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## **Evaluation of Corporations Canada**

### **Final Report**

**February 2013**

Recommended for approval to the Deputy Minister by the  
Departmental Evaluation Committee on February 22, 2013

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## LIST OF ACRONYMS USED IN REPORT

Acronym	Meaning
AEB	Audit and Evaluation Branch
BOTA	Boards of Trade Act
CACLA	Canadian Association of Law Administrators
CBCA	Canada Business Corporations Act
CCA	Canada Cooperatives Act
CIO	Chief Informatics Office
CIPO	Canadian Intellectual Property Office
CRA	Canada Revenue Agency
NFP Act	Canada Not-for-profit Corporations Act
NUANS	Newly Upgraded Automated Name Search
OSB	Office of the Superintendent of Bankruptcy Canada
PAA	Program Alignment Architecture
S&P	Standard & Poor
TSX	Toronto Stock Exchange

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# EXECUTIVE SUMMARY

## Program Overview

In Canada, businesses may choose to incorporate either federally or provincially. Corporations Canada is the body that administers federal statutes pertaining to incorporation. It falls under the Small Business, Tourism and Marketplace Services Sector of Industry Canada.

Corporations Canada's main lines of business are incorporation and related services, dissolution of corporations, ruling on the use of corporate names, collecting and disseminating information on federal companies, development of the regulatory framework, and compliance and enforcement activities.

## Evaluation Purpose and Methodology

In accordance with the *Policy on Evaluation* and the *Directive on the Evaluation Function*, the purpose of this evaluation was to assess the core issues of relevance and performance of Corporations Canada.

The evaluation findings and conclusions are based on the analysis of multiple lines of evidence. The methodology included a review of documents and literature, an administrative data review, a client survey, a survey of firms who submit incorporation applications on behalf of their clients (intermediaries), key interviews, and a cross-jurisdictional analysis.

## Findings

### *Relevance*

There is a continued need for Corporations Canada to provide a framework that allows businesses to incorporate federally. Incorporation provides businesses with benefits such as limited liability and eligibility for corporate tax rates. Corporations Canada affords the business community a recognizable brand on the international stage, as well as other benefits such as heightened name protection and a high level of online services. While businesses may incorporate at the federal or provincial level, there are differences in legislation that favour different business models. For example, a substantial proportion of TSX S&P index firms are federally incorporated (40%).

The *Constitution Act* clearly grants the provinces the legislative authority to incorporate businesses. By contrast, the federal government's authority is not explicitly stated in the Act but is confirmed by the courts. Further, the *Department of Industry Act* provides authority to the Minister of Industry over corporations. While federal and provincial jurisdictions both authorize the creation of corporations, each jurisdiction is seen as providing unique benefits that provide a competitive choice in the marketplace.

The activities that Corporations Canada undertakes and the legislation it administers align with current government priorities related to supporting businesses to improve competitiveness and

open new markets. Corporations Canada's activities also align with Industry Canada's strategic objectives in supporting marketplace efficiency, effectiveness and competitiveness while ensuring corporate accountability, as well as protecting shareholders and the public.

## ***Performance***

Corporations Canada has a high level of client satisfaction. Further, it has been successful in attaining its immediate and intermediate expected outcomes, particularly related to low barriers to business, compliance with legislation, and strong corporate governance in support of entrepreneurship. Client awareness is good overall; however it is lower with respect to some products and services. The evaluation is inconclusive on whether two longer-term outcomes have been achieved, namely marketplace certainty in support of entrepreneurship and informed decision-making, as the outcomes and related indicators require clarification and further definition.

The evaluation found evidence that Corporations Canada provides a leadership role in relation to corporate law in Canada. While each province has a constitutional right to offer its own incorporation legislation, and this legislation is typically similar to federal offerings, there are key differences that offer the Canadian business community choices that facilitate different business models. For example, different jurisdictions have different standards for residency requirements. Further, Corporations Canada's partners are generally satisfied with the leadership the organization provides nationally.

Corporations Canada provides a high level of scrutiny in reviewing corporate name proposals which results in an extremely low level of name challenges. While clients perceive a benefit of this high level of scrutiny and the majority feel that the level of scrutiny should be maintained, there are other jurisdictions that provide much lower levels of scrutiny and believe it is a more cost-effective approach.

In terms of the potential to innovate, the majority of clients did not believe that Corporations Canada needs to do anything differently. However, some clients suggested that Corporations Canada could improve or expand its online and e-filing services.

In examining the regulatory burden, the evaluation concluded that the burden is small and appropriately balances Corporations Canada's objectives to support entrepreneurship while promoting good corporate governance practices.

## **Recommendations**

The conclusions of the evaluation led to the following recommendations:

1. As Corporations Canada's performance measurement strategy evolves, it should ensure that the longer term expected outcomes contained in its logic model are clarified and well-defined and that appropriate data is collected in relation to them. This will ensure that Corporations Canada can assess whether desired outcomes are being achieved.
2. Corporations Canada should consider expanding its online and e-filing services.

## 1.0 INTRODUCTION

This report presents the results of an evaluation of Corporations Canada conducted between March and October 2012. The purpose of the evaluation was to assess the relevance and performance of Corporations Canada. The report is organized into four sections:

- Section 1 provides the profile of Corporations Canada;
- Section 2 presents the evaluation methodology;
- Section 3 presents the findings pertaining to the evaluation issues of relevance and performance; and,
- Section 4 summarizes the evaluation's conclusions and provides recommendations for future actions.

### 1.1 Description

Corporations Canada allows Canadians and businesses to incorporate at the federal level in accordance with Canada's laws. It directly contributes to IC's strategic objectives of ensuring that the Canadian marketplace is efficient and competitive by administering federal laws and statutes governing corporate activity in Canada.

The key statutes are:

- *Canada Business Corporations Act* (CBCA);
- *Canada Not-for-profit Corporations Act* (NFPA) and Part II of the *Canada Corporations Act* (the old not-for-profit legislation);
- *Canada Cooperatives Act* (CCA);
- *Boards of Trade Act* (BTA); and
- Special Acts of Parliament.

The organization's main lines of business include incorporation and related services such as amalgamation or other corporate charter amendments; dissolution of corporations; ruling on the use of corporate names; collecting and disseminating information on federal companies; development of the regulatory framework; and compliance and enforcement activities related to the statutes it administers.

It should be noted that businesses in Canada have the option of incorporating at either the federal or provincial level. In addition, all businesses that incorporate federally are required to register in each province in which they carry on business.

### 1.2 Objectives

Corporations Canada identifies three objectives in their 2011-2012 Business Plan:

- Services to clients: To offer clients high quality services that are innovative, responsive, and cost effective;

- Compliance: To promote conformity with transparent, risk-based compliance and enforcement strategies relating to the legislation and to enhance stakeholder understanding of roles and responsibilities under the regulatory framework; and
- Corporate Law: To contribute to an effective and responsive legal and policy framework.

