre de la direction, employé ou mandataire de la compagnie peut se fonder sur les affirmations d'une déclaration soumise en vertu de l'article 16 ou sur la connaissance de ces faits que peuvent avoir les administrateurs; et la compagnie, les administrateurs, les membres de la direction, les employés ou les mandataires ne sont responsables dans aucune action pour une chose faite ou omise par eux de bonne foi, par suite de conclusions auxquelles ils sont arrivés en se fondant sur des affirmations ou une connaissance semblables.

Conclusions
du conseil

PART II

FEDERAL GOVERNMENT PARTICIPATION

Shares may
be acquired
by Canada

35. (1) With the approval of the Governor in Council but subject to this Part, the Minister of Finance may, from time to time,

- (a) subscribe for, purchase and hold shares of the company for the Government of Canada; and
- (b) enter into an agreement with the company for the Government of Canada to purchase any shares of the company offered at any time to the public that remain unsubscribed at the end of any period specified in that agreement.

How held
and voted

(2) Shares of the company purchased for the Government of Canada shall be registered in the books of the company in the

PARTIE II

PARTICIPATION DU GOUVERNEMENT FÉDÉRAL

35. (1) Avec l'approbation du gouvernement en conseil mais sous réserve de la présente Partie, le ministre des Finances peut, à l'occasion,

Le gouverne-
ment du
Canada peut
souscrire des
actions

- a) souscrire, acheter et détenir des actions de la compagnie pour le gouvernement du Canada; et
- b) conclure avec la compagnie, pour le gouvernement du Canada, un accord par lequel ce dernier s'engage à acheter toutes actions de la compagnie offertes au public à un moment quelconque et qui n'ont pas encore été souscrites à l'expiration de tout délai spécifié dans cet accord.

Modalité de
l'enregistre-
ment et de
l'exercice
des droits
de vote

(2) Les actions de la compagnie achetées pour le gouvernement du Canada doivent être enregistrées dans les livres de la com-

name of Her Majesty in right of Canada as represented by the Minister of Finance and may, in accordance with such regulations as the Governor in Council may prescribe, be voted by the Minister of Finance or his duly authorised proxy on behalf of Her Majesty.

pagnie au nom de Sa Majesté du chef du Canada, représentée par le ministre des Finances, et les droits de vote y afférents peuvent, conformément aux règlements que le gouverneur en conseil peut prescrire, être exercés, pour le compte de Sa Majesté, par le ministre des Finances ou par le fondé de pouvoirs dûment autorisé de ce dernier

Extent and
condition
of holdings

36. (1) Notwithstanding any other provision of this Act, Her Majesty in right of Canada may purchase, own and hold shares of the company in excess of ten per cent of the total number of issued and outstanding voting shares of the company but subject to the following conditions:

(a) the aggregate amount that the Government of Canada may at any one time have invested in the company or be committed to invest in the company by way of investment in the shares of the company shall not exceed two hundred and fifty million dollars at the purchase price thereof plus the amount of any shares or securities of the company acquired pursuant to a sale under section 39;

(b) if the total number of voting shares of the company held by Her Majesty in right of Canada, any agent of Her Majesty in right of Canada and any persons associated with such agent, within the meaning of the statutory conditions, exceed in number ten per cent of the total number of issued and outstanding voting shares of the company, the company may at its sole option redeem for cancellation such number of common shares of the company as equals the number of voting shares held by Her Majesty in right of Canada in excess of ten per cent of the total number of issued and outstanding voting shares or any lesser number thereof, at the net asset value of the common shares so redeemed; and

(c) unless otherwise agreed by the company and the Minister of Finance on behalf of the Government of Canada, no shares of the company shall be purchased, owned or held by Her Majesty in

36. (1) Nonobstant toute autre disposition de la présente loi, Sa Majesté du chef du Canada peut acheter, posséder et détenir un nombre d'actions de la compagnie dépassant dix pour cent du total des actions donnant droit de vote, émises et en circulation de la compagnie, mais seulement sous réserve des conditions suivantes:

a) le montant total que le gouvernement du Canada a placé ou s'est engagé à placer dans la compagnie sous forme d'investissement dans les actions de la compagnie ne doit, à aucun moment, dépasser deux cent cinquante millions de dollars calculés d'après le prix d'achat de ces actions plus le montant de toutes actions ou valeurs de la compagnie acquises par suite d'une vente en vertu de l'article 39;

b) si le total des actions donnant droit de vote de la compagnie qui sont détenues pour Sa Majesté du chef du Canada, un mandataire de Sa Majesté du chef du Canada, et toutes personnes associées avec ce mandataire, au sens des conditions légales, dépasse dix pour cent du total des actions donnant droit de vote de la compagnie qui sont émises et en circulation, celle-ci peut, à sa discrétion, racheter pour annulation un nombre d'actions ordinaires de la compagnie égal au nombre des actions donnant droit de vote détenues par Sa Majesté du chef du Canada en excédent de dix pour cent du total des actions donnant droit de vote qui sont émises et en circulation ou d'un moindre nombre de ces actions, à la valeur d'actif net des actions ordinaires ainsi rachetées; et

c) à moins qu'il n'en soit autrement convenu par la compagnie et le ministre des Finances au nom du gouvernement du

Etendue
conditions
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ticipations

right of Canada, any agent of Her Majesty in such right and any persons associated with such agent, within the meaning of the statutory conditions, other than shares acquired by or on behalf of Her Majesty in right of Canada directly from the company by purchase, dividend or otherwise.

Canada, aucune action de la compagnie ne doit être achetée, possédée ni détenue par Sa Majesté du chef du Canada, un mandataire de Sa Majesté de ce chef et toutes personnes associées à ce mandataire, au sens des conditions légales, si ce n'est une action acquise par Sa Majesté du chef du Canada ou pour son compte directement de la compagnie, par achat, comme dividende, ou autrement.

Price on redemption of Government shares

(2) Where common shares acquired for the Government of Canada directly from the company are redeemed pursuant to paragraph (b) of subsection (1), the price to be paid for such shares shall not be less than the average price paid by the Government of Canada for those shares, but the Governor in Council may waive the requirements of this provision in respect of any common shares of the company when the net asset value of the common shares of the company is less than the average price paid by the Government of Canada for the shares and has been less than that value for a period of at least twelve months.

(2) Lorsque des actions ordinaires acquises directement de la compagnie pour le gouvernement du Canada sont rachetées en application de l'alinéa b) du paragraphe (1), le prix à payer pour ces actions ne doit pas être inférieur au prix moyen payé par le gouvernement du Canada pour ces actions, mais le gouverneur en conseil peut renoncer à exiger l'application de la présente disposition relativement à des actions ordinaires de la compagnie lorsque la valeur d'actif net des actions ordinaires de la compagnie est inférieure au prix moyen payé par le gouvernement du Canada pour les actions et a été inférieure à ce prix pendant une période d'au moins douze mois.

Prix de rachat des actions du gouvernement

Net asset value

(3) Where for any of the purposes of this Act it is necessary to determine the net asset value of any of the common shares of the company, that value shall be determined in accordance with Schedule II.

(3) Lorsque, à l'une des fins de la présente loi, il est nécessaire de déterminer la valeur d'actif net de l'une quelconque des actions ordinaires de la compagnie, cette valeur doit être déterminée conformément à l'annexe II.

Valeur d'actif net

Authority to loan moneys to company

37. (1) Subject to subsection (2), the Minister of Finance may, with the approval of the Governor in Council, and upon such terms and conditions as the Governor in Council may prescribe, make loans to the company and may acquire and hold securities of the company as evidence thereof.

37. (1) Sous réserve du paragraphe (2), le ministre des Finances peut, avec l'approbation du gouverneur en conseil et selon les modalités que le gouverneur en conseil peut prescrire, consentir des prêts à la compagnie et peut acquérir et détenir des valeurs de la compagnie comme preuve de ces prêts.

Droit de prêter de l'argent à la compagnie

Limit

(2) The total of all outstanding loans made under this section to the company shall not at any time exceed the sum of one hundred million dollars.

(2) Le montant total non remboursé des prêts consentis à la compagnie en vertu du présent article ne doit pas dépasser la somme de cent millions de dollars.

Limite

Disposal of shares acquired by underwriting

38. (1) Where any shares of the company have been acquired for the Government of Canada under an agreement with

38. (1) Lorsque des actions de la compagnie ont été acquises pour le gouvernement du Canada en vertu d'un accord

Disposition d'actions acquises par souscription à forfait

the company pursuant to paragraph (b) of subsection (1) of section 35 to take up unsubscribed shares of the company, those shares shall, subject to subsection (3) of section 42, be disposed of by the Government of Canada in such manner and at such times as may be specified in the agreement to purchase the unsubscribed shares

conclu avec la compagnie en application de l'alinéa b) du paragraphe (1) de l'article 35, pour la souscription des actions non souscrites de la compagnie le gouvernement du Canada doit, sous réserve du paragraphe (3) de l'article 42 se départir de ces actions de la manière et aux époques que peut spécifier l'accord d'achat des actions non souscrites

Dispositions
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(2) Sections 98* to 98F of the *Canada Corporations Act* are applicable with respect to any sale or purchase of shares of the company by or on behalf of the Government of Canada

(2) Les articles 98* à 98F de la *Loi sur les corporations canadiennes* s'appliquent relativement à toute vente ou achat d'actions de la compagnie par le gouvernement du Canada ou pour son compte

Base of
certain
corporations

39. (1) The Governor in Council may sell or cause to be sold to the company, at such fair and reasonable price as may be agreed upon by the Governor in Council and the company, the whole or any part of the capital stock of any or all of the following

- (a) Polymer Corporation Limited,
- (b) Eldorado Nuclear Limited;
- (c) Panarctic Oils Ltd., and
- (d) Northern Transportation Company Limited

39. (1) Le gouverneur en conseil peut vendre ou faire vendre à la compagnie au prix équitable et raisonnable dont peuvent convenir le gouverneur en conseil et la compagnie, tout ou partie du capital social de l'une, de plusieurs ou de la totalité des corporations suivantes

- a) Société Polymer Limitée,
- b) Eldorado Nucléaire Limitée,
- c) Panarctic Oils Ltd.; et
- d) La Société des transports du Nord Limitée,

Vente de
certaines
corporations

but subject, in the case of the capital stock of Panarctic Oils Ltd, to any agreements relating to the sale of capital stock held by the Crown.

sous réserve, toutefois, pour le capital social de la Panarctic Oils Ltd, de tous accords concernant la vente du capital social détenu par la Couronne.

