THE AGENCY CONCEPT IN NORTH AMERICA:

FAILURE, ADAPTATION, AND UNEXPECTED BENEFITS

Andrew Graham

Visiting Executive, Conference Board of Canada

agraham@1000island.net

Alasdair Roberts

The Maxwell School, Syracuse University

asrobert@maxwell.syr.edu

Abstract. The agency concept acquired admirers in the American and Canadian public services in the early 1990s, but efforts to replicate the sweeping reforms undertaken in New Zealand and the United Kingdom met with failure. In North America, the trajectory of reform was heavily influenced by problems of budgetary politics and constitutional difficulties peculiar to each country. In neither country did the concept produce the radical improvements in performance promised by eary advocates. On the other hand, complaints about the potential erosion of accountability were also overstated. By the end of the decade, the agency concept had taken firmer hold in Canada; but in both countries governments evinced new interest in government-wide, rather than agency-specific, reform of management systems.

INTRODUCTION

The "new paradigm" that was said to characterize reform in many of the advanced democracies over the last two decades [Organization for Economic Cooperation and Development, 1995 #28] contained three major themes. The first was a desire to release public servants from a welter of rules that were thought to make public organizations inflexible and inefficient. The second was a renewed emphasis on the reporting of results achieved by public organizations, and the use of this data to levy rewards or penalties. A final theme was said to be a new pragmatism about the choice of institutional structures used to deliver public services.

The "agency concept"[1] became popular among reform-minded policymakers because it combined all of these themes. In jurisdictions were the concept was applied most rigorously -- such as New Zealand [Boston, 1996 #34] or the United Kingdom [O'Toole, 1995 #712] -- large government departments were divided into smaller units with more homogeneous cultures and clearer missions. These new single-purpose agencies were to be freed from central controls on human and material resources, but held responsible for performance targets set by political overseers. The relationship between agency heads and policymakers was to be detailed in a contract that tied tenure and compensation to success in attaining the agency's substantive goals.

Reformers in the United States and Canada were particularly impressed by the British effort at agency-building, begun in 1988 and known as the Next Steps Initiative. By the mid-1990s, attempts to replicate Next Steps had been undertaken in both countries. But the agency concept was not easily transplanted. As we shall show in this

chapter, an array of pressures -- bureaucratic, fiscal and constitutional -- shaped and sometimes stunted efforts at reform in each country.

In the United States, efforts to apply the agency concept began in earnest in 1995, when the Clinton administration unveiled a reform plan based closely on the Next Steps Initiative. Reformers within the Clinton administration hoped that the plan would generate large savings, and relieve pressure to balance the budget by eliminating programs. However, the Clinton plan was undermined when elements within the executive branch and Congress refused to provide agencies with significant new flexibilities. The distinctive features of the American system of government -- notably a strong separation of powers and rules on appointment of senior officials -- also made the plan unworkable. Dozens of American agencies were planned; by 2001, only three were created. The new Bush administration turned away from the agency concept, and focussed instead on broad reform of government-wide management laws.

An early Canadian effort at replicating Next Steps -- the Special Operating Agency plan -- also failed, largely because of bureaucratic resistance and the preoccupation of political executives with other issues, such as constitutional reform. In 1996, a combination of fiscal and constitutional pressures drove the government to revive the agency concept by creating three substantial new Legislated Service Agencies. The Liberal government of Jean Chrétien anticipated that these new LSAs would produce substantial new savings, and facilitate cooperation with provinces in service delivery. These goals proved elusive. Instead, LSAs served as proving grounds for modest innovations in human resource and financial management. By the end of the decade, the

Canadian government had also begun to emphasize reform of government-wide law, rather than agency-by-agency improvement.

In both countries, the agency concept played a minor role in the decade-long effort to reinvent federal bureaucracies. Efforts at agencification did not produce dramatic efficiency improvements and did little to ease overall fiscal pressures. On the other hand, concerns about the erosion of accountability that were sometimes made against the American and Canadian plans were equally overstated. Time also undermined the appeal of the agency concept. A reform which seemed radical in 1988 now seems modest when compared to efforts at privatization and public-private partnership -- exercises that seem more likely to generate significant savings, and which at the same time raise sharper issues about accountability.

THE AGENCY CONCEPT IN THE UNITED STATES

The agency concept attracted the attention of reformers within the United States government early in the 1990s. Staff within the U.S. General Accounting Office visited New Zealand and the United Kingdom in 1991-92 and reported favourably on the implementation on the agency concept in those countries [General Accounting Office, 1995 #465]. However, policymakers initially preferred a reform strategy that aimed at governmentwide institutional change. In August 1993, Congress adopted the Government Performance and Results Act, which imposed performance reporting requirements on all federal departments and agencies [Senate Committee on Governmental Affairs, 1993 #135].[2] The National Performance Review (NPR), a reform initiative begun by the Clinton administration, continued this emphasis on government-

wide reform. Its September 1993 report proposed sweeping changes to laws governing personnel, procurement and budgeting within the executive branch of government [Gore, 1993 #27].

By 1995, NPR staff gave the agency concept renewed scrutiny. Compared to executives in Westminster systems, the Clinton administration had limited control over Congress, which often balked at adopting less restrictive general management laws. Many of NPR's 1993 recommendations for government-wide reform were not adopted.[3] More limited reform initiatives also encountered roadblocks. In 1996, Congress rejected an administration bill that would have given agencies authority to experiment with innovative personnel systems. At the same time, the Office of Management and Budget found few volunteers for "flexibility pilot projects" that had been authorized under GPRA: managers said that the promised flexibilities were outweighed by the paperwork requirements imposed by Congress. Modest efforts by NPR to establish "reinvention labs" within federal departments were also stymied by resistance from senior staff within departments and central management agencies [General Accounting Office, 1996 #854].

The agency concept gained attention as an alternative, and possibly more effective, strategy for achieving substantial reform of management systems.[4] A leading advisor to NPR, David Osborne, also reported that the British agencies were reducing operating costs by an average of five percent per year [Osborne, 1996 #478]. The promise of large efficiency gains appealed to reformers within the Clinton administration, which had emphasized its desire to achieve fiscal discipline without cutting government services.

The agency concept gained popularity for another reason. After the November 1994 elections, a Republican majority took control of the House of Representatives and began advocating more radical action to restructure the executive branch, including extensive privatization of federal functions and the wholesale dismantling of departments such as the Department of Commerce. The agency concept proved useful as a method of deflecting calls for more extreme reform of units within government. Several of the functions that were eventually nominated by NPR as candidates for "agency" status were components of the beseiged Commerce Department or had been the object of privatization proposals.