In addition, the Business Plan describes the expected outcomes of Corporations Canada's legislation:

- enhances economic efficiency by making it easy to start up and operate a business in Canada;
- ensures accountability of corporate directors and officers;
- protects shareholders and the public; and,
- ultimately helps make Canada an attractive place to invest and do business.

### **1.3 Organizational Structure**

Corporations Canada is one of seven branches within the Small Business, Tourism and Marketplace Services Sector. The Branch is comprised of three Directorates:

#### ***Compliance and Policy Directorate***

This directorate's main responsibilities are to contribute to government policy development; to develop external and internal administrative policies, guidelines and forms; and to ensure incorporated entities comply with corporate legislation administered by Corporations Canada. Compliance activities include dealing with complex transactions such as court-ordered arrangements and issuing exemptions to relieve corporations from certain requirements of the CBCA; handling complaints from stakeholders on corporate behaviours; and implementing programs to ensure that publicly available corporate information is reliable and up-to-date. The Directorate is the departmental lead for developing the regulatory framework and collaborates with the Marketplace Framework Policy Branch to reform corporate legislation.

#### ***Incorporation and Information Products and Services Directorate***

This group has the overall responsibility for incorporating new businesses, not-for-profit organizations, cooperatives and registering Board of Trades/Chambers of Commerce. This includes examining and approving various applications (incorporations, revivals, amendments, dissolutions, amalgamations, etc.) submitted under the various Acts. It ensures the integrity of Corporations Canada's database by inputting and integrating information provided by applicants. This leads to a related responsibility for providing and disseminating corporate information to the public. The Directorate also manages the NUANS program (Newly Upgraded Automated Name Search), a corporate name search service, which is a key component used by the federal government and nine provincial and territorial corporate law jurisdictions. Lastly, this Directorate is responsible for research and analysis with a focus on identifying and establishing service improvements for clients, providing management information on ongoing organizational performance, and trends in the corporate environment. This work includes developing tools and approaches to gather, analyze and distribute information about client needs and expectations to help inform service improvements, as well as outreach activities.



## ***Corporate Services Directorate***

This directorate provides support to the branch in such areas as finance, administration, human resources, communications and information technologies. The IT activities include liaising with CIO on all aspects of the management of the main service delivery application, CORPCAN, as well as representing Corporations Canada interest on committees related to IM/IT. In addition, the Directorate includes the Office of the Registrar General, which is responsible for the production of official documents and the registration of railway transactions.

### **1.4 Clients and Stakeholders**

Corporations Canada has a number of clients and stakeholders. Its primary clients are companies that wish to federally incorporate and those that are already incorporated federally. In addition, many companies are represented by intermediaries such as accounting and legal firms; these intermediaries can be considered as clients. Corporations Canada also has clients and individuals that wish to find out information about federally incorporated businesses.

Corporations Canada has several stakeholder groups. It has partnered with Canada Revenue Agency (CRA) to enable federally incorporating businesses to get their CRA Business Number at the time of incorporation. The Office of the Superintendent of Bankruptcy Canada (OSB) provides Corporations Canada with the status of federally incorporated businesses that declared bankruptcy. In relation to provinces, Corporations Canada has initiated an online inter-provincial business registration in partnership with four provinces. This has enabled businesses to incorporate federally or in any of the four provinces and to simultaneously register in the partner province where they intend to carry on business. In addition, Corporations Canada's online name search service is used by many provinces. Finally, Corporations Canada interfaces with corporate law experts and key associations within the legal community such as the Corporate Law Section of the Ontario Bar Association.

### **1.5 Resources**

Corporations Canada operates under a vote net authority which is an alternative means of funding under which Parliament authorizes a program to apply its revenues towards costs directly incurred for specific services or activities. Historically, Corporations Canada has collected revenue above its vote net authority on a yearly basis and these surpluses have been returned to the Consolidated Revenue Fund<sup>1</sup>. This revenue supports all activities of the organization including policy and regulatory development; compliance activities; services to clients; IT maintenance and development; web presence and corporate support services.

In addition to the vote net authority, Corporations Canada is also responsible for the NUANS program which is fully funded from its royalties. This means that the revenue collected in one year becomes the spending authority for the following year. The estimated royalties for the current fiscal year are \$800,000.

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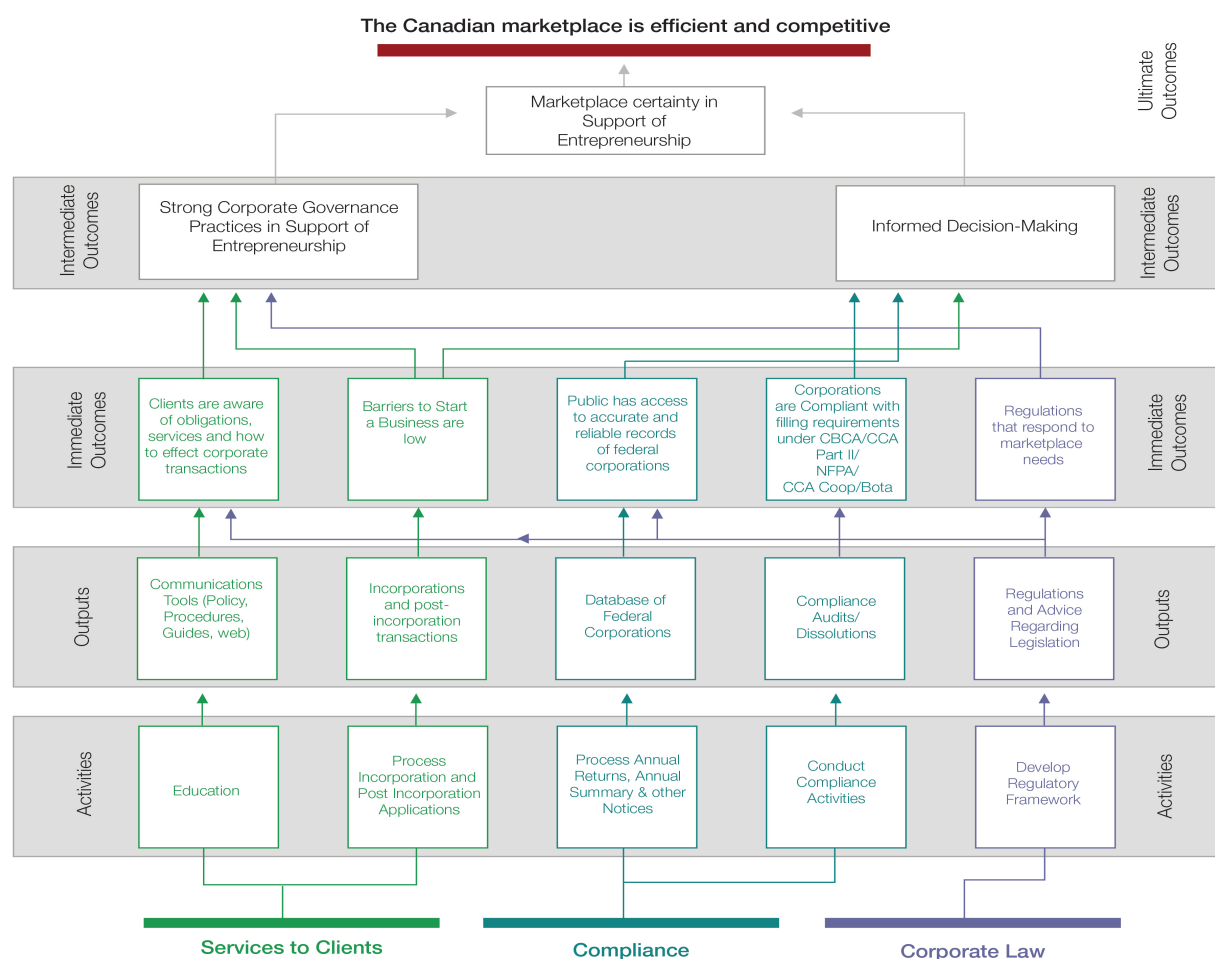
<sup>1</sup> In 2010-2011, Corporation Canada's revenues were \$12.1 M with \$3.4 M being returned to the Consolidated Revenue Fund.