Purchase
price

(2) Any stock sold pursuant to this section may be sold for cash, shares or securities of the company or any combination of cash, shares and securities of the company, as may be approved by the Governor in Council.

(2) Toute action vendue en application du présent article peut être vendue en contrepartie du numéraire, des actions et valeurs de la compagnie ou de la combinaison de numéraire, d'actions et de valeurs de la compagnie que peut approuver le gouverneur en conseil.

Option to
appoint
directors

40. (1) Notwithstanding any provision of Part I or the *Canada Corporations Act*, the Minister of Finance may, with the approval of the Governor in Council, annually appoint not more than four of the members of the Board of Directors in lieu of voting the shares held by Her Majesty

40. (1) Nonobstant toute disposition de la Partie I ou de la *Loi sur les corporations canadiennes*, le ministre des Finances peut, chaque année, avec l'approbation du gouverneur en conseil nommer au plus quatre des membres du conseil d'administration au lieu d'exercer les droits de vote afférents

Possibilité
de nommer
des admi-
nistrateurs

* Note explaining asterisk (*), on p. ix.

* Note expliquant l'astérisque (*), p. ix.

in right of Canada on any resolution electing members of the Board of Directors.

aux actions détenues par Sa Majesté du chef du Canada dans toute résolution éliminant des membres du conseil d'administration.

(2) An appointment under subsection (1) shall be made by notice in writing to the company at least thirty days before the date of the notice by the Board calling an annual general meeting, which date shall be notified to the Minister of Finance at least forty-five days before that date.

(2) Une nomination en vertu du paragraphe (1) doit être faite par avis écrit donné à la compagnie trente jours au moins avant la date de l'avis du conseil convoquant une assemblée générale annuelle, date qui doit être notifiée au ministre des Finances quarante-cinq jours au moins avant cette date.

(3) Where a director appointed to the Board pursuant to this section dies, resigns or becomes incapable of carrying out his duties, the Minister of Finance may appoint a person to replace such director.

(3) Lorsqu'un administrateur nommé au conseil en application du présent article décède, démissionne ou devient incapable d'exercer ses fonctions, le ministre des Finances peut nommer une personne pour remplacer cet administrateur.

(4) Directors appointed pursuant to this section cease to hold office, unless re-appointed for a further term, at the time the directors elected at an annual general meeting assume office.

(4) Les administrateurs nommés en conformité du présent article cessent d'être en fonctions, à moins qu'ils ne soient nommés pour un nouveau mandat, au moment où les administrateurs élus à une assemblée générale annuelle prennent leurs fonctions.

41. (1) During any period when the total number of voting shares of the company held by Her Majesty in right of Canada exceeds fifty per cent of the total number of issued and outstanding voting shares of the company, the Deputy Minister of Finance and the Deputy Minister of Industry, Trade and Commerce are members of the Board *ex officio* and without affecting the membership of the Board.

41. (1) Pendant toute période où le nombre des actions donnant droit de vote de la compagnie détenues par Sa Majesté du chef du Canada dépasse cinquante pour cent du total des actions donnant droit de vote de la compagnie qui sont émises et en circulation, le sous-ministre des Finances et le sous-ministre de l'Industrie et du Commerce sont membres de droit du conseil, sans que cela affecte la composition du conseil.

(2) If the Deputy Minister of Finance or the Deputy Minister of Industry, Trade and Commerce, as the case may be, is absent or is unable to act or if the office is vacant, such other officer of the Department of Finance or of the Department of Industry, Trade and Commerce as the Minister concerned may nominate, shall substitute for the *ex officio* member under subsection (1).

(2) Si le sous-ministre des Finances ou le sous-ministre de l'Industrie et du Commerce, selon le cas, est absent ou incapable d'exercer ses fonctions, ou si le poste est vacant, tel autre fonctionnaire du ministère des Finances ou du ministère de l'Industrie et du Commerce que peut désigner le ministre concerné doit remplacer le membre de droit prévu par le paragraphe (1).

(3) An *ex officio* member of the Board of Directors shall serve on the Board without

(3) Un membre de droit du conseil d'administration doit faire partie du conseil

remuneration but he may be paid reasonable travelling and other expenses incurred by him in attending meetings of the Board.

sans rémunération mais il peut lui être payé les frais raisonnables de déplacement et autres encourus par lui lors de sa présence aux réunions du conseil.

Voting

(4) An *ex officio* member is not entitled to vote at meetings of the Board.

(4) Un membre de droit n'a pas le droit de voter aux réunions du conseil. Droit de vote

Payment out of C R F

42. (1) Subject to this Part, the Minister of Finance may make advances out of the Consolidated Revenue Fund for the purpose of acquiring shares or securities of the company or making loans to the company.

42. (1) Sous réserve de la présente Partie, le ministre des Finances peut consentir des avances sur le Fonds du revenu consolidé aux fins d'acquérir des actions ou des valeurs de la compagnie ou de lui accorder des prêts. Prélèvement sur le P R C

Disposal of shares and dividends, etc

(2) Subject to subsection (1) of section 38 and subsection (3) of this section, the Minister of Finance may, with the approval of the Governor in Council from time to time, dispose of any shares or securities of the company held by Her Majesty in right of Canada or any other shares or securities acquired from the company by way of purchase, dividend or otherwise and all proceeds received from any such disposition form part of the Consolidated Revenue Fund.

(2) Sous réserve du paragraphe (1) de l'article 38 et du paragraphe (3) du présent article, le ministre des Finances peut, à l'occasion, avec l'approbation du gouverneur en conseil, se départir d'actions ou de valeurs de la compagnie détenues par Sa Majesté du chef du Canada ou de toutes autres actions ou valeurs acquises de la compagnie par achat, sous forme de dividende ou autrement et tous les produits provenant d'une telle disposition font partie du Fonds du revenu consolidé. Disposition des actions et des dividendes, etc

Required holdings

(3) So far as it is in the public interest to do so, the Minister of Finance shall endeavour to maintain the percentage of the voting shares of the company held by Her Majesty in right of Canada at any time at not less than ten per cent of the total number of issued and outstanding voting shares of the company; and the Minister of Finance shall not dispose of any voting shares of the company if the disposition would reduce the percentage of voting shares held by Her Majesty in right of Canada to less than ten per cent of the total number of issued and outstanding voting shares of the company.

(3) Pour autant qu'il est dans l'intérêt public de le faire, le ministre des Finances doit s'efforcer de maintenir le pourcentage des actions donnant droit de vote de la compagnie détenues par Sa Majesté du chef du Canada à tout moment, à dix pour cent au moins du total des actions donnant droit de vote de la compagnie qui sont émises et en circulation; et le ministre des Finances ne doit se départir d'actions de la compagnie donnant droit de vote si cette disposition réduisait le pourcentage des actions donnant droit de vote détenues par Sa Majesté du chef du Canada à moins de dix pour cent du total des actions donnant droit de vote de la compagnie qui sont émises et en circulation. Participation requise

REVISED STATUTES

References

43. A reference in this Act to any Act that is repealed and replaced by the Revised Statutes of Canada, 1970, or to any provision of such an Act, shall, after

STATUTS REVISÉS

43. Lorsque, dans la présente loi, mention est faite d'une loi abrogée et remplacée par les Statuts révisés du Canada de 1970, ou d'une disposition d'une telle loi, Mentions

SCHEDULE I

ANNEXE I

CONDITIONS AFFECTING THE ACQUISITION
AND HOLDING OF VOTING SHARES

1. No person shall purchase or hold voting shares of the company in the right of or for the use or benefit of a non-resident, unless such non-resident is an individual who is a Canadian citizen.

2. (1) The total number of voting shares that may be held

(a) in the name or right of or for the use or benefit of a person, and

(b) in the name or right of or for the use or benefit of

(i) any shareholders associated with the person mentioned in paragraph (a), or

(ii) any other persons who would be deemed under these statutory conditions to be associated with the person mentioned in paragraph (a), if both he and such other persons were shareholders,

shall not exceed three per cent of the total number of the issued and outstanding voting shares of the company.

(2) Subsection (1) does not apply, in respect of any voting shares held by Her Majesty in right of Canada.