NPR's adaption of the British model was unveiled in March 1996. Under the NPR plan, many service delivery functions within the federal government would be reorganized as "performance-based organizations," or PBOs. As in Britain, the PBO model had two key elements. First, PBOs would be freed from many of the laws, regulations, and policies that normally constrain managers within government. Vice-President Al Gore explained in March 1996:

> [F]or these PBOs, we're going to toss out the restrictive rules that keep them from doing business like a business. All the red tape, personnel rules that keep managers from using people effectively, the budget restrictions that make planning or allocating resources almost impossible [National Performance Review, 1996 #857: 7].

Second, new incentives would be created for PBOs to improve performance. PBO executives would be hired on short-term contracts, with pay and tenure contingent on their success in meeting annual performance targets.

By Fall 1996 nine organizations, accounting for about two percent of the federal civilian workforce had been identified as PBO candidates (Table 1).[5] However, advocates of the plan suggested that it could be applied more widely. A senior OMB official said that "significant areas of the federal government" would benefit from the application of the concept [Koskinen, 1996 #858]. David Osborne suggested that three-quarters of the federal bureaucracy could be transformed into PBOs by 2004 [Osborne, 1997 #29: 97-98]. During the 1996 election campaign, President Clinton suggested that hundreds of PBOs might be established within the federal government [Clinton, 1996 #859]. He later promised that the PBO plan would be a priority for his second term [Office of Management and Budget, 1997 #860: 37].

NPR and its allies made bold promises about the savings that would be realized through the PBO plan, based mainly on their understanding of British experience. NPR suggested that the U.S. reform would attain operating cost reductions of five percent a year, while maintaining or improving service [National Performance Review, 1996 #857][National Performance Review, 1996 #861]. A senior advisor to Vice-President Gore claimed that the Next Steps initiative had caused a one-third reduction in the size of the British civil service [Executive Office of the President, 1996 #508]. Osborne suggested that the PBO plan could yield twenty-five billion dollars in savings by 2004 [Osborne, 1997 #29: 98-99 and 105].

Resistance to implementation. From a distance, the challenges which the British government had confronted in implementing the Next Steps Initiative may have been obscured. In fact, Britain's executive agencies did not easily "toss out restrictive rules," as the Vice President implied. On the contrary, attempts to deregulate Next Steps

agencies were often met resistance from central agencies, parent departments, and legislators.[6] American reformers encountered similar difficulties as they attempted to win new freedoms for PB O candidates.

PBO proponents had calculated that Congressional subcommittees responsible for oversight of specific agencies might become effective advocates for legislation to give those agencies relief from general management laws. The premise appeared, at first glance, to be a reasonable one. In August 1995, the House and Senate aviation subcommittees had obtained passage of provisions that exempted the Federal Aviation Administration from most federal personnel and acquisition laws.[7] At the same time, the House subcommittee on intellectual property had proposed legislation that would give the Patent and Trademark Office -- soon to be one of NPR's PBO candidates -- significant new exemptions from personnel and procurement laws.[8] A House appropriations subcommittee later proposed similar flexibilities for the another PBO candidate, U.S. Mint.[9]

However, these subcommittee initiatives were resisted by other elements within Congress. The Senate Governmental Affairs committee, which held responsibility for oversight of general management laws, reacted angrily to the FAA exemptions, arguing that the agency's real problem was "incompetent management" [Roth, 1995 #870]. Committee members later told administration officials that they would also oppose attempts to obtain similar flexibilities for other PBO candidates. Meanwhile, the proposal to exempt the Patent and Trademark Office from personnel laws was strongly opposed by PTO's unions, who noted that bills such as this were likely to undermine the Clinton administration's attempt to improve labor-management relations within the

federal government [National Treasury Employees Union, 1996 #867]. The subcommittee then revised its bill to include a substantial concession to the unions, allowing them to negotiate over pay and other forms of compensation.[10] This provoked the ire of Congressional Republicans who opposed stronger bargaining rights for public sector unions, as well as that of the Senate Government Affairs Committee, which continued to protest the weakening of general management laws.

Even within the Executive Branch, there was conflict over the PBO plan. Central management agencies questioned the need for legislative action, suggesting that many of the desired flexibilities could be attained under existing law. After the March 1996 announcement of the PBO initiative, NPR worked with the Office of Federal Procurement Policy (OFPP) and the Office of Personnel Management (OPM) to develop guidelines for future PBO legislation. These negotiations significantly curtailed the breadth of the initiative. OFPP's guidelines stipulated that PBOs would be "required to abide by all applicable federal procurement laws and regulations" [Office of Federal Procurement Policy, 1996 #868]. Similarly, OPM's guidelines emphasized the need to retain "government-wide approaches" to personnel management and preserve its own oversight role. The Office conceded that PBOs might pursue specific flexibilities using legislative language drafted by OPM but suggested that PBO proposals "may be based entirely on existing authorities" [Office of Personnel Management, 1996 #869]. OPM also warned that PBOs might not be permitted to use flexibilities obtained through legislative amendment without approval from OPM and affected unions [National Performance Review, 1997 #871].

Other central management agencies were similarly ambivalent about the PBO plan. The General Services Administration blocked an attempt by a major PBO candidate, the Patent and Trademark Office, to escape its monopoly over the provision of real property services to federal agencies.[11] Similarly, the Department of Justice blocked the Patent and Trademark Office's attempt to avoid its control over the provision of some legal services within the federal government[12], while the Treasury Department obstructed the Office's attempt to acquire an unlimited borrowing authority.[13]

Parent departments also proved reluctant to give flexibilities to PBO candidates. One candidate unsuccessfully pursued a legislative amendment that would allow it to refuse support services provided by its parent department. This was a legislative solution to a purely administrative problem, but the PBO candidate argued that the provision was essential to give it leverage in its negotiations with departmental executives. The Clinton administration's bill to reorganize the St. Lawrence Seaway Development Corporation as a PBO included a similar provision [Department of Transportation, 1997 #872]. Many of the most onerous restrictions on the Corporation were said to be imposed by the parent department, rather than central agencies or Congress [General Accounting Office, 1997 #873]. The largest PBO candidate, the Defense Commissary Agency (DeCA), also faced difficulties with its parent department. Departmental rules required DeCA to purchase a range of services from other units within the Department of Defense. DeCA lobbied for the right to purchase services from other suppliers, arguing that this freedom would improve quality and substantially reduce its running costs [Whittaker, 1996 #874]. However, DeCA was a major customer for internal suppliers, who argued that the loss of

revenue would impair their capacity to maintain readiness of critical administrative systems [Friel, 1996 #875].

Constitutional constraints. Resistance to new flexibilities was a familiar problem, arising in every jurisdiction where the agency concept was applied. However, the PBO plan also encountered problems unique to the United States, rooted in its distinct constitutional features.

A critical element of the PBO plan was a proposal to change the rules that governed how PBO heads -- known as Chief Operating Officers (COOs) -- were selected and compensated, and also the relationship between PBOs and their parent departments.[14] COOs were to be hired through a competition that included candidates from inside and outside the public service, and employed on a contract prohibiting dismissal except for failure to achieve annually-negotiated performance targets [National Performance Review, 1996 #857]. These new arrangements were essentially the same as those used to govern the British Next Steps agencies. However, they seemed less workable within the U.S. government.

