

Presentation to Law Amendments

Governance Concerns

Invest NS Act– Bill No. 214 – October 19, 2022

Build NS Act– Bill No. 216 – October 19, 2022

Good morning, everyone and thank you for the opportunity to present to you today. My name is Patrick Sullivan, and I am the President and CEO of the Halifax Chamber of Commerce. The Halifax Chamber is an organization of over 1,800 members or over 68,000 employees, and as part of our strategic plan we work to provide the services our members need, events that will help them learn and we advocate for conditions in the economy that enhance their prosperity. We have several specific goals in our current strategy, but the one that I am here to focus on today is to optimization of the size of government through, reduced tax burden, efficient spending, and increased revenue.

On July 27th, the province of Nova Scotia announced the consolidation of five crown corporations into two. In general, we are in favour of the concept of less bureaucracy, greater efficiency, improved speed of decision-making and less duplication among government organizations. As I mentioned one of our goals in our Strategic Plan is to optimize the size of government through efficient spending. That being said, we are not in favour of the way the province has decided to implement the governance model of these new crown corporations.

On October 19th, the government introduced two new pieces of legislation: Bill 214 Invest Nova Scotia Act and Bill 216 Build Nova Scotia Act, which consolidated four crown corporations into two new ones. The concern we have is not with the consolidation of these organizations, although it would have been good to understand what efficiencies will be accomplished, our issue is with the system of governance and oversight proposed for these new organizations. Sections 23(a) of Bill 214 and 22(a) of Bill 216 respectively, state that: “The Advisory Board shall report to the Minister through the Chief Executive Officer.” This is not an example of a best practices model.

The government seems to have some confusion about crown corporations and their governance model. As recently as today, as reported in AllNova Scotia, the Premier was forced to defend the independence of Invest Nova Scotia and its decisions, stating that decisions will lie with the CEO and Staff, however, this CEO reports directly to the Minister of Economic Development. The structure proposed reflects the current administration’s lack of awareness when it comes to the role and importance of good governance.

The Board of Directors of a Crown corporation has the legal responsibility to act in the best interests of the corporation and to exercise due care and diligence. A Board is expected to provide strategic guidance to management and oversee the activities of the corporation. While an Advisory Board can provide valuable assistance to a company, the major difference lies in its fiduciary responsibilities. The level of fiduciary obligation is much higher in a Board of Directors than an Advisory Board. If we look to the Canadian Governments’ “[Crown Corporation Guidelines](#)” it states “the board of directors of a crown corporation has the legal responsibility to act in the best interests of the corporation and to exercise due care and diligence. The board is expected to provide strategic guidance to management and oversee the activities of the corporation.”

When we look at this bill, the advisory board has no capacity to create by-laws, has no required number of meetings and no requirement to create a board charter to assist it in its role.

Good board governance has many benefits, below are some of the most significant board responsibilities:

- CEO hiring, direction, performance management and succession planning
- Setting strategic direction for the organization
- Identifying principal risks for the corporation and ensuring systems to manage risk are in place
- Provide high level operational oversight
- Responsibility for Audit review

The announcement of the new legislation continued the trend which started with the elimination of the NSHA Board and CEO, the Tourism Nova Scotia Board, and the Boards for Innovacorp, NSBI and Develop Nova Scotia and others. Terminating these boards with a future promise of an advisory board and displacing the responsibility between the board and the CEO with a reporting relationship between the CEO and the Minister without a board's involvement is a poor example of governance. We have yet to see the rationale for less governance of these and the other organizations which have been consolidated with no oversight by a Board of Directors. How will not having a board of directors, expedite effective decision making and effective governance without political interference

In conclusion, our concerns with the Invest NS Act and the Build NS Act and now others, are centred around the lack of proper governance. An advisory board provides less oversight and creates the potential for accusations of political interference for the Ministers who oversee these files. As such, we feel that the legislation should be amended to reflect a proper governance structure with the establishment of a board of directors and a reporting relationship with the Chief Executive Officer reporting to a board of directors, and then an appointed Chair of the Board who reports to the Minister.

I would be pleased to take questions.