(3) The total number of voting shares of the company that may be held

(a) in the name or right of, or for the use or benefit of Her Majesty in right of a province, and

(b) in the name or right of, or for the use or benefit of an agent of Her Majesty in the right of such province and any persons associated with such agent

shall not exceed three per cent of the total number of the issued and outstanding voting shares of the company.

3. The total number of voting shares that may be held in the name or right of or for the use or benefit of an agent of Her Majesty in right of Canada and any persons associated with such agent shall not exceed

CONDITIONS RÉGISSANT L'ACQUISITION ET
LA POSSESSION D'ACTIONS DONNANT
DROIT DE VOTE

1. Nul ne doit acheter ni détenir d'actions donnant droit de vote de la compagnie soit du chef, soit pour l'usage ou au profit d'un non-résident, à moins que ce non-résident ne soit un particulier qui est citoyen canadien.

2. (1) Le nombre total d'actions donnant droit de vote qui peuvent être détenues

a) soit au nom, soit du chef, soit pour l'usage ou au profit d'une personne, et

b) soit au nom, soit du chef, soit pour l'usage ou au profit

(i) de tous actionnaires associés avec la personne mentionnée à l'alinéa a), ou

(ii) de toutes autres personnes qui seraient censées, en vertu des présentes conditions légales, être associées avec la personne mentionnée à l'alinéa a) si cette dernière et ces autres personnes étaient actionnaires,

ne doit pas dépasser trois pour cent du nombre total des actions donnant droit de vote de la compagnie qui sont émises et en circulation.

(2) Le paragraphe (1) ne s'applique pas relativement à des actions donnant droit de vote détenues par Sa Majesté du chef du Canada.

(3) Le nombre total des actions donnant droit de vote de la compagnie qui peuvent être détenues

a) soit au nom, soit du chef, soit pour l'usage ou au profit de Sa Majesté du chef d'une province, et

b) soit au nom, soit du chef, soit pour l'usage ou au profit d'un mandataire de Sa Majesté du chef de cette province ou de personnes associées à ce mandataire,

ne doit pas dépasser trois pour cent du nombre total des actions donnant droit de vote de la compagnie émises et en circulation.

3. Le nombre total d'actions donnant droit de vote qui peuvent être détenues soit au nom, soit du chef, soit pour l'usage ou au profit d'un mandataire de Sa Majesté du chef du Canada et de toutes personnes

SCHEDULE I

ANNEXE I

CONDITIONS AFFECTING THE ACQUISITION AND HOLDING OF VOTING SHARES

1. No person shall purchase or hold voting shares of the company in the right of or for the use or benefit of a non-resident, unless such non-resident is an individual who is a Canadian citizen.

2. (1) The total number of voting shares that may be held

(a) in the name or right of or for the use or benefit of a person, and

(b) in the name or right of or for the use or benefit of

(i) any shareholders associated with the person mentioned in paragraph (a), or

(ii) any other persons who would be deemed under these statutory conditions to be associated with the person mentioned in paragraph (a), if both he and such other persons were shareholders,

shall not exceed three per cent of the total number of the issued and outstanding voting shares of the company.

(2) Subsection (1) does not apply, in respect of any voting shares held by Her Majesty in right of Canada.

(3) The total number of voting shares of the company that may be held

(a) in the name or right of, or for the use or benefit of Her Majesty in right of a province, and

(b) in the name or right of, or for the use or benefit of an agent of Her Majesty in the right of such province and any persons associated with such agent

shall not exceed three per cent of the total number of the issued and outstanding voting shares of the company.

3. The total number of voting shares that may be held in the name or right of or for the use or benefit of an agent of Her Majesty in right of Canada and any persons associated with such agent shall not exceed

CONDITIONS RÉGISSANT L'ACQUISITION ET LA POSSESSION D'ACTIONS DONNANT DROIT DE VOTE

1. Nul ne doit acheter ni détenir d'actions donnant droit de vote de la compagnie soit du chef, soit pour l'usage ou au profit d'un non-résident, à moins que ce non-résident ne soit un particulier qui est citoyen canadien.

2. (1) Le nombre total d'actions donnant droit de vote qui peuvent être détenues

a) soit au nom, soit du chef, soit pour l'usage ou au profit d'une personne, et

b) soit au nom, soit du chef, soit pour l'usage ou au profit

(i) de tous actionnaires associés avec la personne mentionnée à l'alinéa a), ou

(ii) de toutes autres personnes qui seraient censées, en vertu des présentes conditions légales, être associées avec la personne mentionnée à l'alinéa a) si cette dernière et ces autres personnes étaient actionnaires,

ne doit pas dépasser trois pour cent du nombre total des actions donnant droit de vote de la compagnie qui sont émises et en circulation.

(2) Le paragraphe (1) ne s'applique pas relativement à des actions donnant droit de vote détenues par Sa Majesté du chef du Canada.

(3) Le nombre total des actions donnant droit de vote de la compagnie qui peuvent être détenues

a) soit au nom, soit du chef, soit pour l'usage ou au profit de Sa Majesté du chef d'une province, et

b) soit au nom, soit du chef, soit pour l'usage ou au profit d'un mandataire de Sa Majesté du chef de cette province ou de personnes associées à ce mandataire,

ne doit pas dépasser trois pour cent du nombre total des actions donnant droit de vote de la compagnie émises et en circulation.

3. Le nombre total d'actions donnant droit de vote qui peuvent être détenues soit au nom, soit du chef, soit pour l'usage ou au profit d'un mandataire de Sa Majesté du chef du Canada et de toutes personnes

SCHEDULE I—Continued

three per cent of the total number of the issued and outstanding voting shares of the company.

4 (1) For the purposes of these statutory conditions,

(a) "agent" means,

(i) in relation to Her Majesty in right of Canada or in right of a province, any agent of Her Majesty in either such right and includes a municipal or public body empowered to perform a function of government in Canada, any corporation empowered to perform a function or duty on behalf of Her Majesty in either such right or any body corporate controlled directly or indirectly by Her Majesty in either such right, but does not include an official or corporation performing a function or duty in connection with

(A) the administration or management of an estate or property of an individual, or

(B) the administration, management or investment of a fund established to provide compensation, hospitalization, medical care, annuity, pension or similar benefits to particular classes of individuals, or moneys derived from such a fund, and

(ii) in relation to the government of a foreign state or any political subdivision thereof, a person empowered to perform a function or duty on behalf of the government of the foreign state or political subdivision;

(b) "corporation" includes an association, partnership or other organization;

(c) "non-resident" means

(i) an individual who is not ordinarily resident in Canada,

(ii) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,

(iii) the government of a foreign state or any political subdivision thereof, or an agent of either,

(iv) a corporation that is controlled directly or indirectly by non-residents as defined in this paragraph,

(v) a trust

(A) established by a non-resident as defined in any of subparagraphs (ii) to (iv) other

ANNEXE I—Suite

associées avec lui, ne doit pas dépasser trois pour cent du total des actions donnant droit de vote de la compagnie émises et en circulation.

4. (1) Aux fins des présentes conditions légales,

a) «mandataire» désigne

(i) à l'égard de Sa Majesté du chef du Canada ou d'un chef d'une province, tout mandataire de Sa Majesté de l'un ou l'autre de ces chefs et comprend un organisme municipal ou autre organisme public habilité à exercer une fonction gouvernementale au Canada, toute corporation habilitée à exercer une fonction ou attribution pour le compte de Sa Majesté de l'un ou l'autre de ces chefs, ou une personne morale contrôlée directement ou indirectement par Sa Majesté de l'un ou l'autre de ces chefs, mais ne comprend pas un préposé ni une corporation exerçant une fonction ou attribution ayant trait à

(A) l'administration ou la gestion de la succession ou des biens d'un particulier, ou

(B) l'administration, la gestion ou l'investissement d'une caisse établie pour fournir l'indemnisation, l'hospitalisation, les soins médicaux, la retraite, la pension ou des prestations analogues à des catégories spéciales de particuliers, ou de deniers provenant d'une telle caisse, et

(ii) relativement au gouvernement d'un État étranger ou de toute subdivision politique d'un tel État, une personne habilitée à exercer une fonction ou attribution pour le compte du gouvernement de cet État ou de cette subdivision politique;

b) «corporation» comprend une association, une société ou un autre organisme;

c) «non-résident» désigne

(i) un particulier qui ne réside pas ordinairement au Canada,

(ii) une corporation constituée, formée ou autrement organisée ailleurs qu'au Canada,

(iii) le gouvernement d'un État étranger ou de toute subdivision politique d'un tel État, ou un mandataire de l'un ou l'autre,

(iv) une corporation qui est contrôlée directement ou indirectement par des non-résidents selon la définition qu'en donne le présent alinéa,

SCHEDULE I—Continued

than a trust for the administration of a pension fund for the benefit of individuals a majority of whom are residents, or

(B) in which non-residents as defined in any of subparagraphs (i) to (iv) have more than fifty per cent of the beneficial interest,

(vi) a corporation, of which the majority of the directors, or persons occupying the position of directors by whatever name called, are non-residents as defined in subparagraph (i), or

(vii) a corporation that is controlled directly or indirectly by a trust defined in this paragraph as a non-resident; and

(d) "resident" means an individual, corporation, trust or government that is not a non-resident.