Under the Next Steps initiative, annual performance targets for executive agencies are agreed upon by each agency executive and a minister who is ultimately accountable to Parliament for the activity of that agency. The process of negotiating and enforcing these agreements is simplified by the relative weakness of Parliament. There is little danger that Parliament will intervene in negotiations over annual targets, or use its power to divert executives from agreed-upon goals. The situation is obviously quite different in the United States, where Congress has more influence in shaping the priorities of departments and agencies. The presence of an influential third party -- Congress --

threatened to complicate negotiations over the content of annual performance agreements.

Congress quickly signalled its ambivalence about NPR's proposal to establish performance agreements between COOs and executive departments. A provision to negotiate annual performance agreements had been included in the Clinton Administration's 1995 bill to reorganize the Patent and Trademark Office as a PBO, but was deleted by the House subcommittee on intellectual property. The provision was only reinstated after the Administration indicated that President would veto the bill without it. A Senate committee later struck out a similar provision in legislation to establish the U.S. Mint as a PBO.[15]

NPR attempted to allay Congressional concerns about the erosion of its influence by restricting the range of potential PBO candidates. NPR insisted that candidates "have a clear mission with broad-based support from its key 'stakeholders' -- both internal and external to the agency -- regarding its mission" [National Performance Review, 1996 #857: 19].[16] In practice, the PBO project would be limited to the "paper factories" within the federal civil service -- units that performed highly routinized, and largely non-controversial, work.[17] This was a significant limitation on the potential scope of the PBO plan.

Nor was this the only limit imposed in response to constitutional difficulties. The success of the performance agreement system also depended significantly on the ability of the parent department and central management agencies to make commitments about budgets for the period covered by an agreement. If a PBO agreed to achieve certain improvements in service quality, and then found that its budget had been cut substantially

mid-way through the term of the agreement, it could reasonably argue that it could no longer be held responsible for achieving the originally agreed-upon target. Governments in parliamentary systems usually have the ability to make such commitments.[18] The situation is quite different in the United States. Intense policy disagreements between the Clinton administration and Republican-controlled Congresses meant that appropriation bills were often delayed for months after the beginning of the new fiscal year. The problems that would confront an appropriation-funded PBO during a budgetary deadlock are obvious. The PBO would argue that the performance agreement negotiated at the start of the fiscal year was vitiated by the cuts imposed in continuing resolutions.

NPR anticipated this difficulty by insisting that PBO candidates have "funding predictability" [National Performance Review, 1996 #880]. In practice this meant that PBO candidates would typically be organizations that imposed user fees, held those fees in revolving funds, and draw on those revolving funds without the need for an annual appropriation. All of NPR's early PBO candidates were to be funded in this way. By contrast, only twelve of the 110 Next Steps agencies operating in 1995 financed themselves through a revolving fund (Cabinet Office, 1996a). The need for "funding predictability" became a second significant restriction on the potential scope of the PBO plan.

Constitutional problems also threatened the PBO plan in a third way. The PBO plan assumed that it will be possible to hire COOs on fixed-term contracts that were terminable only if the executive failed badly in his or her attempt to achieve performance targets. The threat of dismissal for non-performance was expected to sharpen the executive's focus on targets. However, the arrangement would also provide protection

for the COO, by precluding dismissal on any basis other than failure to achieve stipulated targets.[19] The COO would then be freed from the obligation to make investments in areas not identified as priorities in his or her performance agreement.

NPR's first legislative proposals would have entrenched this arrangement by authorizing fixed-term contracts between COOs and departmental Secretaries.[20] However, Justice Department officials shortly questioned the constitutionality of this approach. The general rule established by the Supreme Court is that Congress may not limit the ability of the President to remove appointees, unless those appointees exercise quasi-legislative or quasi-judicial functions that require some independence from the administration. In early 1997, NPR adopted new language that required a contract between the COO and Secretary but gave the President an unfettered discretion to remove the COO.

This new provision undermined the idea that COOs would hired on the basis of a performance-based *contract*. Executives who had been wrongly dismissed would have had no recourse if the removal had been done in the name of the President. Appointing officials would have been free to judge the performance of COOs by any criterion they wished, regardless of whether that criterion has been stipulated in the annual performance agreement. COOs, in turn, would have been encouraged to adopt hedging strategies, investing in areas that they believed might attract the interest of appointing officials in the future. For example, a COO might invest more heavily in internal controls, knowing that allegations of impropriety, however small, may lead to dismissal. The main goal of the contractual arrangement -- to sharpen the attention of the COO on performance targets -- would have been defeated.

Modest accomplishments. It is perhaps not surprising that the PBO plan proved to be a substantial failure. David Osborne had suggested that three-quarters of the federal civil service might be recreated as PBOs, but this was wildly optimistic. The range of financially self-sustaining units engaged in politically benign "factory" work was always substantially smaller. Furthermore, the hurdles created by parent departments and central management agencies were substantial enough to deter many of these units from aggressively pursuing reform. Only a small handful of organizations responded to NPR's call for volunteers for PBO status. A year after Vice President Gore's March 1996 announcement, only three reform bills -- for the Patent and Trademark Office, the St. Lawrence Seaway Development Corporation, and the Defense Commissary Agency -- had been sent to Congress by the Clinton administration. The delay was largely attributable to difficulties in resolving internal disagreements about the legislative freedoms that ought to be given to PBOs.

Congress also proved recalcitrant. It was not until October 1998 that Congress adopted legislation establishing the first PBO -- the Office of Student Financial Assistance, a component of the Department of Education[21] (Table 1). The Patent and Trademark Office became the second PBO in November 1999, after more than four years of legislative wrangling.[22] In the last weeks of the Clinton administration a third PBO, the Air Traffic Organization, was created -- by an Executive Order of the President, rather than Congressional action. [23]

These three PBOs were denied significant flexibilities. The Office of Student Financial Assistance was permitted to hire twenty-five technical and professional employees without regard to personnel rules in Title V of the US Code. Otherwise it

remained entirely subject to existing labour law. The agency was given limited freedom to adopt new procurement methods, while remaining subject to existing rules imposing labour standards and civil rights obligations on government contractors. Legislation for the Patent and Trademark Office was similarly restrictive: while modifying arrangements for appointment of topmost officials, it provided no relief from existing civil service law and no new flexibility in procurement procedures. The Executive Order creating the new Air Traffic Organization simply enjoined its new Chief Operating Officer to "optimize use of existing management flexibilities and authorities to improve the efficiency of air traffic services and increase the capacity of the system." [24] In fact, the most important feature of the Order may have been a new restriction: by declaring the work of the Organization to be "inherently governmental," the Order complicated Congressional efforts to privatize ATO's work.