The total expenditures for 2011-12 were \$8.7M. Of this amount, \$5.8M (67%) was spent on salary, \$1.9M (22%) on Operations and Maintenance and about \$1M (11%) on capital. In terms of staff, Corporations Canada has 84 allocated FTEs for 2012-2013: 60% of its positions are entry level support/technical positions or developmental.

## 1.6 Logic Model

The logic model presented below depicts the program theory for Corporations Canada. That is, it shows how Corporations Canada's activities are expected to lead to certain outputs and various levels of outcomes, ultimately to one of Industry Canada's strategic outcomes.

**Figure 1: Corporations Canada Logic Model**



## **2.0 EVALUATION METHODOLOGY**

This section describes the objectives of the evaluation, the overall approach and the specific questions that were addressed, the data collection methods used, and the limitations of the methodology.

### **2.1 Context**

An evaluability assessment of Corporations Canada was completed in 2008-2009 by the Audit and Evaluation Branch (AEB). The assessment concluded that Corporations Canada met all of the criteria for evaluability, and while there was no immediate need for an evaluation, there was a perceived value in doing so and openness of the organization to do so. Due to evolving priorities, the evaluation of Corporations Canada was planned for 2012-2013.

### **2.2 Approach**

AEB managed the evaluation, conducted much of the primary data collection and developed this report. AEB also oversaw two contracts to complete the evaluation: one of which was to conduct a survey of intermediaries, and the other, which was to conduct a cross-jurisdictional analysis.

### **2.3 Evaluation Objective and Scope**

An evaluation of Corporations Canada is required under the Treasury Board Policy on Evaluation. In line with this Policy and the Directive on the Evaluation Function, the purpose of this evaluation was to assess the core evaluation issues of relevance and performance and certain specific issues identified by the management of Corporations Canada.

The evaluation focused primarily on the activities related to the incorporation of businesses under the CBCA, although incorporation under not-for-profit legislation was addressed to some extent. The NUANS program was explicitly excluded from the scope of the evaluation.

### **2.4 Evaluation Questions**

The evaluation addressed the following questions:

#### Relevance

- Is there a continued need for Corporations Canada? What is the distinct benefit that Corporations Canada provides?
- To what extent do Corporations Canada's activities align with federal government priorities and Industry Canada's strategic priorities?
- Are Corporations Canada's activities consistent with federal roles and responsibilities? Is there overlap and duplication between Corporations Canada's activities and those of the provinces?

## Performance

- Is Corporations Canada realizing its expected outcomes?
- Has Corporation Canada's leadership fostered harmonization of corporate law across Canada? Can Corporations Canada better leverage its partnerships with the provinces/territories?
- To what extent does the level of scrutiny applied to corporate name proposals provide a benefit to clients? What is the perceived value of the service amongst provinces and stakeholders?
- Are there opportunities for Corporations Canada to become more innovative or cost-effective?
- To what extent are Corporations Canada's regulatory requirements appropriate? Are there ways to reduce regulatory burden while still achieving Corporations Canada's objectives?

### **2.5 Data Collection Methods**

Multiple lines of evidence, along with the triangulation of data, were used where possible to address all evaluation questions of relevance and performance. Evaluation methods included the following:

- Document review
- Literature review
- Administrative data review
- Client survey
- Survey of intermediaries
- Interviews
- Cross-jurisdictional analysis

#### **2.5.1 Document review**

A review of Corporation Canada's program documents was completed as part of this evaluation. These documents included Corporations Canada's annual business plans, periodic studies, external reviews, and other Corporations Canada web documentation and publications. Additionally, statutes related to incorporation under Corporations Canada and other jurisdictions in Canada were reviewed to document key differences identified by clients. A list of the documents reviewed can be found in Appendix 1.

#### **2.5.2 Literature review**

The literature review sought out information regarding the theory of incorporation and the benefits of having a legal framework with respect to fostering a fair, efficient and competitive marketplace as well as the philosophy of enabling legislation. It also looked at the roles of the various jurisdictions in Canada in relation to incorporation. A list of the literature reviewed can be found in Appendix 2.

### **2.5.3 Administrative data review**

A mix of data from Corporations Canada as well as other jurisdictions was used to assess Corporations Canada's relevance and performance. Corporations Canada databases provided statistics related to outputs and some outcomes, such as compliance with filing obligations. Data from other jurisdictions was also used to demonstrate the distribution of incorporations between the federal and provincial governments.

### **2.5.4 Client Survey**

A web-based survey was conducted of all self-filing clients who incorporated in 2011-2012. Self-filers are those clients who file their application on their own behalf and do not employ an intermediary. (Selected intermediaries were subject to telephone interviews, described in the next section.) The survey questionnaire can be found in Appendix 3.

Corporations Canada provided a list of 13,605 clients who were believed to have self-filed in 2011-2012. Emails were sent to all of these clients and 1,947 opted to participate in the survey, resulting in a response rate of 14.3%. However, 699 of the respondents self-identified as intermediaries, and were asked no further questions. This left a total of 1,248 respondents who confirmed that they were self-filers and further participated in the survey.