(2) For the purposes of these statutory conditions, a shareholder is, except as provided by section 5 of these statutory conditions, deemed to be associated with another shareholder if

(a) one shareholder is a corporation of which the other shareholder is an officer or director;

(b) one shareholder is a partnership of which the other shareholder is a partner;

(c) one shareholder is a corporation that is controlled directly or indirectly by the other shareholder;

(d) both shareholders are corporations and one shareholder is controlled directly or indirectly by the same government in Canada, individual or corporation that controls directly or indirectly the other shareholder;

(e) both shareholders are members of a voting trust where the trust relates to voting shares of the company;

(f) both shareholders are agents of Her Majesty in right of Canada or officials or corporations performing on behalf of Her Majesty in such right a function or duty in connection with the administration, management or investment of any fund or moneys

ANNEXE I—Suite

(v) un organisme de fiducie,

(A) établi par un non-résident selon la définition qu'en donne l'un quelconque des sous-alinéas (ii) à (iv), autre qu'un organisme de fiducie chargé de l'administration d'une caisse de pension au profit de particuliers qui, en majorité, sont des résidents, ou

(B) dans lequel des non-résidents, selon la définition qu'en donne l'un quelconque des sous-alinéas (i) à (iv), ont plus de cinquante pour cent du droit de propriété en *equity*,

(vi) une corporation dont la majorité des administrateurs, ou des personnes occupant le poste d'administrateurs quel que soit le nom donné à ce poste, sont des non-résidents selon la définition qu'en donne le sous-alinéa (i), ou

(vii) une corporation qui est contrôlée directement ou indirectement par un organisme de fiducie que le présent alinéa définit comme étant un non-résident; et

d) «résident» désigne un particulier, une corporation, un organisme de fiducie ou un gouvernement qui n'est pas un non-résident.

(2) Aux fins des présentes conditions légales, un actionnaire est, sous réserve des dispositions de l'article 5 de ces conditions, censé être associé avec un autre actionnaire si

a) l'un de ces deux actionnaires est une corporation dont l'autre est un membre du bureau ou un administrateur;

b) l'un de ces actionnaires est une société dont l'autre est un associé;

c) l'un de ces actionnaires est une corporation qui est contrôlée directement ou indirectement par l'autre actionnaire;

d) les deux actionnaires sont des corporations et l'un d'eux est contrôlé directement ou indirectement par le même gouvernement au Canada, le particulier ou la corporation qui contrôle directement ou indirectement l'autre;

e) les deux actionnaires sont membres d'un organisme de fiducie institué en vue d'exercer le droit de vote attaché aux actions donnant droit de vote de la compagnie;

f) les deux actionnaires sont des mandataires de Sa Majesté du chef du Canada ou des préposés ou corporations exerçant, pour le compte de Sa Ma-

SCHEDULE I—Continued

referred to in clause (B) of subparagraph (i) of paragraph (a) of subsection (1);

(g) both shareholders are agents of Her Majesty in right of the same province or officials or corporations performing on behalf of Her Majesty in such right a function or duty in connection with the administration, management or investment of any fund or moneys referred to in clause (B) of subparagraph (i) of paragraph (a) of subsection (1);

(h) both shareholders are associated within the meaning of paragraphs (a) to (g) with the same shareholder; or

(i) both shareholders are parties to an agreement or arrangement, a purpose of which, in the opinion of the Board of Directors, is to require the shareholders to act in concert with respect to their interests in the company;

and the expression "associates", when used with reference to any person, means any persons deemed to be associated with him pursuant to this subsection.

(3) For the purposes of these statutory conditions, where a share of the company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident.

(4) For the purposes of these statutory provisions, a corporation shall be deemed to be controlled by another corporation, individual, trust or government, if at any time in the opinion of the Board of Directors it is at that time in fact effectively controlled by such other corporation, individual, trust or government either directly or indirectly and either through the holding of shares of the corporation or any other corporation or through the holding of a significant portion of the outstanding debt of a corporation, trust or individual or by any other means whether of a like or different nature.

(5) Where a corporation or trust that was at any time a resident becomes a non-resident, any shares of the company acquired by the corporation or the trust while it was a resident and held by it while it is a non-

ANNEXE I—Suite

jesté de ce chef, une fonction ou attribution ayant trait à l'administration, la gestion ou l'investissement d'une caisse ou de deniers que mentionne la disposition (B) du sous-alinéa (i) de l'alinéa a) du paragraphe (1);

g) les deux actionnaires sont des mandataires de Sa Majesté du chef de la même province ou des préposés ou corporations exerçant, pour le compte de Sa Majesté de ce chef, une fonction ou attribution ayant trait à l'administration, la gestion ou l'investissement d'une caisse ou de deniers que mentionne la disposition (B) du sous-alinéa (i) de l'alinéa a) du paragraphe (1);

h) les deux actionnaires sont, au sens des alinéas a) à g), associés avec le même actionnaire; ou.

i) les deux actionnaires sont parties à un accord ou à un arrangement, dont une des fins, de l'avis du conseil d'administration, est d'exiger des actionnaires qu'ils agissent de concert pour ce qui est de leurs intérêts dans la compagnie;

et le mot «associés», lorsqu'il est utilisé relativement à une personne quelconque, désigne toutes personnes censées être associées avec elle en application du présent paragraphe.

(3) Aux fins des présentes conditions légales, lorsqu'une action de la compagnie est détenue conjointement et qu'un ou plusieurs des co-détenteurs sont des non-résidents, l'action est censée détenue par un non-résident.

(4) Aux fins des présentes conditions légales, une corporation est censée être contrôlée par une autre corporation, un particulier, un organisme de fiducie ou un gouvernement, si à un moment quelconque, elle est en fait, de l'avis du conseil d'administration, effectivement contrôlée par cette autre corporation, ce particulier, cet organisme de fiducie ou ce gouvernement, soit directement, soit indirectement, et soit du fait qu'ils détiennent des actions de la corporation ou d'une autre corporation, qu'ils sont créanciers d'une fraction importante de la dette impayée d'une corporation, d'un organisme de fiducie ou d'un particulier, ou pour toute autre raison de même nature ou de nature différente.

(5) Lorsqu'une corporation ou un organisme de fiducie qui, à un moment quelconque, étaient des résidents, deviennent des non-résidents, toutes actions de la compagnie acquises par eux pendant qu'ils

SCHEDULE I—*Concluded*

resident shall be deemed, for the purposes of these statutory conditions, to be shares held by a resident for the use or benefit of a non-resident.

5. Notwithstanding subsection (2) of section 4 of these statutory conditions,

(a) where one shareholder who is a resident and who, but for this paragraph, would be deemed to be associated with another shareholder submits to the company a declaration stating that none of the voting shares of the company held by him or to be held by him is or will be, to his knowledge, held in the right of, or for the use or benefit of, himself or any person with whom, but for this paragraph, he would be deemed to be associated, neither shareholder is deemed to be associated with the other so long as the voting shares of the company from time to time held by the shareholder who made the declaration are not held contrary to the statements made in the declaration;

(b) two shareholders that are corporations and residents shall not be deemed to be associated with each other by virtue of paragraph (h) of subsection (2) of section 4 of these statutory conditions by reason only that each is deemed under paragraph (a) of that subsection to be associated with the same shareholder; and

(c) where it appears from the register of shareholders of the company that not more than two thousand of the voting shares of the company are held by a shareholder, he shall not be deemed to be associated with any other shareholder and no other shareholder shall be deemed to be associated with him.

ANNEXE I—*Fin*

étaient des résidents et détenues par eux pendant qu'ils sont des non-résidents, sont censées, aux fins des présentes conditions légales, être des actions détenues par un résident pour l'usage ou au profit d'un non-résident.

5. Nonobstant le paragraphe (2) de l'article 4 des présentes conditions légales,

a) lorsqu'un actionnaire qui est résident et qui, n'était-ce le présent alinéa, serait censé être associé avec un autre actionnaire, présente à la compagnie une déclaration affirmant qu'aucune des actions donnant droit de vote de la compagnie qui sont ou seront détenues par lui, n'est ou ne sera, à sa connaissance, détenue soit de son chef, soit pour son usage ou profit, soit du chef, pour l'usage ou au profit de toute personne avec laquelle, n'était-ce le présent alinéa, il serait censé être associé, aucun de ces actionnaires n'est censé être associé avec l'autre, tant que les actions donnant droit de vote de la compagnie détenues à l'occasion par l'actionnaire qui a fait la déclaration ne sont pas détenues contrairement aux affirmations de la déclaration;

b) deux actionnaires qui sont des corporations et des résidents, ne sont pas censés être associés l'un avec l'autre en vertu de l'alinéa h) du paragraphe (2) de l'article 4 des présentes conditions légales du seul fait que chacun est censé, en vertu de l'alinéa a) de ce paragraphe, être associé avec le même actionnaire; et

c) lorsque le registre des actionnaires de la compagnie indique qu'un actionnaire ne détient pas plus de deux mille actions donnant droit de vote de la compagnie, l'actionnaire n'est pas censé être associé avec un autre actionnaire et aucun autre actionnaire n'est censé être associé avec lui.