Overestimating gains. The overall failure of the PBO plan meant that observers were never able to determine whether optimistic promises about the importance of the reform would be fulfilled in practice. In fact, proponents of the PBO plan had greatly exaggerated the gains made under the Next Steps initiative.

One error made by PBO proponents was the failure to disentangle the impact of Next Steps from that of other reform efforts, such as the Citizens' Charter Initiative, under which agencies were directed to publicize service standards and provide remedies for poor service, or the Competing for Quality Initiative, under which agencies were strongly encouraged to expand contracting-out. Some PBO proponents also credited the Next Steps initiative with workforce reductions that had actually been caused by the

privatization of Britain's state-owned enterprises throughout the 1980s and the emphasis on contracting-out in the early 1990s.

In some instances, American observers simply misunderstood what British agencies had accomplished. In 1995, the head of the United States Patent and Trademark Office told Congress that the reorganization of the British Patent Office into a Next Steps agency had resulted in a forty percent reduction in costs [Lehman, 1995 #883]. In fact, the British Patent Office claimed only that it had achieved a forty percent reduction in some inflation-adjusted operating costs, mainly by relocating staff from London to Wales in 1991. Between 1993 and 1996, the British Office's operating costs actually increased by thirteen percent [Patent Office, 1995 #884][Cabinet Office, 1996 #881: 322][Cabinet Office, 1997 #885: 271].

Broader claims about efficiency gains were similarly misguided. The data on British efficiency gains reported by American reformers were not, in fact, measures of *actual* year-to-year reductions in operating costs for Next Steps agencies. Instead, they were measures of the extent to which operating costs have been reduced from the amount *planned* for that year.. Statistics based on actual year-to-year changes in operating costs for all Next Steps agencies told a different story. Total operating costs for Next Steps agencies had actually shown consistent, annual increases, even after adjustment for inflation [Roberts, 1997 #99: 468].

In short, it was never reasonable to expect that the the PBO plan would have achieved the fiscal objective of dramatically reducing the cost of government operations. On the contrary, the PBO plan might have increased operating costs in some sectors. Some PBO candidates, such as the Patent and Trademark Office, had lobbied for

legislative amendments that would consolidate their control over user fees collected by the organization, and exempt them from overall caps on discretionary spending. The Office argued that increased spending would allow them to address staff shortages and high staff turnover. In fact, PBO legislation for Patent and Trademark Office and the Office of Student Financial Assistance contained directions that neither organization should be subject to constraints on the number or classification of employees which they are allowed to hire.

Shift in strategy. T he PBO plan appears to have died with the Clinton administration. In its early months the new Bush administration made clear its desire to pursue a strategy of government-wide, rather than agency-specific, reform. In November 2001, the Bush administration proposed a broad set of changes to personnel, budgeting and procurement laws.[25] The administration also proposed the adoption of a new law, the Freedom to Manage Act of 2001,[26] that would establish a procedure under which Congress would be required to give quick consideration to presidential requests for reform of government-wide management laws. Analogous to "fast-track" rules sometimes used in Congressional ratification of trade agreements, the law is intended to ensure that new reform initiatives do not meet the same fate as that of the early Clinton administration proposals.

THE AGENCY CONCEPT IN CANADA

The evolution of the agency concept in Canada had two distinct phases: an early attempt to create Special Operating Agencies (SOAs), which met with modest success; followed by the creation of a few large Legislated Service Agencies (LSAs) in the late

1990s. As Peter Aucoin has noted, Canadian reform efforts have been shaped by distinctly Canadian circumstances and challenges.[27] The SOA initiative limited to a small range of activities because of a lack of strong political and bureaucratic leadership. A change in fiscal and constitutional conditions gave stronger impetus to the LSA initiative; nevertheless, it remained an opportunistic response to immediate problems rather than a systematic effort at government reform. A range of new administrative and service flexilibities were created for these agencies, but they remained firmly under the umbrella of ministerial accountability as traditionally understood in the Westminster model.

Canadian political leadership has chosen this path for a variety of reasons. The reform response had its origins not in ideology but in fiscal concerns. The accepted scope and role of government remained a strong force in the country, principally the use of 'national institutions' to preserve the country from fragmentation. The political – and bureaucratic - leadership opted to preserve its traditional notion of ministerial accountability when creating new agencies.

A history of pragmatism. In fact, Canada has a long history of finding distinct organizational forms to follow particular functions in the delivery of services. J.E. Hodgetts has called these "structural heretics" [Hodgetts, 1973 #887: 153]. Such forms include boards, tribunals, commissions, and economic development agencies. Crown corporations have also been used extensively to intervene in the market or operate commercial activities. (For example, when it rescued a number of bankrupt rail lines in the 1920s, it consolidated these into Canadian National Railways, a corporation fully owned by the federal government. It was only in the late 1980s that it the corporation

was privatized as part of the first wave of reforms designed to reduce the overall scope of core government activities.) Similarly, many provinces consolidated their power generation and distribution systems into publicly owned entities that operated at arm's length from government but remained under firm government control and ownership.

Such examples reflect what has been a long history of pragmatism with respect to how best deliver public services. This pragmatism has also manifested itself across the political spectrum. In the past twenty years, the strongest impetus for reforms of government structures has come from center-left governments rather than center-right ones. For example, while the Conservative government of the 80s did privatize certain purely commercial enterprises such as Air Canada, it did little to change core government activities, preferring to maintain and, in fact, strengthen the departmental model of core activity organization. Hence, it shed from government a number of relatively easy choices, given the increasing desire even of those who operated these commercial Crown Corporations to be free of government, i.e. political, control. Notwithstanding these privatizations, a large number of Crown Corporations remained within the government's control. Today there are forty-four corporations with varying degrees of independence and commercialization.

Special operating agencies. Another experimentation with new organizational models was the creation of Special Operating Agencies (SOAs) in the late 1980s and early 1990s. Like the PBO plan, The SOA concept was inspired by Britain's Next Steps initiative. The plan was championed by bureaucrats in central agencies such as Treasury Board Secretariat, and taken up by a few deputy ministers who saw an opportunity to improve the efficiency of their operations. Ministers were generally indifferent to the

SOA plan. While ministers permitted experimentation with the model, it was never high on the political agenda. In fact, management reform never gained a high profile during this period. The Mulroney government remained preoccupied with the negotiation of constitutional reforms aimed at addressing regional alienation, as well as new trade agreements with the United States.

As with the PBO plan, the SOA model was applied in a small territory within the federal government. Treasury Board Secretariat stipulated that SOAs should be "operational organizations within existing departmental structures which deliver services, as distinct from providing policy advice to ministers" [Treasury Board Secretariat, 1992 #891: 2]. They were designed to give these highly operational units special administrative flexibilities to more easily carry out their unique roles. In many instances, because there was a commercial element to their work -- centered on the sale of a specific good or service and the absence of strong regulatory functions -- they were also intended to permit commercialization and also permit the SOA to retain all or part of the earnings of fees. In normal departmental structures, these fees would revert to the Consolidated Revenue Fund (CRF) rather than being retained by the department. It was felt that retention of revenue would be an incentive to maximize the commercial potential of the organization or, at least, reduce the draw on the CRF.