The survey provided insight into the reasons clients choose to incorporate federally as well as program performance.

### **2.5.5 Survey of Intermediaries**

Intermediaries are firms, primarily in the areas of law and accounting, which submit incorporation applications on behalf of clients. Corporations Canada maintains a list of self-identified intermediaries and tracks the number of incorporation applications they submit. The survey of intermediaries focused on the 150 firms that had submitted the most incorporation applications in 2011-2012. These intermediaries represent a broad range of clients seeking federal incorporation, and often represent large numbers of firms that incorporate at the provincial level. As such, they were expected to have a broad knowledge of the relevance, effectiveness and efficiency of Corporation Canada's activities and in relation to those provided by provincial authorities.

This survey collected a fair amount of qualitative data and, therefore, was conducted by telephone by EKOS Research. EKOS contacted 232 individuals at the 150 intermediary firms identified and was successful in completing 142 interviews for a response rate of 61%. (Some firms had multiple contacts often in different offices/cities.) The questionnaire employed can be found in Appendix 4.

### **2.5.6 Interviews**

The objective of the interviews was to gather in-depth information for evaluation purposes, including views, explanations and factual information that address the evaluation questions. Interviews allowed evaluators to gain insight into the role and performance of Corporations

Canada from the perspective of Corporations Canada staff, provincial corporate registrars, and subject matter experts in the area of the CBCA and not-for-profit incorporations. Interview guides may be found in Appendix 5.

A total of 30 interviews were conducted:

- Corporations Canada staff (11)
- Provincial registrars (9)
- CBCA subject matter experts (6)
- Not-for-profit subject matter experts (4)

### **2.5.7 Cross-Jurisdictional Analysis**

The cross-jurisdictional analysis was conducted by Prairie Research Associates (PRA). This analysis examined legislative differences between selected jurisdictions in Canada that were cited by clients as reasons for favouring particular jurisdictions. In addition, processes, challenges and best practices were examined for four key activities of interest to Corporations Canada management:

- processing of incorporation applications;
- processing of annual reports;
- scrutiny applied in corporate names approvals; and
- compliance activity.

The coverage of this analysis included selected jurisdictions proposed by Corporations Canada in Canada (Corporations Canada plus New Brunswick, Quebec, Manitoba and British Columbia) and internationally (Delaware in the United States, Australia, Sweden and Singapore).

The interview guides for this analysis can be found in Appendix 6.

## **2.6 Data Limitations**

A key data limitation of the evaluation was a lack of available information related to two of the intended outcomes depicted in the logic model: marketplace certainty in support of entrepreneurship; and, informed decision-making.

The evaluation attempted to measure the attainment of the first outcome through interviews of CBCA and not-for-profit subject matter experts. Unfortunately, respondents were generally unable to answer questions about these outcomes. The second outcome is related to the provision of corporate information to interested parties. These parties primarily access this corporate information online through Corporation Canada's "search for a corporation" facility. There was no available secondary information available on the use of this information by this type of client to inform decision-making.

## 3.0 FINDINGS

### 3.1 Relevance

#### 3.1.1 Is there a continued need for Corporations Canada? What is the distinct benefit that Corporations Canada provides?

**Key Finding:** There is a continued need for Corporations Canada to provide a framework that allows businesses to realize the advantages of incorporating federally. While federal and provincial incorporation are similar in many respects, academics, stakeholders and clients all believe that there are unique benefits of federal incorporation. These benefits include increased name protection and international recognition.

The literature review<sup>2</sup> provided evidence of the continued need for businesses to be able to incorporate. It suggests that the largest advantage of a corporation over a sole-proprietorship is the concept of limited liability, as a corporation is legally treated as a person. It further suggests that as corporations are seen as being beneficial to a national economy, laws that have evolved around the corporate form have tended to be empowering to a corporation.

In Canada, the most popular form of business structure is the corporation; in 2011, 67% of Canadian businesses were corporations<sup>3</sup> and at the time of this evaluation, there were 225,000 active federal corporations. The survey of self-filers confirms that the main reasons these businesses incorporated were to create a separate legal entity, to realize the advantages of limited liability, to create a structure that suits specific needs, to be eligible for lower corporate tax rates, and to gain greater access to capital. (see Table 1)

**Table 1: Why Chose to Incorporate**

	Responses	
	N	Percent
To create a separate legal entity	815	65%
To limit liability	628	50%
To create a corporate structure that suits specific needs	500	40%
Lower corporate tax rates	411	33%
To gain greater access to capital	224	18%
Other, please specify	137	11%

Survey of Self-Filers 2012, n=1248

Another factor in considering a continued need for the federal framework is the distribution of corporations across the various jurisdictions. Table 2 shows that overall 9% of active corporations in 2011 were federal.<sup>4</sup> However, the distribution across provinces is quite varied.

<sup>2</sup> McBride, 2011

<sup>3</sup> Corporations Canada Business Analysis 2011

<sup>4</sup> This number is understated to some extent as Quebec has not processed any dissolutions in the last few years and New Brunswick is 9 months behind in processing its dissolutions.

Quebec has the greatest proportion at 23%, but 4% or less of incorporated businesses are federal in 8 of the 13 provinces and territories. While these low proportions may draw into question the continued need for Corporations Canada, an important consideration is that federal corporations account for over 40% of the TSX S&P index<sup>5</sup>. It should be noted that the TSX S&P index companies have considerable impact on the Canadian economy as they represent about 70% of market capitalization for all Canadian-based companies listed on the TSX.

**Table 2: Distribution of Active Corporations in Canada, 2011**

	<b>Provincial Corporations</b>	<b>Federal Corporations</b>	<b>Total Corporations</b>	<b>Proportion Federal Corporations</b>
Newfoundland and Labrador	21,195	386	21,581	2%
Prince Edward Island	6,693	673	7,366	9%
Nova Scotia	54,607	1580	56,187	3%
New Brunswick	33,842	879	34,721	3%
Quebec	344,693	105,774	450,467	23%
Ontario	906,160	94,253	1,000,413	9%
Manitoba	61,808	2,615	64,423	4%
Saskatchewan	57,313	1196	58,509	2%
Alberta	379,790	7,106	386,896	2%
British Columbia	351,467	9,684	361,151	3%
Yukon Territory	4,682	78	4,760	2%
Northwest Territories	2,268	211	2,479	9%
Nunavut	718	107	825	13%
<b>All Canada</b>	<b>2,225,236</b>	<b>224,542</b>	<b>2,449,778</b>	<b>9%</b>

Corporations Canada Business Analysis 2012

The final factor in assessing a continued need for Corporations Canada is whether there are distinct benefits that Corporations Canada offers that are not provided by other jurisdictions. The literature review<sup>6</sup> provides distinct views on this. For example, it is asserted that the federal government is instrumental in providing both provincial jurisdictions and companies with the required structure and environment necessary to promote good corporate governance and thus produce a strong economy. (This is further discussed in section 3.2.2.) Other literature suggests that another identified need for federal corporate legislation is that it provides some distinct benefits that set it apart from other jurisdictions. For example, it provides benefits to corporations that are doing business across provinces or outside of the country. Constitutionally, federal corporations create a special form of economic business organization that attain a national identity and are bound solely by the federal corporate statutes.