Chapter C-2

AN ACT RESPECTING THE CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC

DIVISION I

CONSTITUTION OF THE FUND

Body constitute	1. A body is constituted under the name of "Caisse de dépôt et placement du Québec".
Designation	It is designated in this act by the word "Fund".
1965 (1st sess.), c. 23, s. 1; 1977, c. 5, s. 14.
Corporate seat	2. The corporate seat of the Fund shall be in the city of Québec or in the immediate vicinity.
1965 (1st sess.), c. 23, s. 2.
Corporation	3. The Fund shall be a corporation within the meaning of the Civil Code and shall have such general powers of a corporation as are consistent with this act, in addition to the special powers herein conferred.
1965 (1st sess.), c. 23, s. 3.
Agent of the Crown.
Property	4. The Fund shall be an agent of the Crown in right of Québec. The moveable and immoveable property belonging to the Fund shall be the property of the Crown in right of Québec.
Authorization	Every alienation of immoveables by the Fund must first be authorized, generally or specially, by the Gouverneur en conseil.
Effect	Every authorization contemplated in the preceding paragraph shall have effect only from the date of its publication in the <i>Gazette officielle du Québec</i> .
1965 (1st sess.), c. 23, s. 4; 1970, c. 18, s. 1.

CAISSE DE DÉPÔT ET PLACEMENT

DIVISION II
ADMINISTRATION

Board of directors. **5.** The Fund shall be administered by a board of directors consisting of the General Manager of the Fund, the president of the Régie des rentes du Québec and seven other members appointed for three years by the Gouvernement who shall fix, as the case may be, the salary, additional salary, fees or allowances of each of them.

Appointments. Of such seven members, two shall be chosen from among the officers of the Gouvernement or the directors of a government agency, another shall be chosen from among the representatives of associations of employees and another shall be chosen from among the directors of cooperative associations.

Government agency. A government agency mentioned in the second paragraph is one to which the majority of its members are appointed by the Gouvernement or a minister, or at least one-half of whose capital stock is derived from the consolidated revenue fund.

1965 (1st sess.), c. 23, s. 5; 1977, c. 5, s. 14; 1977, c. 62, s. 1.

Associate members. **6.** There shall also be three associate members of the board of directors of the Fund who shall sit thereon without the right to vote: the Deputy Minister of Finance, one senior officer of Hydro-Québec attached to the finance branch and one member of the Commission municipale du Québec or an officer of the Ministère des affaires municipales, designated by the Gouvernement.

1965 (1st sess.), c. 23, s. 6; 1969, c. 27, s. 1; 1977, c. 5, s. 14; 1977, c. 62, s. 2.

General Manager. **7.** The General Manager of the Fund shall be the chairman of the board of directors and the president of the Régie des rentes du Québec shall be the vice-chairman thereof.

1965 (1st sess.), c. 23, s. 7; 1977, c. 5, s. 14.

Term of office. **8.** The General Manager shall be appointed for ten years by the Gouvernement who shall fix his salary, which shall not be reduced.

Removal. He shall not be removed except upon an address of the Assemblée nationale.

Replacement. In case of temporary inability to act, he shall be replaced by the vice-chairman or by a person appointed temporarily by the Gouvernement.

1965 (1st sess.), c. 23, s. 8; 1968, c. 9, s. 84.

CAISSE DE DÉPÔT ET PLACEMENT

Continuance in office

9. Each member of the board of directors, including the General Manager, shall remain in office after the expiry of his term of office until replaced or reappointed.

1965 (1st sess.), c. 23, s. 9.

Vacancies

10. Any vacancy occurring during the term of office of a member appointed under section 5 shall be filled for the unexpired portion of the term of office of the member to be replaced.

1965 (1st sess.), c. 23, s. 10.

Qualification

11. No person shall act as a member of the board of directors unless he resides in Québec.

1965 (1st sess.), c. 23, s. 11.

Conflict of interests.

12. No member of the board of directors shall have an interest in a securities business.

Disinterestedness

If upon his appointment a member of the board of directors has such an interest or if he acquires the same subsequently by succession, gift or otherwise, he must dispose thereof promptly.

1965 (1st sess.), c. 23, s. 12; 1977, c. 62, s. 3.

Regulations Approval

13. The board of directors shall make the regulations of the Fund. Such regulations shall be submitted to the Gouvernement for approval, and published in the *Gazette officielle du Québec*.

Regulations laid before Assemblée.

They shall be laid before the Assemblée nationale within fifteen days if then in session; if not, they shall be laid before it within fifteen days after the opening of the next session.

1965 (1st sess.), c. 23, s. 13; 1968, c. 9, s. 90.

Administration

14. The General Manager of the Fund shall be responsible for the administration thereof within the scope of the regulations.

1965 (1st sess.), c. 23, s. 14.

Appointments.

15. The officers and employees of the Fund shall be appointed and remunerated in accordance with the Civil Service Act.

Powers of General Manager.

However, the General Manager of the Fund shall in this respect exercise such powers as are assigned by the said act to the head and deputy-head of a department.

1965 (1st sess.), c. 23, s. 15; 1965 (1st sess.), c. 14, s. 81.

CAISSE DE DÉPÔT ET PLACEMENT

Suit prohibited

16. The General Manager and the other members of the board of directors of the Fund, and the officers and employees thereof, cannot be sued for any official act performed in good faith in the exercise of their functions.

1965 (1st sess.), c. 23, s. 16.

Recourses denied

17. No extraordinary recourse contemplated in articles 834 to 850 of the Code of Civil Procedure shall be exercised and no injunction shall be granted against the Fund or against the members of its board of directors acting in their official capacity.

Provisions not to apply

Article 33 of the Code of Civil Procedure shall not apply to the Fund.

Annulment

Two judges of the Court of Appeal, upon motion, may annul summarily any writ, order or injunction issued or granted contrary to this section.

1965 (1st sess.), c. 23, s. 17; 1969, c. 27, s. 2.

DIVISION III

DEPOSITS

Moneys to be deposited

18. The Fund shall receive on deposit all moneys whereof such deposit is provided for by law.

1965 (1st sess.), c. 23, s. 18; 1969, c. 27, s. 3; 1969, c. 50, s. 4.

Securities to be administered by Fund

19. The Fund shall administer on behalf of the Commission des accidents du travail the securities of which the latter is owner in accordance with the terms and conditions fixed by the Gouvernement.

1972, c. 41, s. 1 (*part*); 1977, c. 5, s. 14.

Discretion to receive

20. The Fund may receive on deposit sums of money derived from
(a) a supplemental pension plan to which contributions are made by a school board or a body which derives more than one-half of its resources from the consolidated revenue fund;

(b) the Office de la construction du Québec under the Act respecting labour relations in the construction industry (chapter R-20);

(c) a government and public employees retirement plan established by the Act respecting the Government and Public Employees Retirement Plan (chapter R-10).

Approval

The Fund shall not exercise the powers provided in paragraph a

CAISSI DE DÉPÔT ET PLACEMENT

	except with the approval of the Gouvernement and upon such conditions as it determines
Use of sums	<p>The Fund shall use the sums it has received under paragraph c in accordance with the retirement plan contemplated therein</p> <p>1969, c. 50, s. 5, 1973, c. 11, s. 10, 1973, c. 12, s. 184, 1975, c. 19, s. 7.</p>
Delegation of functions	<p>21. The administrator of a plan contemplated in section 20 may, with the approval of the Gouvernement and upon such conditions as it determines, delegate all or part of his functions to the Fund as regards the administration of the patrimony of such plan and the latter shall have the powers required to exercise such functions.</p>
Investments separate	<p>The Fund shall keep the investments of every plan contemplated by section 20 separate from its own investments and manage them in accordance with the Act respecting supplemental pension plans, without regard to Division IV of this act, and, in the case of the investments of the plan contemplated by paragraph c of the said section, by taking into account the general standards, if they have been prescribed, made by the investment committee contemplated by the Act respecting the Government and Public Employees Retirement Plan</p>
Priority	<p>However, in the case of funds derived from a plan established by decree in the construction industry, priority must be given to investments promoting such industry.</p> <p>1969, c. 50, s. 5, 1973, c. 12, s. 185.</p>
Moneys received by the Fund	<p>22. The moneys received by the Fund shall be entrusted to it in the form of demand deposits, of term deposits or of participation deposits, as the depositor sees fit.</p>
Demand deposits and term deposits	<p>The demand deposits and the term deposits constitute an indebtedness of the Fund to the depositors, and bear interest</p>
Participation deposits	<p>The Fund may receive participation deposits in its general fund, in individual funds and in segregated funds. The participation deposits do not bear interest, they constitute a participation of their holders in the net/equity and in the net revenues of the fund in which they are made and their holders share the net revenues thereof.</p>
Distribution of funds	<p>The general fund and the segregated funds are common funds; the individual funds have only one depositor each.</p>
Content of fund	<p>The general fund and the individual funds consist of different categories of investments. Each segregated fund consists of investments of only one category</p> <p>1965 (1st sess.), c. 23, s. 19; 1969, c. 27, s. 4; 1969, c. 50, s. 6, 1977, c. 62, s. 6</p>

CAISSE DE DÉPÔT ET PLACEMENT

- Regulations **23.** The Fund shall establish by regulation
- (a) the terms and conditions governing each category of deposits;
 - (b) the method of computing the rate of interest payable on demand deposits or term deposits;
 - (c) the method of calculating the reserves to be constituted in each fund whose net annual revenue, after deduction of such reserves, must be wholly paid out to the depositors.
- 1965 (1st sess.), c. 23, s. 20, 1969, c. 27, s. 4, 1977, c. 62, s. 7

DIVISION IV
INVESTMENTS

- Government bonds **24.** The Fund may, without restriction, acquire and hold.
- (a) bonds issued or guaranteed by Québec;
 - (b) bonds issued or guaranteed by the Government of Canada or of any province of Canada;
 - (c) bonds issued by any other government;
 - (d) bonds of the International Reconstruction and Development Bank.
- Definition For the purposes of this section, all securities issued or guaranteed by any government, including treasury bonds, short-term notes and deposit certificates, whether negotiable or not, shall be regarded as bonds.
- 1965 (1st sess.), c. 23, s. 21, 1969, c. 27, s. 5.