Even in this limited territory, SOAs were given few new flexibilities. Almost all were required to continue working within existing personnel legislation. Roughly half of SOAs establishing revolving funds, while half did not; but all remained under the budget control of their parent departments. As such SOAs remained under the direct control of a Deputy Minister and, hence, within the departmental structure of accountability. All

SOA heads were career public servants appointed under conventional public service rules and bound by the traditional conventions of public service.

Furthermore, there was no central thrust to use them in a systematic way for specific public management policy purposes. While the central agency responsible, Treasury Board Secretarit, created a policy framework, it was permissive, not directive.[28] It deals with the methodologies, especially associated with staff and delegations, should a department wish to purse this course. (The Secretariat did try to encourage broader adoption of the SOA model as part of a reorganization of the federal Department of Public Works and Government Services, but this proved largely unsuccessful [Roberts, 1996 #888]).

Restrictions on the SOA model made it unattractive to managers within the federal government, and few were established. Presently there are nineteen SOAs within the federal government, ranging from the Passport Office to prison industries (Table 2). As the Auditor General of Canada has noted: "Notwithstanding these special operating agencies that exist today, the experiment never really took off. Only about 5000 government employees were affected." [29] Although new SOAs are still created, the organizational form has largely become a footnote in recent administrative history.

Legislated Service Agencies. Later in the decade, the agency concept emerged in a new form within the Canadian government. This second phase was driven by a combination of fiscal and political considerations and led to more substantial institutional changes.

The Liberal government elected in 1993 was soon compelled to face the fiscal crisis within the country. By the time that it was elected, Canada had the highest debt

burden of the G-7. Political, bureaucratic and media leaders recognized that the “deficit situation was extremely grave, and that it could not be addressed through incremental measures” [Pal, 1999 #657: 8]. The Wall Stree Journal worried in January 1995 that Canada might “hit the debt wall and have to call in the International Monetary Fund” [Savoie, 1999 #253: 177].

In his 1995 Budget, Finance Minister Paul Martin, set the stage for a series of deficit-fighting budgets, promising "a new vision of the role of government in the economy. In many cases that means smaller government. In all cases it means smarter government."[30] This budget announced the creation of Program Review, an internal government process led by the President of Treasury Board, the Cabinet Minister responsible for central government management and financial control. Gilles Paquet suggests that the Program Review "triggered profound rethinking of the governance process" [Paquet, 1999 #892]. This process created the analytical foundation for the creation of new agencies. The Program Review process converted the targeted reductions given to departments into requirements to find different ways to deliver services or organize themselves.

The review process was largely internal. Departments, principally Ministers and their Deputies, were to bring forward recommendations for change. This reflected the degree of consensus between the politicians and senior bureaucrats that had evolved on the need for drastic action to address the fiscal crisis. Aucoin observes: "Canadian ministers (and their partisan- political advisors) did not perceive the federal public service bureaucracy to be a major obstacle that had to be overcome in order to pursue their public policy agenda."[31] The bureaucracy itself became the engine of change.

During the Program Review exercise, departments put forward proposals to create new special agencies -- by restructuring entire departments or entities within a single department, or combining functions lodged in a number of departments. The first announcements of these agencies were in the 1996 budget statement. Promising "a focused, more affordable government," the Minister of Finance announced the creation of three new "service agencies" [Martin, 1996 #894]. A new single food inspection agency would be a single window for all federal inspection activities that were then spread across several departments. Martin suggested the possibility of partnerships with the provinces, which had their own inspection responsibilities, thereby improving service to the public. The Minister also announced the creation of a national revenue agency out of the Department of National Revenue, once again holding out the possibility of partnerships with the provinces in tax collection. Added to the list was the creation of a national parks agency.

The Treasury Board Secretariat described the new organizations as Legislated Service Agencies (LSAs). The terminology served to distinguish LSAs from Special Operating Agencies, which were administrative bodies created by the Treasury Board. The Secretariat explained:

> A service agency is a mission-driven, client-oriented organization established under constituent legislation to manage the delivery of services with the federal government. The legislation sets out the framework under which the agency will operate including its mandate, governance regime, powers and authorities, and accountability requirements.
>
> Service Agencies remain organizations within the federal government and are under the direction of a minister who is accountable for the agency to parliament. The employees remain public servants under the *Public Service Staff Relations Act.*

> Service Agencies demonstrate commitment to enduring Public Service values and over-riding government commitments such as Official Languages, federal identity, individual, privacy rights and access to information.
>
> A key consideration for service agencies is their ability to provide more responsive and streamlined operations and to partner with the provinces to provide better services to citizens in an efficient manner [Treasury Board Secretariat, 2001 #893].

The description reflected the government's conflicting objectives: on one hand, its desire to experiment with new delivery mechanisms; on the other, its concern about preserving control by central government.

The Canadian Food Inspection Agency. In late 1997, the Canadian Food Inspection Agency (CFIA) merged the food inspection responsibilities of three government departments. It was removed from the key personnel law, the Public Service Employment Act, and became a "separate employer," with responsibility for its own collective bargaining, classification standards and personnel policies. It was also granted certain latitude to manage its own finances, human resources and contracting. In return, CFIA was expected to provide better information to Parliament, including an annual corporate plan including objectives and performance expectations, and an annual report on actual achievements. In addition, CFIA was required to structure its finances on an accrual basis so that it could report in a more business-like manner.

Canada Customs and Revenue Agency. The second -- and by far the largest -- agency was the Canada Customs and Revenue Agency (CCRA). In this instance, in contrast to CFIA, an entire department moved to agency status. The principal theme in the government's public communications about the creation of CCRA has been improvement of service to the public.[32] This took on two dimensions. One was that the

agency would have sufficient flexibility on the administrative side to refocus its orientation towards service. The other was that, like CFIA, it could enter into partnerships with provinces to integrate tax activities, thereby reducing the tax-processing burden.

The overall impact of this move in terms of numbers of federal employees was extensive. Over 45,000 federal employees moved outside the umbrella of the Public Service Employment Act to become part of the "separate employer" regime. CCRA was given human resource and financial authorities similar to those already received by CFIA. The CCRA has built a new human resources regime, undertaking its own collective bargaining and establishing a classification and pay system. These have differed from the core public service, but in degrees. For example, the Agency must seek a bargaining mandate from Treasury Board on economic elements to the collective agreement. The larger public service unions bargain on behalf of the employees. However, the capacity to set working conditions within the ambit of the agency enables it to accommodate the needs of its working environment which is a highly operational, 24-hour, 7-day a week as well as highly seasonal one.