<sup>5</sup> Corporations Canada Business Analysis 2011

<sup>6</sup> See Daniels, 1991 and Anisman, 1994



Interestingly, 11% of self-filer respondents were not even aware that they could incorporate provincially. However, the remaining 89% of respondents were able to identify what factors led them to incorporate federally as set out in Table 3.

**Table 3: Reason for Incorporating Federally rather than Provincially**

Reason	Responses	
	N	%
Ability to work in all provinces	924	83%
Heightened name protection (i.e. can operate using corporate name across Canada)	651	59%
International recognition as a Canadian corporation	541	49%
Able to file Articles of Incorporation and other required documents online	499	45%
Greater flexibility on province/territory where registered offices can be located	380	34%
Speed of service	316	28%
Initial cost to incorporate is less than cost of incorporating in some provinces	307	28%
Quality of service	279	25%
National company, so prefer federal incorporation	227	20%
Greater flexibility on where corporate records are maintained or annual meetings held	192	17%
Advice provided by someone else	164	15%
Responsiveness of Corporations Canada staff	159	14%
Requirement that 25% of directors must be residents of Canada (in comparison to some provinces who have 50%, for example)	57	5%
Statutory/legislative reasons	12	1%
Other, please specify	47	4%

Self-Filer Survey 2012, n=1112

The results show that the predominant reason for incorporating federally was the ability to work in all provinces. However, it should be noted that businesses may incorporate in any province and still be able to operate in any other province by simply registering there. On the other hand, heightened name protection and international recognition as a Canadian corporation were the next most frequently cited reasons and are unique to federal incorporation.

Intermediaries were also asked why their clients selected federal over provincial incorporation. The results are displayed in Table 4. While the distributions are different, the ranking of top factors are similar.

**Table 4: Reasons Why Clients of Intermediaries Incorporate Federally Rather than Provincially**

Factors	Responses	
	N	%
Heightened name protection (i.e. can operate using corporate name across Canada)	33	23%
The company operates nationally	23	16%
Ability to work in all provinces	21	15%
Initial cost to incorporate is less than the cost of incorporating in province	19	13%
Greater flexibility than in province/territory where registered	11	8%
Requirement that 25% of directors must be residents of Canada	11	8%
International recognition as a Canadian corporation	9	6%
Your advice (advice provided by the intermediary)	7	5%
Able to file Articles of Incorporation and other required documents	6	4%
Business needs	5	4%
Speed/timeliness	5	4%
Responsiveness of Corporations Canada staff	4	3%
Need/choice of clients	4	3%
The name	3	2%
Greater flexibility on where corporate records are maintained	2	1%
Other	9	6%
Don't know/No response	11	8%

Interviews of Intermediaries 2012, n = 183

As intermediaries represent clients who incorporate both federally and provincially, they are also aware of the reasons why some of their clients incorporate provincially. Table 5 shows that the most frequently cited reason (32%) is that the business is small or only conducting local business. Other key reasons were cost, ease, name approval and residency requirements.

**Table 5: Reasons Why Clients of Intermediaries Incorporate Provincially Rather than Federally**

Factors in selecting provincial over federal incorporation	Responses	
	N	Percent
Small/local (only conduct local business)	45	32%
Cost	26	18%
Ease (e.g. dealings with provincial)	16	11%
Name approval	15	11%
Residency requirements	13	9%
Depending on activity/nature of the business	10	7%
Timeliness	6	4%
Other	9	6%
Don't know/No response	23	16%

Interviews of Intermediaries 2012, n=142

Interviews with Corporations Canada staff, provincial/territorial registrar representatives, and CBCA and not-for-profit subject matter experts all mentioned similar top benefits of incorporating federally versus provincially.

### **3.1.2 Are Corporations Canada’s activities consistent with federal roles and responsibilities? Is there overlap and duplication between Corporations Canada’s activities and those of the provinces?**

**Key Finding:** The *Constitution Act* clearly grants the provinces the legislative authority to incorporate businesses. By contrast, the federal government’s authority is not explicitly stated in the Act but is confirmed by the courts. Further, the *Department of Industry Act* explicitly provides authority to the Minister of Industry in this regard. While Corporations Canada and provinces provide a similar service, there are distinct features that provide competitive choices in the marketplace, such as differing residency requirements and degrees of name protection.

The application of this federal role question is noteworthy in the context of incorporation in Canada because the federal government and the provincial/territorial governments all provide incorporation services.

In the provincial context, the *Constitution Act* of 1867 expressly authorizes provinces to create corporate legislation:

“92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

...

11. The Incorporation of Companies with Provincial Objects.”

It follows that Parliament has legislative jurisdiction with respect to the incorporation of companies at the national level (called residual legislative powers of Parliament). The literature review<sup>7</sup> indicates that while the federal jurisdiction may have been intended to encompass all corporations carrying on business in more than one province, the courts have interpreted it to correspond to provincial incorporation as well. It is generally argued that the reasoning behind this apparent duplication was to create differentiation between companies intending to carry on business within provincial borders and companies that would carry on business in more than one province or, more broadly, outside of Canada. Anisman, in his review, concluded that there is no duplication between provincial and federal corporate legislations, rather that they work in parallel to each other.

In the federal context, Corporations Canada is the client interface on several statutes, including the *Canada Business Corporations Act*, Part II of the *Canada Corporations Act* as well as the new *Not-for-profit Corporations Act*, the *Canada Cooperatives Act* and the *Boards of Trade Act*. These statutes provide the legal framework for the creation and governance of federal corporate entities so they can engage in marketplace activities on a for-profit and not-for-profit basis. Further, section four of the *Department of Industry Act* – S.C. 1995, c.1 states:

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<sup>7</sup> See Anisman, 1994

4. (1) The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not by law assigned to any other department, board or agency of the Government of Canada, relating to:

[...]

(e) corporations and corporate securities;

[...]

In terms of whether Corporation Canada's incorporation activities duplicate those of provinces and territories, the end result is the same, that is a corporate body is created. However, there are unique differences and benefits such as in fees, residency requirements, name protection, reporting requirements, and other administrative requirements. Both federal and provincial interviewees agreed the different options provide competitive choices rather than duplication. A spirit of cooperation is also demonstrated in the fact that Corporations Canada has partnered with four provinces to allow simultaneous registration in those provinces.