- Bonds backed by subsidy **25.** The Fund may also, without restriction, acquire and hold
- (a) bonds secured by the transfer to a trustee of an undertaking of the Gouvernement du Québec to pay sufficient annual subsidies for the payment of interest and capital at maturity, and
 - (b) bonds of a public authority having as its object the operation of a public service and entitled to impose a tariff for such service
- 1965 (1st sess.), c. 23, s. 22, 1977, c. 5, s. 14.

- Municipal and school bonds. **26.** The Fund may acquire and hold bonds of municipalities or school corporations in Québec or of the Conseil scolaire de l'île de Montréal, upon the following conditions.
- Restriction It shall not acquire more than 20% of any issue at the time such issue is put on the market.
- Restriction It shall not acquire bonds which would increase the amount held by the Fund to more than 20% of the outstanding bonded indebtedness of the municipality or school corporation.
- Other evidences of indebtedness It may also acquire and hold other evidences of indebtedness issued or guaranteed by municipalities in Québec or by the Conseil

CAISSE DE DÉPÔT ET PLACEMENT

scolaire de l'île de Montreal provided that such other evidences of indebtedness added to the bonds which the Fund holds do not increase the amount held by the Fund to more than 20% of the outstanding bonded indebtedness of the municipality or the Conseil 1965 (1st sess.), c. 23, s. 23, 1969, c. 27, s. 6, 1972, c. 60 s. 47; 1976, c. 39, s. 13, 1977, c. 5, s. 14

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Other bonds

27. The Fund may acquire and hold bonds or other evidences of indebtedness issued by a company

(a) if they are fully secured by hypothec on real estate and equipment or by pledge of evidences of indebtedness acceptable as investments for the Fund, or

(b) if they are secured by privilege on equipment and the company has paid in full the interest on its other debts during the ten years preceding the acquisition, or

(c) if they are issued or fully guaranteed by a company which, during each of the five years preceding the acquisition, has

— paid on its common shares a dividend at least equal to the weighted average of the annual dividend rates specified on all its preferred shares, or

— obtained on its common shares a net yield of at least 4% of their book value

Restriction

The total investment of the Fund in bonds or other evidences of indebtedness contemplated in paragraph c and issued or guaranteed by one company shall not exceed 1% of its total assets.

1965 (1st sess.), c. 23, s. 24, 1969, c. 27, s. 7

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Hypothees

28. The Fund may, without restriction, acquire and hold hypothees upon real estate in Quebec if payment of the capital and interest is insured by the Government of Canada or of Québec.

Hypothees

The acquisition of other hypothees shall be subject to the following restrictions

(a) the aggregate of the hypothees shall not exceed 75% of the value of the immoveables which secure the payment thereof,

(b) the amount of each hypothec on an immoveable constituting a single undertaking shall not exceed 1/2% of the total assets of the Fund, and

(c) the Fund's total investment in hypothees contemplated in this paragraph and in immoveable property shall not exceed 10% of its total assets

1965 (1st sess.), c. 23, s. 25, 1969, c. 27, s. 8

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Immoveables

29. The Fund may acquire and hold immoveables in Québec upon the following conditions

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(a) the total investment in each immovable constituting a single undertaking and in the shares of each company having as its sole object the acquisition, holding, leasing, or administration of immovables shall not exceed 1% of the total assets of the Fund; and

(b) the Fund's total investment in immovables, in hypothecs contemplated in the second paragraph of section 28 and in the shares of companies having as their sole object the acquisition, holding, leasing or administration of immovables shall not exceed 10% of its total assets.

1965 (1st sess.), c. 23, s. 26, 1969, c. 27, s. 9; 1970, c. 18, s. 2

Preferred shares

30. The Fund may acquire and hold fully paid preferred shares of:

(a) a company which has as its sole object the acquisition, holding, leasing or administration of immovables; or

(b) a company which, during each of the five years preceding the acquisition of such preferred shares, obtained on its common shares a net yield of at least 4% of their book value or paid on its common shares a dividend at least equal to the weighted average of the annual dividend rates specified on its preferred shares.

1965 (1st sess.), c. 23, s. 27; 1970, c. 18, s. 3.

Common shares

31. The Fund may acquire and hold fully paid common shares of any company which, during each of the five years preceding the acquisition, has obtained on its common shares a net yield of at least 4% of the book value thereof or of a company which has as its sole object the acquisition, holding, leasing or administration of immovables.

1965 (1st sess.), c. 23, s. 28; 1970, c. 18, s. 4.

Restrictions

32. The acquisition by the Fund of shares and of evidences of indebtedness in companies shall be subject to the following restrictions:

(a) it may not hold more than 30% of the common shares or of a class of common shares of one company unless such company has as its sole object the acquisition, holding, leasing or administration of immovables;

(b) it may not invest more than 30% of its total assets in common shares;

(c) it may not acquire securities which increase its total investment in shares and evidences of indebtedness of a company to more than the following percentages of its total assets:

first five years: 5% in shares, 10% in all;

next five years: 4% in shares, 7½% in all;

- i) The location of corporate headquarters (Québec/outside of Québec).
- ii) The language of the CEO (francophone/anglophone).
- iii) The relationship of the corporation to the Caisse. We have designated as "clients" of the Caisse...
 - any corporation in which the Caisse holds more than 5 per cent of equity;
 - any corporation in which the Caisse holds five million dollars in bonds or at least 10 per cent of the corporation's total debt;
 - any corporation having direct financial transactions with the Caisse.
- iv) The corporate charter (public company v. private company).
- v) The size of the corporation.

The survey was conducted by SECOR (Montréal), and the questionnaire was mailed out on the 15th of October, 1983. We received 115 responses by the 4th of November. The participation rate is therefore 37 per cent, and is constant between francophones and anglophones (38% v. 36%), and between businesses with their headquarters in Québec and those based outside of the province (37% in each case). We presume that except for demonstrating a greater interest in the subject of the study, the sample is not biased in any systematic way. The margin of sampling error is on the order of 4 per cent, again assuming that those who have responded are representative of the total population.

Translated and adapted from Marcel Gt et Lon Courville, "La perception de la Caisse de dpt et placement du Qubec par les chefs d'entreprises", in C. Forget (ed.), La Caisse de dpt et placement du Qubec (Montreal: C.D. Howe Institute, 1984), pp.75-76.

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or loans other than those it is authorized to make under the above sections.

1965 (1st sess.), c. 23, s. 33; 1969, c. 27, s. 12.

DIVISION V

CONFLICTS OF INTEREST

Loans to members
prohibited

38. The Fund shall not make a loan to a member of its board of directors or to any of its officers or to the spouse or child of any of them.

1965 (1st sess.), c. 23, s. 34.

Loans to certain
companies.

39. The Fund shall not make a loan to any company of which a director is a member of the Assemblée nationale, or acquire, hold or take as security any securities issued by any such company.

Exception.

This section shall not apply to the acquisition of shares and bonds of a company whose shares are listed on a recognized stock exchange.

1965 (1st sess.), c. 23, s. 35; 1968, c. 9, s. 85, s. 90.

Certain financial
transactions prohibited.

40. The Fund shall not make any financial transaction with an enterprise to which any of its officers or employees, any member of its board of directors, or any member of the Assemblée nationale is related.

Related persons

For the purposes of this section, the following shall be related persons:

(a) individuals connected by blood relationship, marriage or adoption;

(b) a partnership and an individual who is a member thereof or with whom one or more partners are so connected or by whom more than one-half of its available property has been advanced;

(c) a company and an individual who directly or indirectly controls it or who holds more than one-half of its capital stock or who has provided it, by loan or otherwise, with more than one-half of the property which it has available for its business;

(d) companies directly or indirectly controlled by the same person or group of persons;

(e) a company and a person who is one of several related persons by whom such company is directly or indirectly controlled.

Blood relationship

For the purposes of this section:

(a) persons are connected by blood relationship if one is the descendant of the other, or is his brother or sister;

(b) persons are connected by marriage if one is married to the

CAISSE DE DÉPÔT ET PLACEMENT

other or to a person connected with the other by blood relationship; and

(c) persons are connected by adoption if one has been adopted legally or in fact as the child of the other or as the child of a person connected with the other by blood relationship otherwise than as brother or sister.

1965 (1st sess.), c. 23, s. 36; 1968, c. 9, s. 86, s. 90.

Use of certain information prohibited

41. No officer or employee of the Fund, member of its board of directors, or person who performs services for it or is associated with its activities, shall make use, for trading in securities or carrying out any other financial transaction on his own account, of any information received respecting the operations of the Fund.

Accessory provisions

The Fund may, by regulation, prescribe accessory provisions or means of verification in order to ensure compliance with this section.

1965 (1st sess.), c. 23, s. 37.

Information to Minister

42. Every member of the board of directors shall, at the time he assumes his duties and every year thereafter, forward to the Minister of Finance and to the board of directors a list of his interests in any companies and a list of such interests as his spouse may have together with a statement of all transactions which have changed such lists during the year.