Like the CFIA and Parks Canada, reporting to Parliament was specified and, relative to departments, increased. The Act required that the CCRA formulate an annual Corporate Business Plan and provide performance reports as well. It also directs that the CCRA will act in accordance with its plan, a measure of legislated accountability not found in departmental legislation generally.

CCRA's governance structure is designed to ensure that Westminster conventions remain intact. The Commissioner of CCRA, the title given the CEO, retains the employment status of Deputy Minister. (The same is true of the President of CFIA.) The

legislation makes the Commissioner remains accountable to the Minister of National Revenue, the same reporting relationship that a Deputy Minister has to a Minister. The Minister retains decisionmaking authority for the new agency and is accountable to Parliament for the agency's conduct. A Board of Management representing non-governmental stakeholders has only a limited role in advising the Minister and guiding planning within the CCRA.[33]

Parks Canada. The creation of Parks Canada represents yet another variation on the theme. In this instance, a part of an existing department, Heritage Canada, was made into an agency, but remained within the overall portfolio responsibilities of the same Minister. Some context may help in understanding this move. Parks Canada, with responsibility for managing the system of national parks as well as a variety of heritage and archaeology programs across the country, has had a distinct identity for many years. It has been an organizational orphan, moving from ministry to ministry but always maintaining its own distinct character. While it has been most recently lodged as part of the traditional organizational structure of Heritage Canada, it has been quite independent bureaucratically and in its relations with the public.

The new Parks Canada Agency (PCA) received financial and human resource flexibilities similar to those granted to CFIA and CCRA. However, reporting requirements are more extensive. Additional obligations include the production of management plans for parks and heritage areas; reports every five years on the effectiveness of the human resource regime; and a biennial report on the state of protected heritage areas. [34] As with the other agencies, governance arrangements for PCA have cautiously drafted. PCA's legislation adds an distinctive obligation to

undertake public consultations on the future of the parks system.

What has been accomplished? Perkins and Shepherd have recently characterized the creation of agencies such as LSAs as efforts at "administrative decentralization."[35] Such a term is instructive in that it suggests that the nature of the changes, while constituting some change in the centralized departmental structure, remain within the broader umbrella of government control, ensuring that the new organizations retain the same accountabilities. As Perkins and Shepherd note: "It was thought that they are able to be more adaptable than regular government departments, which are perceived to be inflexible and governed by process-driven rules." [36]

The creation of new agencies is a recent phenomenon in the Canadian context. As such, it is difficult to assess the impact and relative success of these measures. However, preliminary conclusions can be reached.

Few Savings Realized: A thesis of this chapter is that fiscal concerns, rather than ideological zeal, shaped the development of new agencies. The budget statements of 1995 and 1996 suggested that LSAs would reduce the cost of service delivery; and in one case -- that of CFIA -- costs savings were promised.[37] Such savings were not realized. On the contrary, the budgets of all three agencies are now larger than before their creation. It would seem that this was not caused by the transition to agency status, but rather to program growth and successful efforts by the agencies to rectify outstanding under-funding issues.

Reducing Duplication: A constitutional element, unique to Canada, was the provision that the new agencies might be able to integrate services with the provinces to

offer more "national" services. In all cases, there was duplication in tax collection, food inspection and park services. The theoretical notion was that duplication and overlap across governments could also be eliminated. This goal took on special importance in the months following the 1995 Quebec referendum on separation. The establishment of more independent LSAs became a first step to building "common national institutions." Canada's Minister of Intergovernmental Affairs, Stephane Dion, cited the LSA initiative as part of the federal govenrment's program to build "harmonious federalism" and and promote "economic union" [Dion, 1996 #889][Dion, 1996 #890]. However, the reality of Canadian federal-provincial relations soon got in the way of this practical goal. There was very little take-up by provinces to amalgamate tax services. While some co-operative discussions were taking place on food inspection with Alberta, little more has occurred. Certainly there has been no integration of services.

Stronger Expectations of Accountability: The increased reporting requirements for the new agencies have already been discussed. The expectation is that these would improve parliamentary oversight and transparency. To date, the most widely articulated concerns about the quality of these new reports are those of the Auditor General of Canada. In his February 2001 Report to Parliament, he had a chapter entitled **New Arrangements Put Parliamentary Oversight and the Public Interest at Risk**.[38] With specific reference to the Canadian Food Inspection Agency, he noted that, as a result of its creation, it had expanded authorities but counterbalancing increased reporting burdens. He criticized the quality of the performance information provided by CFIA in its first three years of existence, noting that it "is not providing a clear and complete picture of its performance to allow Parliament and other others to judge how well it has carried out its

role."

"Service to the public and ASD initiatives are challenging the traditional concept and practice of accountability – that is, that public servants are accountable, up the line, through the bureaucracy, to their deputy, the minister, cabinet, the rime minister, and Parliament." note Perkins and Shepherd.[39]

Such a criticism is serious. However, given what he has written about the overall quality of government performance reporting elsewhere, it is not surprising that he would focus on this. The challenge for CFIA and other agencies is that there is an increased expectation about their reporting capabilities as part of 'the deal' and those expectations, regardless of how challenging they are, must be met. It might also be noted that the Auditor General has also praised the Food Agency for its management of the transition to agency status.

Ministerial Accountability: The new LSAs are within the ambit of traditional notions of ministerial accountability and the present norms of the parliamentary reporting that apply to core departments. Ministerial accountability can best be described as generally undefined in law, but in practice involves a direct relationship of reporting and seeking direction by public servants from their Minister on matters of policy and overall direction.

If one examines the various laws governing Canadian departments in the core and these new agencies, an argument could made that, in theory, the new legislation for the LSAs describes in much finer detail what ministerial accountability means than existing law. For instance, the legislation governing the Royal Canadian Mounted Police, states simply that the Commissioner, "under the of the Minister" shall carry out his various

duties. This is the sum total of how the relationship between the Minister and the head of Canada's federal police force should interact.

Contrast this with the legislation governing the CCRA, with respect to the responsibilities of the Commissioner to the Minister. Section 38 of the Act explicitly require the Commissioner to "keep the Minister informed of any matter that could affect public policy or that could materially affect public finance, and any other matter that the Minister considers necessary." The Commissioner must also "assist and advise the Minister" in carrying out his or her duties.

A reading of the legislation for all the new LSAs would suggest that efforts were made, albeit in different language and formats, to create the strong connection between agency and Minister. Such a modest step toward better defining ministerial accountability shows the concern that the federal government continues to have to ensure unbroken lines of ministerial accountability.

Improved Reporting and Tranparency: Another side of ministerial accountability is the responsibility to report to Parliament. In each new LSA has expanded reporting requirements specified in law rather than practice, as is the case for the core departments.

It could then, in theory at least, be argued that reporting has actually been improved with the creation of the agencies. In context, however, these additional reporting requirements reflect a trend within the federal government to improve overall reporting. Agencies were freed to find the best format and language for doing so.

Debate will continue on the quality and usefulness of such reports. The comments of the Auditor General reflect this.

