

## THE WARTIME CROWN COMPANIES OF CANADA

In 1776, Adam Smith issued his famous dictum that the state should only concern itself with three duties which he conceived of as being the defence of the country, the administration of justice and the maintenance of certain public works. Since that time the state has largely altered and increased its functions. In the western world, the "laissez-faire" state has become the administrative or welfare state. In Canada, for instance, governments have taken over from private enterprise in many fields. Today, governments of various kinds and shades produce and distribute electric power, operate railroads and air transportation facilities and telephones, own and control radio broadcasting facilities as well as many other public enterprises. The underlying tendency to increase government functions and activities has increased since 1900 under, needless to say, both Liberal and Conservative regimes. The establishment and the operation of the Crown companies during the second world war was nothing more than a variation on this theme.

When the danger of war was at its greatest the Government of Canada, by the Department of Munitions and Supply Act, (1) created a governmental department to replace the War Supply Board, which had functioned since November 1939, as a purchasing agent for the Department of National Defence. The new statute, which was proclaimed on April 9, 1940, empowered the Minister of Munitions as follows: (2)

"The Minister shall examine into, organize, mobilize and conserve the resources of Canada contributory to, and the sources of supply of, munitions of war and supplies and the agencies and facilities available for the supply of the same and for the construction and carrying out of defence projects and shall explore, estimate and provide for the fulfilments of needs, present and prospective, of the Government and the community in respect thereto and generally shall take steps to mobilize, conserve and co-ordinate all economic and industrial facilities in respect of munitions of war and supplies and defence projects and the supply thereof."

Thus, the Department of Munitions and Supply became the "General Staff of the second front line charged with marshalling and directing Canada's productive effort." (3)

In pursuit of the goal of waging total war, the Government authorized the Minister of Munitions and Supply to incorporate certain government-owned companies. The authorization to establish crown companies was given to the Minister in the following terms:— (4).

"(a) The Minister may, if he considers that the carrying out of any of the purposes or provisions of this Act is likely to be facilitated thereby, procure the incorporation of any one or more companies or corporations under the provisions of The Companies Act, 1934, or under the provisions of any Act of any province of Canada relating to the incorporation of companies, for the purpose of exercising and performing in Canada or elsewhere any of the powers conferred or the duties imposed on the Minister by this Act or by the Governor in Council and may delegate to any such company or corporation any of the powers and duties conferred or imposed upon the Minister under this Act or any Order in Council.

(b) For the purposes of this section, the Secretary of State may, if the Minister so requests, by letters patent under his seal of office, grant a charter constituting such persons as are named by the Minister and

1. *Statutes of Canada, 1940, C. 31.*

2. *Statutes of Canada, 1940, C. 31, S. 3.*

3. *The Canadian Congress Journal, January, 1940. The words were used by Hon. C. D. Howe, Minister of Munitions and Supply in a C.B.C. broadcast.*

4. *Statutes of 1940, C. 31, s. 3; as amended by Statutes of 1943, C. 8, s. 2.*

any others who may thereafter be appointed by the Minister in their stead or in addition thereto, a body corporate and politic without share capital, for the purpose of exercising and performing in Canada or elsewhere, without pecuniary gain to such corporation, such of the powers and duties conferred or imposed upon the Minister under this Act or any Order in Council as the Minister desires to delegate to such corporation. The charter and by-laws of any such corporation shall be in such terms as may be approved by the Minister and by the Secretary of State. The Minister may remove any members, directors or officers of any such corporation at any time and appoint others in their stead. The provisions of Part II of *The Companies Act, 1934*, shall apply to every such corporation, except in so far as they may be declared inapplicable, varied or added to by its charter or by the Governor in Council.

(c) The accounts of any such company or corporation shall be audited by the Auditor General of Canada."

This, then, was the legal authorization for the establishment or creation by the Minister of Munitions and Supply, of approximately thirty crown companies.