Officers.

Every officer of the Fund shall be subject to this section in cases provided for by the regulations of the Fund or on written application of the General Manager.

Information privileged.

Information furnished under this section shall be privileged and no one shall communicate such information or allow it to be communicated to any person not legally entitled thereto.

1965 (1st sess.), c. 23, s. 38.

DIVISION VI

ANNUAL REPORT

Fiscal year.

43. The fiscal year of the Fund shall be the calendar year.

1965 (1st sess.), c. 23, s. 39.

Annual report.

44. The Fund shall, before the 15th of March in each year, submit to the Minister of Finance a report on its operations for the previous year.

Deposit.

Such report shall be forthwith laid before the Assemblée nationale,

CAISSE DE DÉPÔT ET PLACEMENT

if in session, or, if not, within fifteen days after the opening of the next session.

1965 (1st sess.), c. 23, s. 40; 1968, c. 9, s. 90.

Report of management

45. Not later than the 31st of March each year, the Fund shall also submit to each administrator of a supplemental pension plan contemplated in section 21, a detailed report of the management of its patrimony for the preceding year.

Report to Office de la construction.

Not later than 31 March each year, it must also submit to the Office de la construction du Québec a detailed report of the management of its assets for the preceding year.

Opinion of Office to the Fund.

The Office de la construction du Québec may give its opinion to the Fund on any question respecting the application of sections 20 and 21; the Office de la construction du Québec may exercise any other attributions of a consultative nature in such matters as the Gouvernement may confer on it.

1969, c. 50, s. 7; 1975, c. 19, s. 8.

Contents.

46. The annual report of the Fund shall contain:

- (a) a summary of operations and a statement of policies pursued;
- (b) a balance sheet and a statement of revenue and expenditure;
- (c) a detailed statistical statement respecting each class of securities, showing the average yield for each class;
- (d) an annual statement of each immoveable acquired or held by the Fund;
- (e) the average annual interest rate paid on demand deposits and term deposits, and the annual average yield of participation deposits;
- (f) a summary of the activities of the Fund respecting its operations under sections 20 and 21.

1965 (1st sess.), c. 23, s. 41; 1969, c. 27, s. 13; 1969, c. 50, s. 8; 1977, c. 62, s. 12.

Investments at cost.

47. For the purposes of the annual report of the Fund, all investments shall be entered at cost price or, in the case of bonds and immoveables, at the amortized cost price, and the amount so entered shall be the only amount used for the purposes of sections 24 to 36.

Market-value.

However, the annual report shall also state the market price value whenever it is possible to determine the same.

1965 (1st sess.), c. 23, s. 42.

Audit.

48. The Auditor-General shall audit that Fund's accounts and his report shall accompany the annual report of the Fund.

CAISSE DE DÉPÔT ET PLACEMENT

Auditor's report The Auditor's report shall mention every investment and financial transaction which is not in compliance with this act.
1965 (1st sess.), c. 23, s. 43, 1970, c. 17, s. 102.

Information **49.** The Fund shall furnish the Minister of Finance with any information respecting its operations which he may require.
1965 (1st sess.), c. 23, s. 44.

DIVISION VII
MISCELLANEOUS

Offence and penalty **50.** Every person who knowingly infringes sections 38 to 42 is guilty of an offence and liable, on summary prosecution, to a fine of two hundred to ten thousand dollars.

Provisions to apply Part II of the Summary Convictions Act shall apply to any offence contemplated in this section.
1965 (1st sess.), c. 23, s. 45.

Title not invalidated. **51.** No provision of this act shall invalidate the Fund's title to any property.
1965 (1st sess.), c. 23, s. 46.

Section 15 of this act shall be replaced on the coming into force of section 4 of chapter 62 of the statutes of 1977, on the date to be fixed by proclamation of the Gouvernement.

The French version of sections 16, 38, 40, 41 and 42 of this act shall be amended on the coming into force of sections 5, 8, 9, 10 and 11 of chapter 62 of the statutes of 1977, on the date to be fixed by proclamation of the Gouvernement.

CAISSE DE DÉPÔT ET PLACEMENT

REPEAL SCHEDULE

In accordance with section 17 of the Act respecting the consolidation of the statutes (chapter R-3), chapter 23 of the annual statutes of 1965 (1st session), in force on 31 December 1977, is repealed, except sections 47 and 48, effective from the coming into force of chapter C-2 of the Revised Statutes.

Éditeur officiel du Québec, 1979

APPENDIX II

A Questionnaire Surveying CEOs' Perceptions of the Caisse de dépôt et placement

In order to sound out businessmen on various matters surrounding the behavior of the Caisse, we sent a questionnaire to the CEOs of 312 businesses which are among the most important in Québec. Our survey population was determined in the following way:

- the 350 largest industrial businesses in Québec, according to the list compiled by les Affaires (August, 1983);
- the exclusion of crown corporations and co-operatives;
- the addition of 25 businesses that operate in Québec, but which are not among the 350 businesses ranked by les Affaires, in which the Caisse has invested at least \$5 million.

This survey population does not include every large business in Québec. Certain sectors, such as retail trade and the co-operative movement, are under-represented or not represented. But overall, this population contains the vast majority of medium- and large-sized private sector businesses in Québec. The smallest of all these businesses (Multigrade, of Shawinigan), according to the information provided by les Affaires, accounts for a hundred employees in the province.

The questionnaire was comprised of 31 questions, grouped under six different subjects. In addition, it allowed for a breakdown according to five characteristics.

- i) The location of corporate headquarters (Québec/outside of Québec).
- ii) The language of the CEO (francophone/anglophone).
- iii) The relationship of the corporation to the Caisse. We have designated as "clients" of the Caisse...
 - any corporation in which the Caisse holds more than 5 per cent of equity;
 - any corporation in which the Caisse holds five million dollars in bonds or at least 10 per cent of the corporation's total debt;
 - any corporation having direct financial transactions with the Caisse.
- iv) The corporate charter (public company v. private company).
- v) The size of the corporation.

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Translated and adapted from Marcel Gôté et Léon Courville, "La perception de la Caisse de dépôt et placement du Québec par les chefs d'entreprises", in C. Forget (ed.), La Caisse de dépôt et placement du Québec (Montreal: C.D. Howe Institute, 1984), pp.75-76.

APPENDIX III: The Questionnaire

When the decision-making section of this study was conceived, the intention was to ask each respondent a standard set of questions. In addition, a supplementary set of questions focussing on conflictual decision situations was to be asked. These supplementary questions would vary, of course, between respondents depending upon the case with which they were involved.

Once interviewing began, it immediately became apparent that considerable flexibility was required in terms of the questions asked and the issues discussed. Based largely upon points raised in earlier interviews, the schedule of questions for later interviews was much more precise than the original supplementary questions. In most sessions the long schedule of questions to be asked of all respondents was incorporated into questioning about specific decisions.

INTERVIEW SCHEDULE

This questionnaire is part of a research project carried out under the auspices of the Faculty of Graduate Studies and Research at Carleton University. The purpose is to study decision-making in corporations in which ownership is shared between the private and public sectors. Your co-operation is necessary for its successful completion.

All answers to this questionnaire are absolutely confidential.
Any results will be presented in an anonymous or a statistical form.
Please tell me if you prefer not to answer a question and we will go on to the next item.

I would like to start with some general questions about the goals of this corporation:

QUESTIONS 1 TO 3a

I have some questions about the role of the board of directors of this corporation.

QUESTIONS 4 TO 6a

If I could return to the goals of this corporation for a moment:

QUESTIONS 7 TO 7b

I am interested in how the government and its private sector partners interact:

QUESTIONS 8 TO 8c

Let me ask some general questions about government participation:

QUESTIONS 9 TO 11

Now a question about yourself: QUESTION 12

STANDARD INTERVIEW SCHEDULE

POPULATION

All subjects

1) What do you see as the major goals of this corporation?

1a) Is your choice of goals influenced in any way by the fact that the government is a major shareholder?

2) In your opinion, does the government now have, or has it ever had, a clear set of expectations for this corporation?

IF YES:

2a) What are they?

2b) Do these result in any conflicts with other objectives of the corporation?

IF NO:

2c) Do you think there is a chance that the government might develop and communicate to the corporation such expectations in the future?

3) Are there any circumstances under which it might be acceptable for the corporation to be assigned public policy objectives?

IF YES:

3a) Please elaborate.

4) Of course the board of directors deals with the broad outline of the corporation's policy, rather than the day-to-day management of affairs. I am going to list four different functions which the board of directors of a shared public/private ownership corporation might conceivably fulfil. Could you tell me how well each fits in the case of this particular corporation.
(SHOW LIST A AND READ OUT)

POPULATION

IF AN AGREE OR TEND TO AGREE RESPONSE IF GIVEN FOR EITHER
A, C, OR D:

- 4a) Could you provide a concrete example where the board has played this role?
- 5) I would like to ask you about your views as to your own personal responsibilities as a member of the board of directors. On a scale of 0 to 10, where would you rank each of these three responsibilities?
- a. Ensuring that the corporation is responsive to the policy goals articulated by the government as shareholder.
 - b. To ensure that the corporation is as profitable as possible.
 - c. Protecting the decision-making integrity of the corporation from inappropriate political intervention.
- 6) How does the fact of being a government representative on the board of directors influence your responsibilities as a director of this corporation? (Responsible for what, responsible to whom?)
- 6a) Can you give any concrete examples of situations in which your role as government representative influenced your position on a particular issue being considered by the board of directors?
- 7) Would you say that the goals of this corporation have changed significantly since its creation/the advent of state participation?