Sandboxes of experimentation? In assessing how the agencies have faired with

their new authorities, it also remains early days. However, they have used these authorities to set up their human resource systems. Both CCRA and CFIA have completed rounds of collective bargaining. Once again, the connection to the central agencies was not fully dropped. As both of these agencies draw from appropriated public funds, they are not permitted to set any salary scale without reference to sources of funds. As such, while they bargain, they must receive a bargaining mandate from the Treasury Board to set dollar limits on what they can, in fact, bargain. Hence, while they have flexibility with respect to such issues as working conditions and hours of work, salary scales are limited by available funding as determined by the core central agency. Given that none of these agencies has been put on a fully self-funded basis, such discipline is consistent with parliamentary democracy.

While all agencies have moved to create their own human resource systems, they have movedin parallel to the government as a whole. For instance, as the core departments create a new classification structure, some of the agencies have adopted elements of it. They continue to be preoccupied by the capacity of staff to move easily within the larger public service and, as such, do not want to be too different.

On the other hand, agencies have experimented with new tools that provide core departments with practical experience in innovation. For instance, the CCRA is planning to broaden its definition of it management cadre. Such an experiment in one organization can offer practical experience to others. The issues of cross-government implementation of innovative techniques can often be cumbersome without some form of piloting. The flexibilities the agencies can provide that.

Making departments more like agencies: The question could be asked, why these

organizations? Why not others? This reflects the Canadian experience. It has been pragmatic and incremental. The Program Review process was also, in essence, bottom-up in that Ministers were expected to bring forward proposals to address the budgetary cuts that they ha already received. Some chose to look to new organizations. Some seized the opportunity – describe by one deputy minister as 'creative opportunism'[40]– to make needed changes in service delivery; some worked within the existing structure. Hence, the why is best answered with an understanding of the nature the process (incremental, upward flowing) and the impact that personality and history can have on it.

Another reason that some departments did not pursue agency status is that, in parallel to the creation of these agencies, the Treasury Board and, to a lesser extent, the Public Service Commission, were also pursuing increasing delegations to departments, regardless of their status. Once again, these tended to be business-case driven and specific. In their planning processes, departments ere encouraged to address shortfalls in delegations and authorities as well as funds. Increasingly efforts to retain funds from various sorts of revenues met with success with the Board. This encouraged local-level entrepreneurialism within departmental structures. The core itself started to 'loosen up'. This resembles the direction of the Bush administration to pursue across-the-board reform.

On the human resources side, departments continued to chafe under excessive process burden, one that the Auditor General himself focused on in the last report of his term. Even here, the Government announced that it was, after decades of refusal, prepared to reassess its public service legislation to reduce the process orientation. Announcements of the changes it will make are anticipating din early 2002. The

incentive to go their own way was reduced by these changes for many departments.

CONCLUSION

In both the United States and Canada, the initial enthusiasm of some reformers for the agency concept was soon tempered by significant challenges in implementation. Fiscal and political considerations unique to each country shaped -- and constrained -- the development of the agency concept in profound ways. In neither country did the agency concept become the foundation for a broad reform project, as it had in New Zealand or the United Kingdom. American and Canadian reform efforts were not systematic, intellectually coherent, or backed by strong support among political executives. On the contrary, North American reforms were pragmatic and opportunistic. The application of the concept often depended on the initative of entrepreneurs within the bureaucracy who adapted the idea to resolve immediate policy predicaments.

When the agency concept was embedded in actual reforms, these proved to be incremental in character. Concerns about the potential erosion of accountability or control -- expressed by parent departments, central agencies or legislators -- often meant that new agencies were given few new flexibilities. Nor were governance structures, and traditional accountability structures, radically changed. Just as there was no radical change in organizational structure, there was no radical change in organizational performance. Where established, agencies did not generate dramatic improvements in efficiency or service quality. More often, they served as demonstration sites for modest innovations in managerial practice.

By 2001, the agency concept had ceased to hold a prominent place in the rhetoric

of reform in the United States and Canada. Both countries appear to have reached a point of statis in which they have a small array of agencies, but do not intend to pursue the creation of any more as a matter of strategic direction. Additional prospective candidates for agency status had been deterred by the obvious difficulties in attaining significant changes in central controls or accountability structures. Many reformers had also begun to revisit the possibilities for reform of government-wide management laws, aiming to improve conditions for all federal departments and agencies at one stroke. In a sense, the pendulum had swung back to where it had been one or two decades before. Such reforms, if successful, would make all departments more like agencies. The outstanding question, both in Canada and the United States, is whether such across-the-board initiatives, tried many times in the past, will actually succeed this time around.

TABLE 1: CANDIDATES FOR PBO STATUS (USA)

Organization	Parent department	Staff	Date proposed	Date established
Patent and Trademark Office	Commerce	5,237	September 1995	November 1999
National Technical Information Service	Commerce	406	September 1995	Not established
Defense Commissary Agency	Defense	17,612	March 1996	Not established
Animal and Plant Health Inspection Service	Agriculture	5,300	March 1996	Not established
Federal Housing Administration	Housing and Urban Development	4,544	March 1996	Not established
Government National Mortgage Association	Housing and Urban Development	72	March 1996	Not established
Office of Retirement Programs	Office of Personnel Management	921	March 1996	Not established
U.S. Mint	Treasury	2,347	July 1996	Not established
Seafood Inspection Program	Commerce	200	September 1996	Not established
Air Traffic Organization	Transportation		December 1997	December 2000
Office of Student Financial Assistance	Education		April 1998	October 1998

TABLE 2: SPECIAL OPERATING AGENCIES AND LEGISLATED SERVICE AGENCIES IN THE CANADIAN PUBLIC SERVICE

Name	Year established	Personnel	Budget (2001)
Special Operating Agencies (SOAs)			
Consulting and Audit Canada	1990	420	$67MM
Translation Bureau	1995	120	$107 MM
Passport Office	1990	550	$38 MM
Training and Development Canada	1990	150	$15MM
CORCAN	1992	360	$47MM
Canadian Intellectual Property Office	1992	450	$40MM
Measurement Canada	1996	380	$20MM
Superintendent of Bankruptcy	1997	250	$12MM
Technology Partnerships Canada	1996	50	$250MM
Canadian Heritage Information Network	1992	34	$2MM
Canadian Conservation Institute	1992	78	$6MM
Canadian Para-Mutuel Agency	1992	78	$15MM
Indian Oil & Gas Canada	1993	67	$6MM
Physical Resources Bureau	1993	124	$70MM
Canada Investment and Savings	1995	18	$130MM
Occupation Health and Safety Agency	1996	210	$30MM
Canadian Forces Housing Agency	1995	N/A	$115MM
Defence Research & Development Canada	2000	1050	$ 217MM
Legislated Service Agencies			
Canadian Customs and Revenue Agency	1999	48,000	$3,330MM
Canadian Food Inspection Agency	1997	5026	$235MM
Parks Canada Agency	1998	5278	$345MM

WORKS CITED

ENDNOTES

[1] The phrase is Francesca Gains': see her chapter in this volume.