These crown companies were to be utilized for buying and selling certain commodities, for the supervising, controlling and planning a sector of the economy and for managing the operation of certain war plants. Between 1940 and 1945 three separate kinds of crown companies with distinct functions were established, namely: "commodity companies" for buying, selling and stockpiling certain goods and materials; "supervisory and control companies" for co-ordinating and planning the production of certain war materials; and "productive companies" for the production of certain equipment. Amongst the commodity group, Melbourne Merchandising Limited purchased and sold wool while War Assets Corporation Limited disposed of or utilized war assets. Allied War Supplies Corporation was one of the most important supervisory and control companies. It was charged with the administration and integration of a vast group of industries in the chemicals and explosives field. Also among this group, Park Steamships Company Limited was charged with the important duty of controlling the operation of tankers and cargo vessels which were built in Canada under the supervision of another crown company, Wartime Merchant Shipbuilding Limited. Among the productive crown companies there was Research Enterprises Limited, which produced optical glass, fire control devices and radiolocators, and Small Arms Limited which produced service and automatic rifles. In the Montreal plant of National Railway Munitions Limited guns and gun carriages were manufactured. The Polymer Corporation Limited built and operated a synthetic rubber plant. Other crown companies were given the responsibility of working mines, building houses and logging. Obviously, the establishment of these emanations of the Crown greatly increased the range of activities and the direct powers of the Dominion Government.

In form, the crown companies was an adaption of the joint stock company to public enterprise; the creation of crown companies was a utilization for war purposes of the corporate device. Statutory corporate bodies have long been used by governments, but the crown companies marked a further development in the use of the corporate device because their powers were not regulated by a special act of Parliament; (5) the powers of the crown companies which operated under the supervision of the Minister of Munitions and Supply stemmed from the enactment of the Department of Munitions and Supply Act by the Canadian Parliament. (6) This Act was a Canadian version of a similar British Statute.

All of the crown companies, with one exception (7) were incorporated, with share capital, under Part I of the Dominion Companies Act, 1934. In the case of the companies incorporated under Part I, the only shares issued, other than in the

5. Cf. Sellar, *Watson; Crown Munitions Companies*. (Canadian Chartered Accountant, June 1943).

6. *Ibid.*

7. *Allied War Supplies Corporation, which was incorporated under Part II, as a company without share capital.*

name of the Minister of Munitions and Supply in trust for His Majesty the King in right of Canada, were directors' qualifying shares. Thus, the directors were only nominal owners of the shares which they held. Moreover, every director of a crown company was compelled, before he could act, to file with the Department of Munitions and Supply the following documents, namely, a tender of resignation to take effect upon acceptance by the board of directors; an assignment, in blank, of his qualifying share; and an irrevocable request that any distribution of income or capital, in respect of the share registered in his name, be made directly to His Majesty the King in Right of Canada. (8) Thus, as far as voting rights in the various crown company directorate were concerned, the Minister of Munitions and Supply, as the shareholder for the Crown could outvote all the other directors. Moreover, the Minister could dispense with any director or any board of directors. In short, his veto was absolute. Also, the Minister's control over the operations of the crown companies was enhanced by virtue of contractual agreements which were made between the Minister and the corporations. These agreements contained the following or a similar clause:— (9).

"It is understood and agreed that the Minister shall at all times have the right to exercise such control over the affairs and operations of the Company as he may in his absolute discretion think fit, and that the Company shall do or refrain from doing, as the case may be, all such things as the Minister may from time to time direct, and that all obligations of His Majesty under this agreement are conditional upon the Company acting accordingly."

Besides these controls, which could be termed contractual, there were financial controls. All of the funds, used by the crown companies either in the way of capital expenditures or operating expenditures, were obtained from the Dominion Treasury. (10) Moreover, each crown company was subject to an annual audit by the Auditor General, who reported to the Minister of Munitions and Supply, and as well, to Parliament.

The crown companies, while responsible to the Minister of Munitions and Supply and subject to the close scrutiny of Parliament, had considerable freedom of action in running their own affairs. One particular crown company was described as having all "the freedom of action of a private company plus the prestige and authority of an agency operating as a unit of the Dominion Government." (11) In practice, if not in theory, this statement would seem to have applied to the operations of all crown companies, because, within the general framework of the policy of the Department of Munitions and Supply, the companies were allowed a considerable degree of self-government; the directors were allowed to operate the companies without much interference, but they were required to remember that they were "trustees" of the "Public investment." (12)

In essence, the crown company was a new mechanism of democratic government born of the needs and conditions of war. One reason for the establishment of the companies was that the Government did not want to become directly involved in the economy in bargaining and contracting and in open-market buying and selling operations; the crown companies served as buffers or cushions between the cabinet and entrepreneurs.

When Mr. Howe, the Minister of Munitions and Supply, spoke in the House of Commons during the first reading of the enabling Act of 1940, he advanced another reason for the use of the crown company organization: (13)

8. *Dominion of Canada; Report of the Auditor General for the year ended March 31, 1941.* (King's Printer, Ottawa, 1941), page 460.