In terms of why businesses incorporate federally or provincially, 83% of self-filers indicated that the ability to work in all provinces was one factor in their decision. Complete details on why businesses choose to incorporate federally versus provincially/territorially can be found in section 3.1.1.

It is important to note that Parliament's authority has never been challenged by the provinces or territories. Furthermore, Corporations Canada solely administers certain types of corporations that are created under the *Boards of Trade Act* and by special Acts of Parliament.

### **3.1.3 To what extent do Corporations Canada's activities align with federal government priorities and Industry Canada's strategic priorities?**

**Key Finding:** The activities that Corporations Canada undertakes and the legislation it administers align with current government priorities related to supporting businesses to improve competitiveness and open new markets. Corporations Canada's activities also align with Industry Canada's strategic objectives in supporting marketplace efficiency, effectiveness and competitiveness.

Corporation Canada's activities are consistent with the *Speech from the Throne* on June 3, 2011, which states that jobs and growth will remain the Government's top priority. It also outlined Government objectives to enhance Canada's economic competitiveness, continue opening new markets for Canadian businesses, and increase our standard of living. Corporations Canada contributes to the achievement of these priorities by administering legislation that enhances economic efficiency by making it easy to start up and operate a business in Canada<sup>8</sup>, protects shareholders and the public, and ultimately helps make Canada an attractive place to invest and do business.

<sup>8</sup> The World Bank publication Doing Business 2012 ranked Canada 3rd out of 183 economies for both 2011 and 2012 in the ease of starting a business.

Canada's Budget 2012 continued outlining similar priorities for the Government, such as allowing business to focus on what they do best and ensuring that the Government is focused on enabling and sustaining Canada's long-term economic growth. Again, Corporation Canada's activities are consistent with these priorities.

The *Program Alignment Architecture* (PAA) for the department shows that Corporation Canada's activities contribute to Industry Canada's strategic objectives of ensuring that the Canadian marketplace is efficient and competitive. It facilitates this by administering federal laws and statutes governing corporate activity in Canada. These statutes provide the legal framework for the creation and governance of federal corporate entities so that they can engage in marketplace activities on a for-profit or not-for-profit basis. In addition, Corporations Canada, through its activities, maintains order and fairness in the corporate law arena; ensures greater certainty in the marketplace; and, improves the overall framework of corporate law in Canada – three objectives that support marketplace efficiency and effectiveness.

More specifically, the activities of Corporations Canada contribute to the PAA program activity of Marketplace Frameworks and Regulations. The elements of this program activity, including Corporations Canada, are intended to contribute to the integrity of the marketplace. As previously mentioned, Corporations Canada administers marketplace framework laws and regulations that facilitate corporate activity in Canada while ensuring the accountability of corporate directors and officers, and protecting shareholders and the public.

## **3.2 Performance**

### **3.2.1 Is Corporations Canada realizing its expected outcomes?**

**Key Finding:** Corporations Canada is largely achieving its immediate and intermediate expected outcomes, particularly related to low barriers to business, compliance with legislation, and strong corporate governance in support of entrepreneurship. The evaluation is inconclusive on whether two longer-term outcomes have been achieved, namely marketplace certainty in support of entrepreneurship and informed decision-making, as the outcomes and related indicators require clarification and further definition.

This section examines Corporations Canada's success in achieving its intended outcomes in a broad sense and specifically in relation to the intended outcomes depicted in the logic model, contained in section 1.6.

There are some broad measures of Corporations Canada's success in achieving its expected outcomes. For example, 88% of interviewed intermediaries were satisfied with Corporations Canada's service. In addition, Corporations Canada recently completed its own online survey of self-filers in October 2012, and found that 83% of respondents reported that it was easy to find what they were looking for on the Corporations Canada website, 87% found the information and instructions clear and easy to understand, and 90% found it easy to complete the incorporation request.

## **Immediate Outcomes**

In terms of the logic model, the following are the immediate outcomes that are expected to be achieved:

- clients are aware of obligations, services and how to effect corporate transactions
- regulations respond to marketplace needs
- barriers to start a business are low
- public has access to accurate and reliable records of federal corporations
- corporations are compliant with CBCA/CCA Part II/ NFPA/CCA Coop/ BOTA

### ***Outcome: Clients are aware of obligations, services and how to effect corporate transactions***

Corporations Canada specified a number of areas in which it would expect clients be knowledgeable as a result of the communication tools it produces. These areas of knowledge relate to aspects of the CBCA and obligations set out in various Corporations Canada products and services.

Table 6 shows self-reported knowledge levels of self-filers on various aspects of the CBCA. The table shows that between 8 and 10% of respondents have no knowledge of the various aspects. Between 73 and 75% of respondents rate their knowledge as medium or greater (between 3 and 5) on the various aspects.

**Table 6: Knowledge of Aspects of the CBCA**

	Level of knowledge where 1 = no knowledge and 5 = very knowledgeable				
	1	2	3	4	5
The role of corporate directors	8%	16%	33%	28%	15%
The role of shareholders	9%	16%	34%	27%	14%
The role of corporate officers	10%	17%	34%	25%	14%
The nature of corporate records that must be maintained by my company	8%	17%	34%	26%	15%

Survey of self-filers 2012, n=1248

The survey also demonstrated that clients are generally knowledgeable of their CBCA obligations. Table 7 below shows that a very large majority of respondents (92-95%) are aware of the obligations regarding filing an annual return and providing notification regarding changes in address and changes in directors. Fewer respondents (77%) are aware of the requirement to hold an annual meeting or have a resolution in lieu of the meeting. It should be noted that while 92% reported that they are aware of the annual filing obligation, in 2011-2012, 84% actually complied with the obligation.

**Table 7 – Knowledge of Obligations Under the CBCA**

	% yes	% no
Filing an annual return with Corporations Canada	92	8
Notifying Corporations Canada of an address change for your Registered Office	95	5
Notifying Corporations Canada of changes in directors	93	7
Requirement to hold an annual meeting with shareholders or to have a resolution in lieu of a meeting	77	23

Survey of self-filers 2012, n=1248

Table 8 shows knowledge levels related to various products/services offered by Corporations Canada. The table shows that a strong majority (75%) are aware of the searchable online database of federally incorporated businesses, but less than half are aware that Corporations Canada can provide uncertified copies of corporate documents and certificates of compliance.

**Table 8: Knowledge of Various Corporations Canada Products/Services**

	% yes	% no
Uncertified copies of corporate documents	40	60
Certified copies of corporate documents	59	41
Certificates of compliance	47	53
Certificates of existence	55	45
Searchable online databases of federally incorporated businesses	75	25

Survey of self-filers 2012, n=1248

Overall, client awareness is good. Knowledge of obligations is very high, but knowledge of aspects of the CBCA and knowledge of Corporations Canada products and services are lower. This may be linked to the respondents' needs. For example, clients may not be aware of products/services they have not required or that would normally be requested by an intermediary.