[2] Government Performance and Results Act, PL 103-62.

[3] Although significant procurement reforms were enacted, many other key recommendations from NPR's first report were not been adopted. These include proposals to reduce "over-itemization" in appropriation accounts (recommendation BGT03); eliminate employment ceilings and floors (BGT04); convert to multi-year appropriations and permit carry-forwards (BGT07); allow agencies to develop their own recruitment and examining programs (HRM01), broadband classification systems (HRM02), performance management programs (HRM03), or incentive systems (HRM04); and eliminate the GPO and GSA service monopolies (SUP01 and SUP08) [Gore, 1993 #27].

[4] A senior NPR official observed in 1996 that "[T]he basic 'rules of the game' in the personnel and budget systems have not changed . . . The inability of NPR to achieve government-wide changes in these rules during its first three years is part of the underlying rationale for the Vice President's embrace of the Performance-Based Organizations initiative -- it allows piecemeal reforms of these rules on an agency-by-agency basis" [Kamensky, 1996 #866: 34].

[5] Two other organizations were later added to the list of PBO candidates.

[6] For contemporaneous comments on challenges of deregulation within Next Steps agencies, see: [Trosa, 1994 #100][Barberis, 1995 #864][Greenaway, 1995 #95] [Campbell, 1995 #865: 496-498][Talbot, 1996 #162].

[7] Department of Transportation and Related Agencies Appropriations Act, 1996, P.L. 104-50, sections 347 and 348.

[8] Patent and Trademark Office Corporation Act, H.R. 1659, 104th Cong., 1st sess.

[9] Treasury, Postal Service, And General Government Appropriations Act, 1997, 104th Cong., 2d sess., H.R. 3756, section 527.

[10] Patent and Trademark Office Government Corporation Act of 1996, H.R. 3460 (as reported by subcommittee), section 113. 104th Cong., 2d sess.

[11] Even though a bill already endorsed by the chair of PTO's House subcommittee would have released the Patent and Trademark Office from GSA control, the administration's own bill did not: instead, it allowed PTO to contract for real property services only when the head of GSA and the Secretary of Commerce agreed it would be cost-effective to do so. Compare H.R. 1659, section 101, with United States Intellectual Property Organization Act of 1995, H.R. 2533, 104th Cong., section 102. The change was

important to the Patent and Trademark Office, which wanted to acquire a new headquarters.

[12] Compare H.R. 1659, section 102, with H.R. 2533, section 102.

[13] Compare H.R. 3460 (as reported by subcommittee), section 121, with H.R. 3460 (as reported by committee), section 122.

[14] A senior official argued that "the main argument in favor of the [PBO] model" was the ability to hire COOs under fixed-term contracts with performance incentives [Koskinen, 1996 #858].

[15] A provision to establish annual performance agreements for the head of a reorganized U.S. Mint was also included in the House of Representative's 1997 Treasury appropriation bill (H.R. 3756 (as reported to the House), section 527). However, the provision was deleted during mark-up of the bill by the Senate appropriations committee.

[16] This may explain why the Administration did not take up a suggestion by the former head of the Occupational Safety and Health Administration that his organization should be established as a PBO (Dear, 1996).

[17] For references to "factory" operations that could be converted to PBO status, see: [Sanders, 1997 #879][Subcommittee on postsecondary education, 1997 #878].

[18] Convention dictates that the government alone can introduce appropriation bills in Parliament, and the fact that the governing party usually holds a majority in Parliament means that appropriation bills rarely change dramatically. Unless there is an major shift in economic conditions, operating budgets will not change radically during the fiscal year.

[19] This principle may have been established in Britain as a result of the controversy surrounding the firing of the head of Her Majesty's Prison Service in October 1995. The fired executive sued the government for wrongful dismissal, arguing that he had achieved all of the targets specified in his performance agreement. In March 1996, the government agreed to pay damages to the executive.

[20] The administration's 1995 bill to reorganize the Patent and Trademark Office, H.R. 2533, provided for PTO's executive to "serve on the basis of a six-year contract with the Secretary [of Commerce], so long as performance, as set forth in the annual agreement, is satisfactory" (H.R. 2533, section 103). The same language was used by the House appropriations subcommittee to define the status of the director of the proposed Mint PBO (H.R. 3756 (as reported to the House), section 527).

[21]Provisions establishing the Office of Student Financial Assistance Programs as a performance-based organization were contained in the Higher Education Amendments of 1998, P.L. 105-244.

[22] American Inventors Protection Act of 1999, PL 106-113.

[23] Executive Order 13180, December 7, 2000.

[24] Executive Order 13180, Section 2(a). Contrast the Executive Order with the recommendations of the National Civil Aviation Review Commission, which in 1997 recommended a new PBO with significant flexibilities in key areas [National Civil Aviation Review Commission, 1997 #544]

[25] Managerial Flexibility Act of 2001, S. 1612, 107th Cong., 1st Sess.

[26] S. 1603, 107th Cong., 1st Sess.

[27] Peter Aucoin, *Comparative Perspectives on Canadian Public Service Reform in the 1990s, published as part of the report of the Auditor General, 2000, Ottawa*

[28] *Framework for Alternative Service Delivery,* Treasury Board of Canada, 1996, available at www.tbs-sct.gc.ca/Pubs_pol/opepubs/TB_B4/FR_e.html

[29] *Report of the Auditor General, February, 2001,* Government of Canada, available at www.oag-bvg.gc.ca/domino/reportsnsf/html

[30] op. cit

[31] Aucoin, op. cit.

[32] As the Minister of National Revenue wrote in the most recent Corporate Business Plan of CCRA: "The Canada Customs and Revenue Agency was created to find better ways to serve Canadians." *Summary of the Corporate Business Plan, 2001-2004,* Canada Customs and Revenue Agency, Ottawa, 2001

[33] *Canada Customs and Revenue Agency Act,* 1999, Section 38 (1) and (2), available at http://laws.justice.gc.cs/en/C-2.7/11187.html

[34] *Parks Canada Act,* 1998, Sections 31-35, available at www.parkscanada.gc.ca/Lirbrary/acts

[35] *Managing in the New Public Service: Some Implications for How We are Governed,* Anne Perkins and Robert F. Shepherd, in *How Ottawa Spends, 2001-2002,* edited by Leslie A. Pal, Oxford University Press, 2001

[36] op. cit.

[37] President Ron Doering, testifying before a Parliamentary Committee, quoted in *Banishing Bureaucracy or Hatching a Hyrbid? The Canadian Food Inspection Agency and the Politics of Reinventing Government,* Michael J. Prince, Governance, Vol. 13, No. 2, April 2000

[38] op. cit.

[39] op. cit

[40] Prince, op. cit