9. *Report of the Auditor General for the year ended March 31, 1942.*

10. Sellar, Watson; *loc. cit.*

11. *Polymer Corporation Limited.*

12. *Rt. Hon. C. D. Howe, Minister of Munitions and Supply, in House of Commons Debates (unrevised) November 20, 1940, page 287.*

13. *Debates of House of Commons, Canada, June 14, 1942, vol. I, p. 783.*

"It has been found utterly impossible to assemble in Ottawa a sufficient staff to handle all the multiplicity of undertakings that the Department has in hand at the present time. The Act provides that certain government owned and controlled companies shall be established and headed by business men chosen by the government who will be able to carry on operations as companies rather than as part of the Departmental staff."

Thus, the complex technological problems involved in beginning and maintaining the production of munitions of war, the need for a spirit of boldness and enterprise in the managerial personnel of the crown companies, the desire to escape from the excessive caution and circumspection which day to day responsibility to parliament necessitates and the recognition that the operation of these utilities required a flexible type of organization adapted to the outlook of the persons who were to operate them were the underlying reasons for the formation of crown companies. The Government of Canada desired to enlist certain industrialists in the war effort and because it was discovered that these persons would not conform to civil service conditions or, perhaps, because some industrialists, loyal to one political party refused to serve under a minister loyal to another, public enterprise was found feasible and practicable. (14) The crown companies were not born of any particular doctrine or ideology; they were not the product of socialist control of government; they were sired of the needs of war.

These crown companies could be distinguished from all forms of governmental agencies by their form of organization, by their freedom from most of the usual ministerial controls, by the secrecy which surrounded the operation of some of them and by the purely business character of their personnel. The wartime crown companies were closely allied with the traditional form of the "public corporation." (15)

The main difference in form between the wartime crown companies and the pre-1949 public corporation was that the crown companies were operated under a general act of parliament which was vaguer in delimiting the statutory powers of the controlling minister than the various public acts which established public corporations where the powers of the minister in charge were usually clearly defined and restricted. The distinguishing feature lies in the difference of degree of ministerial and parliamentary control of the operation of the enterprise. The two types of public enterprise are similar in structure in that they are government-owned corporations, the operations of which are divorced from the ordinary fabric of government, so that the day to day control has been delegated to virtually autonomous directors or trustees. (16) Thus, public corporations like the Canadian National Railways, the Ontario Hydro-Electric Power Commission, the Canadian Broadcasting Corporation and the British National Coal Board and the Tennessee Valley Authority are similar in organization to the wartime crown companies. Public corporations the operations of which are divorced from the ordinary fabric of both operated under the same general conditions within the national economy. These conditions are : first, both are free from full and continuous responsibility to

14. *From a conversation with Watson Sellar, Auditor General of Canada.*

15. *The term "public corporation" was first used by the Right Honourable Herbert Morrison, Minister of Transport in the first Labour Government of Great Britain to describe semi-autonomous commercial organizations, regulating their own personnel and, in the main, their financial arrangements but forbidden to extract profits for their services and governed by boards appointed for stated terms by Ministers of the Crown. See Gordon, L., The Public Corporation in Great Britain. (New York, 1938). The public corporation has been otherwise defined as a "corporate body created by public authority with defined powers and functions, and financially independent. It is administered by a board appointed by public authority to which it is answerable." See Davies, Ernest: National Enterprise; The development of the Public Corporation. (London, 1946.)*

16. *Cf. Encyclopaedia of Social Sciences, Volume VII, page 106.*

a minister of the crown and through him, to Parliament, as is a government department; second, that there are, apart from the community itself, no proprietors to whom the governing body of the corporation or company owes a duty to make profits, that is, the capital is provided either from public funds or by private investors who have the status of creditors not of shareholders; third, both are financially autonomous in the sense that the corporation's or company's finances are self-contained and it has no taxing power. (17) These, then, are the common characteristics of the two forms of public enterprise.

The crown company — so it was believed by many — was only a wartime expedient. In this respect, the crown corporations can be distinguished from the average public corporation, which operates in both peace and war. But even this criterion of distinguishing the two has broken down so that the Auditor General of Canada could say in 1946: (18)

"The war is over, the efficiency of the corporate device has been proven and it is not unreasonable to anticipate its continued use, especially in commercial ventures."

J. Carlisle Hanson

17. (See articles in *The Times*, London, January 20-24, 1947.)

18. Sellar, Watson; *Government Corporations*; in 24 C.B.R. 392.

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