***Outcome: Regulations that respond to marketplace needs***

CBCA subject matter experts interviewed were generally of the view that the CBCA does respond to marketplace needs and that there are no major contradictions with other statutes or regulations. However, some CBCA subject matter experts with a shareholder focus suggested that the CBCA lags behind some international trends in responding to specific marketplace needs. A specific area mentioned is the trend of Canadian companies to voluntarily go to a majority voting system for directors as opposed to the current plurality system which is permitted under the CBCA.

Not-for-profit subject matter experts were unanimous that the new NFP Act has responded to marketplace needs because it brings focus to fundamental good governance principles, it is consistent with the CBCA, and the NFP Act language is consistent and clear.

***Outcome: Barriers to start a business are low***

It is clear from the survey of self-filers that the majority of respondents found it easy to incorporate at the federal level. When asked to rate the ease of incorporation on a scale of one to five with one being very easy and five being very difficult, nearly three quarters of respondents (74%) rated their experience as a one or two. Only about two per cent of respondents found it very difficult to incorporate their business.

**Table 9: Ease of Incorporating**

<b>How difficult did you find it to incorporate your business?</b>			
	<b>Frequency</b>	<b>Percent</b>	<b>Cumulative Percent</b>
1 Very Easy	552	45	45
2	365	29	74
3	213	17	91
4	85	7	98
5 Very Difficult	26	2	100
Total	1241	100	

Survey of self-filers 2012, n=1248

In addition, the literature review provided evidence<sup>9</sup> that the requirements placed on businesses through the requirements of the CBCA do not restrict business activity but rather facilitate it. It is suggested that there are a limited number of mandatory rules under the CBCA which are meant to promote managerial accountability, to protect shareholders, and at times, other stakeholders such as creditors and employees, but they do not interfere with the general freedom of corporations to manage their business affairs.

The efforts of Canada in this area are reflected in the relatively high standing in international rankings of evaluations regarding the ease of starting a business. The World Bank publication Doing Business 2012 ranked Canada 3rd out of 183 economies for both 2011 and 2012 in the ease of starting a business. Indicators for this ranking included the number of procedures to legally start and operate a company, time and cost required to complete each procedure and paid-in minimum capital. Canada ranks well in part because there is a one-day service standard for online filing with Corporations Canada, as well as the various incorporation services made available to the business community, such as online incorporation services, name search services (through NUANS), and combined business number generation through CRA. Cost is another factor in the ranking as Canada's are relatively low. An incorporation can cost as little as \$200.

***Outcome: Public has access to accurate and reliable records of federal corporations***

Corporations Canada maintains a database of all federal corporations incorporated under the various legislations except financial legislation. Clients can conduct an online search by corporate name, corporate number or business number (assigned to business by the Canada Revenue Agency). In fact, in 2011-2012, over 750,000 individuals accessed the database,

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<sup>9</sup> Puri, 2007



conducting close to 2 million searches. In addition, the Corporations Canada website provides a number of search tips to assist clients. This would seem to indicate that the public has easy access.

In terms of accuracy and reliability, information that clients input online that does not have to be approved (change of address, change of director, annual return) is verified by the client as part of the online updating process and is reflected in the database within 30 minutes. Information that is submitted by mail is entered into the system by one Corporations Canada staff member and verified by another. This information is generally reflected in the database within 5 days.

***Outcome: Corporations are compliant with CBCA/CCA Part II/ NFP Act/CCA Coop/ BOTA***

The 2011-2012 Departmental Performance Report indicates that 84% of federally incorporated corporations complied with statutory annual filing requirements. This result surpassed the established target of 80% and was a two percent increase over the 2010-11 fiscal year. Corporations Canada currently does not collect any additional compliance statistics but report that they may consider collecting additional measures as the data system, CorpCan, gets further developed.

**Intermediate Outcomes**

The following are the intermediate outcomes Corporations Canada intends to achieve, as depicted in the logic model:

- strong corporate governance practices in support of entrepreneurship
- informed decision-making

***Outcome: Strong corporate governance practices in support of entrepreneurship***

For this outcome, surveyed intermediaries were asked to rate the extent to which the requirements of Corporations Canada promote good corporate governance of Canadian businesses. Respondents were generally positive with seven in ten (70%) suggesting that the requirements have been effective in promoting good corporate practices. One-quarter of respondents (23%) feel that the rules have been neither effective nor ineffective, and only one in ten (7%) believe they have been ineffective. Furthermore, 69% of respondents believe that the activities of Corporations Canada are effective in facilitating entrepreneurship in Canada.

In interviews of CBCA subject matter experts, most interviewees believed that the CBCA does promote good corporate governance. Of these experts, those with a focus on shareholders rights and corporate governance suggested that the CBCA could tighten governance through additional requirements related to advisory vote for executive compensation, separation of chair and CEO, majority voting, and vote disclosure regulations. The CBCA subject matter experts also generally agreed that the CBCA is enabling legislation that facilitates entrepreneurship because it does not impose a lot of regulatory burden on companies and provides an appropriate balance between transparency for shareholders and the efficient functioning of the company.

Not-for-profit subject matter experts suggested that the new NFP Act supports good corporate governance but wondered if not-for-profits have the capacity to comply with the requirements. These experts did not provide any consensus on whether or not the new legislation will facilitate the creation of not-for-profits in Canada.

***Outcome: Informed decision-making***

Corporations Canada does not collect any ongoing performance data in relation to this outcome. This is partially because this outcome is largely targeted to the users of corporate information who are not the mainstream clients who incorporate under Corporations Canada. Such clients would include lenders, creditors, shareholders and business associates. While subject matter experts were interviewed, they were not able to provide conclusive evidence regarding the success in attaining this outcome.

**Ultimate Outcomes**

Corporations Canada outlines two ultimate outcomes in its logic model:

- marketplace certainty in support of entrepreneurship
- the Canadian marketplace is efficient and competitive

The second ultimate outcome is a strategic outcome under Industry Canada's Program Alignment Architecture.

***Outcome: Marketplace certainty in support of entrepreneurship***

Corporations Canada management had suggested that this outcome would be achieved through useful policy statements and the transparency and consistency of administrative decisions. Accordingly, the evaluators questioned CBCA and not-for-profit subject matter experts regarding the usefulness of Corporations Canada policy statements and the transparency and consistency of administrative decisions. Unfortunately, respondents were unable to answer these questions with the exception that they generally agreed that policy statements about the new NFP Act were clear and useful. It may be useful for Corporations Canada to review this outcome to ensure it is clearly understood by stakeholders and that it has appropriate associated performance indicators.