Just board members

Just state
representatives
on the board of
directors

All subjects

IF YES:

- 7a) In what respects?
- 7b) (WHERE APPLICABLE) Does the statutory mandate of this corporation (BRIEFLY DESCRIBE) adequately reflect the current orientation of the corporation? Elaborate?

8) Meetings of the board of directors is the obvious forum for interaction between the government's representatives and private sector board members. To your knowledge are other times and situations in which this interaction occurs? (If yes, elaborate.)

8a) Let me put this to you: if the minister or deputy minister of Communications/chairman or president of the CDIC/president of the Caisse were to make personal contact with the CEO or chairman of the board of this corporation, and express his view as to how a particular matter of investment or production should be decided, would that be an appropriate intervention?

IF YES:

8b) Why is that?

IF NO:

8c) Why not?

9) In your view, how would the private sector actors (shareholders, managers, and board members) react if the government were to demand a greater role in corporate decision-making?

9a) Are there circumstances in which you can see this happening?

9b) A Royal Commission of a few years ago recommended that corporations like this one, in which the government holds a large interest, be made more accountable to Parliament. Would this pose problems? (Elaborate.)

9c) Do you feel that the corporation should be more independent of the government than is currently the case?

- 10) Do you think that any special requirements or obligations are imposed upon this corporation by virtue of the fact that the state is a major shareholder? (Elaborate.)
- 10a) Aside from the obvious fact of bringing equity to the corporation, does government participation carry any special advantages or disadvantages? (Elaborate.)
- 11) Why do you think the government decided to create this "mixed enterprise" type of corporation/acquire a major share in this corporation, instead of using some more conventional tool of economic intervention (taxation, crown corporations, etc.)?
- 12) Has your professional career been spent mainly in the public sector or the private sector?

LIST "A"

Fits:

Well	To some degree	Uncertain	Not too well	Not at all
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- A) Interpreting the significance of government policy for corporation objectives.
- B) Advising management on all major decisions to be taken by the corporation.
- C) Defending the corporation against inappropriate government intrusions.
- D) Interpreting the corporation's mandate.

SUPPLEMENTARY INTERVIEW SCHEDULE: TELESAT CANADA

In the selection of satellites, Telesat has had to balance such factors as cost, Canadian content, and the particular technological features of alternative systems. If we consider the initial decision to choose the Hughes Aircraft Company bid (1970) for the ANIK I it is clear that all of these factors were weighed before the final decision was taken.

- 1) What is your recollection of the reasoning behind the choice of the Hughes satellite in preference over the higher Canadian content RCA bid?
- 1a) In view of the fact that this decision was of concern to each of the common carrier partners in Telesat, as well as the departments of Finance, Communications, and Industry of the federal government, how did the various parties line up in regard to the selection of alternative satellite systems?
- 1b) (RELATED TO 1a) The Hughes bid involved a substantially lower level of Canadian content than did the RCA proposal. Where was support for the RCA system coming from?
- 1c) The Canadian content portion in more recent procurement decisions has increased. To what would you attribute this? (If not mentioned, refer to the Canadian content "premium" paid by the government to Telesat.)
- 1d) Given the economic, political, and technological factors which Telesat is required to take into account in decisions on equipment and facilities, how are the sometimes different goals of government and its common carrier partners reconciled?

If we could move on to another important decision in Telesat's operating history, namely, the application made by Telesat in 1976 to join the TransCanada Telephone System.

- 2) What is your recollection of the support for and opposition to Telesat's membership in TCTS?
- 2a) The CRTC's rejection of Telesat's application was quickly reversed by an order in council issued by the federal Cabinet. This was followed by lawsuits brought by the Consumers' Association of Canada and various other organizations. In view of this opposition, and the fact that the memorandum of understanding with TCTS seemed to impose commercial and operating restrictions on Telesat, how do you explain the government's resolve that Telesat be a part of TCTS.
- 2b) Has membership in TCTS in any way changed the expectations which either the government or its common carrier partners have for Telesat?
- 2c) Do you see any parallels between the conflicts which surfaced in the original satellite choice decision, and this later issue of whether Telesat should be a part of the TCTS?

I would like to ask you about one final decision situation. Perhaps the term "non-decision" is more appropriate, because I am referring to the fact that despite early expressions of intent Telesat has never issued shares for purchase by the public.

- 3) What are the views of the government on transforming Telesat into a public company (i.e. a corporation whose shares are offered for sale to the investing public?)
- 3a) What are the views of the common carriers?
- 3b) Do you think that the entry of a new ownership factor, namely, private investors, would result in any change in either the goals of Telesat, or in the existing balance of power between the federal government and its partners?

SUPPLEMENTARY INTERVIEW SCHEDULE: CANADA DEVELOPMENT CORPORATION

1) A good deal has been written about the investment crisis of 1980, when the federal government wanted the CDC to purchase equity in Massey-Ferguson. How was the government's desire communicated to the corporation?

1a) What was your reaction to this proposal?

1b) Was this the first time that the federal government had attempted to influence a major investment decision of the CDC? (Elaborate.)

1c) What sort of repercussions did management's refusal to invest in Massey-Ferguson have for the relationship between the corporation and its major shareholder?

1d) Let me present you with a rather different scenario: If Massey-Ferguson had been financially sound, so that the government was more concerned with expanding domestic control in the industrial sector rather than bailing out a sinking company, would your reaction to this proposed investment have been different? *

Let's go on to a situation which occurred not long after the Massey-Ferguson investment conflict.

2) In the spring of 1981 the Globe and Mail reported that the government was, "pushing the CDC to be a more active player in Ottawa's industrial and economic strategies. And for this role it is lobbying to have its own man, Maurice Strong, at the top". When did the corporation first learn that the government was intent on replacing Frederick Sellers with Maurice Strong as chairman? (And how was this resolve communicated?)

* This question is for management respondents only..

2a) Given that the federal government held approximately 50 per cent of the voting shares of the CDC, what was the basis for the objections of management and the board to the exercise of control by the major shareholder?

2b) Can this conflict over control be linked in any way to the prior Massey-Ferguson investment issue?

SUPPLEMENTARY INTERVIEW SCHEDULE: LA CAISSE DE DEPOT ET PLACEMENT

The period of 1978-1980 is often referred to as one of reorientation for the Caisse.

- 1) Did the events of this period signify any sort of development in the role of the Caisse?
- 1a) Why did representation on the boards of directors of Caisse investments become a matter of some priority, when it had not been a matter of concern before this period?
- 1b) The Caisse is, by law, an independent agency with a mandate to invest the pension funds of the QPP and several other public agencies. In view of this, did the decision to lower the rate of interest charged to Hydro-Quebec, in accordance with the publicly expressed desire of the Government, pose any sort of problem? (Is there a conflict of interest?)
- 1c) How was the Government's desire that the interest rate be lowered communicated to the Caisse? (Is this typical of how communication takes place between the Caisse and the government?)

The 1981 takeover of Domtar by the Caisse and the Societe generale de financement received a good deal of press coverage.

- 2) Given that the Caisse already held 23 per cent of Domtar's equity, why was an increase in this share considered necessary?
- 2a) What was the reaction of Domtar management and the board of directors to the news that the Caisse and the SGF had together acquired 42 per cent of Domtar's equity?
- 2b) Is this sort of co-ordinated investment effort between the SGF and the Caisse common?
- 2c) In your view, has the 1982 takeover had any consequences for the investment, production, or dividend decisions of Domtar?

INDIVIDUAL QUESTIONNAIRE

This is an example of a detailed schedule of questions tailored to the respondent. These questions were asked of a state actor who was involved with the CDC.

- 1) Was it usual for the DM to attend meetings of the executive committee of the CDC board? How frequently? Would the DM or a substitute attend?
- 2) Was your role as director of the CDC in any way different from your role on the board of Petro-Canada, Telesat, etc.? Did the fact of private shareholders make a difference?
- 3) Can you recall any situations where your role as government representative influenced your position on a particular issue being considered by the CDC's board of directors?
- 4) Meetings of the board of directors is the obvious forum for interaction between the government's representatives and private sector board members. To your knowledge, were there other times and situations in which interaction between the government and the corporation occurred?
- 5) Was it your view that any special requirements or obligations were imposed on the CDC by virtue of the fact that the federal government was the principal shareholder?
- 6) Aside from the obvious fact of bringing equity to the CDC, is it your view that government participation carried any special advantages or disadvantages for the corporation?
- 7) A good deal has been written about the Massey-Ferguson investment crisis in 1980, when the federal government proposed that the CDC examine the possibility of investing in Massey-Ferguson. How was the government's proposal communicated to the CDC?
- 8) Was this the first time that the federal government had attempted to influence a major investment decision of the CDC?
- 9) Did management's refusal to invest in Massey-Ferguson have any repercussions for the relationship between the CDC and its major shareholder?

- 10). I am interested in the government's 1981 proposal that Maurice Strong be nominated for the chairmanship of the CDC. Given that the federal government held approximately 50 per cent of the CDC's voting shares, what was the basis for the objections of management and the board to the exercise of control by the corporation's major shareholder?
- 11) Can this conflict over control be linked in any way to the prior Massey-Ferguson investment issue?

END

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FIN