***Outcome: Canadian marketplace is efficient and competitive***

The 2010-2011 Departmental Performance Report (DPR) describes two performance indicators related this outcome: 1) barriers to competition; and, 2) number of days taken to register a new company. The DPR reported that the target related to the first outcome was 'mostly met' and that the target related to the second outcome (3 days) was 'somewhat met' as the actual performance was 5 days.

### 3.2.2 Has Corporation Canada's leadership fostered harmonization of corporate law across Canada? Can Corporations Canada better leverage its partnerships with the provinces/territories?

**Key Finding:** There is evidence that Corporations Canada has and does exert a leadership role in corporate law. Corporate law in Canada is largely harmonized on key features; however, there are distinguishing features of each legislation that provide different choices in the market.

This evaluation issue is based on certain premises and has several dimensions. First, Corporations Canada along with provincial/territorial authorities all create corporate bodies. One of the suggested benefits of a federal role is that Corporations Canada plays a leadership role that provides a model and raises the bar across Canada. Therefore, one of the objectives of this evaluation was to verify this leadership role. Further to this objective, the evaluation examined whether any such leadership role fostered harmonization of corporate law across Canada and whether Corporations Canada can better leverage its partnerships with provinces/territories.

The literature review conducted as part of this evaluation provided considerable evidence that Corporations Canada has been providing a leadership role. The literature review<sup>10</sup> found that prior to the 1980s, corporate law systems were largely diverse across Canada, due in large part to the existence of two distinct corporate law systems within the national framework: the letters patent and the memorandum systems. This environment changed dramatically in 1975 when the federal government introduced the *Canada Business Corporations Act* (CBCA). After its introduction, the provinces reacted with a wave of competition in an attempt to modernize their own corporate legislature. This resulted in the majority of provincial statutes being exceedingly similar to the federal statute. Within the span of ten years, nine out of ten provinces responded to this federal initiative, adopting similar statutes at a provincial level.

It can be seen that the federal statute has a role in establishing the environment for corporate organizations to operate. McBride (2011) states that a country's federal law establishes parameters under which provincial jurisdictions can experiment and compete. In this way, provincial authorities can use the federal statute as a tool for comparison in order to judge their relative strength. Additionally, provinces may be unable to realize the benefits of the large start-up investment required to create or modify a new corporate statute. Finally, Daniels concludes that inter-governmental competition exerted a harmonizing rather than divisive impact on the Canadian corporate law environment. Provinces generally adopt the federal statute to remain competitive within the national corporate legislation framework, rather than providing the large investment necessary to create their own unique legislation<sup>11</sup>.

From the perspective of provincial/territorial authorities interviewed, most believe that Corporations Canada provides a leadership role to some degree. Intermediaries were much stronger in their belief of the role exerted by Corporations Canada with half of the survey respondents (49%) suggesting that Corporations Canada plays a strong leadership role while one-third (30%) say that the agency plays neither a strong nor a weak role. Just one in ten

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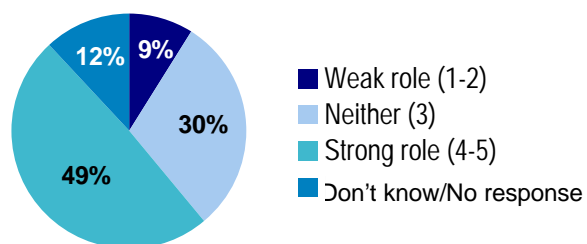
<sup>10</sup> See Daniels, 1991

<sup>11</sup> Daniels, 1991

respondents (9%) feel Corporations Canada offers little leadership, and 12% are unsure (see Figure 2).

**Figure 2: Rating of Leadership Role Played by CC**

"In terms of the leadership role that Corporations Canada plays vis-à-vis provincial authorities in the area of corporate law, how would you rate the leadership role played by Corporations Canada?"



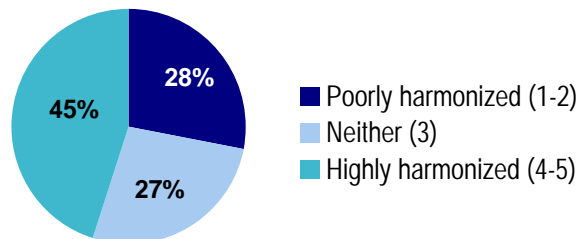
Survey of Intermediaries, 2012, n=142

Corporations Canada staff outlined their participation in the Canadian Association of Corporate Law Administrators (CACLA) in which all the jurisdictions across Canada participate as a forum to communicate with the provinces/territories and provide influence. Provinces/ territories agreed that CACLA is a useful venue to facilitate collaboration. Corporations Canada also hosts the Registrar's Corner on their website which acts as a knowledge base and a collaborative tool for all jurisdictions. The facility provides a repository for CACLA information and papers prepared by individual jurisdictions, provides NUANS reference documents and minutes of committee meetings, and acts as a portal through which registrars share monthly statistics for new incorporations in their respective jurisdictions. In terms of improving harmonization, the provinces/territories are generally satisfied with the interaction provided through CACLA and the Registrar's Corner and did not have any majority views on how collaboration could be improved.

Finally, surveyed intermediaries were asked about the degree of harmonization between the activities and functions of Corporations Canada and the provincial authority that they primarily deal with. Results are somewhat mixed, although almost half of respondents (45%) believe that the two groups are well harmonized. One-quarter (27%) believe that Corporations Canada and provincial authorities are neither highly nor poorly harmonized, and a similar proportion (28%) rate the level of harmonization as poor (see Figure 3).

### Figure 3: Degree of Harmonization Between CC and Provincial Authority

"In terms of the degree of harmonization between the activities and functions of Corporations Canada and the provincial authority that you primarily deal with, how would you rate the degree of harmonization?"



Survey of Intermediaries, 2012, n=142

Provincial/territorial representatives interviewed do not believe there is a high degree of harmonization of corporate law and its administration across Canada. In general, they believe that each jurisdiction has its nuances that are beneficial in presenting a variety of choices to businesses wishing to incorporate.

#### 3.2.3 To what extent does the level of scrutiny applied to corporate name proposals provide a benefit to clients? What is the perceived value of the service amongst provinces and stakeholders?

**Key Finding:** Clients see the benefit of the high level of scrutiny Corporations Canada applies in reviewing corporate name requests and the majority would suggest that this level of scrutiny be maintained. Within the international community, many jurisdictions are exploring the automation of this process, but many technological innovations are fairly recent.

Registrars across Canada and around the world consider corporate name proposals from clients who wish to incorporate. The level of scrutiny that these registrars apply in considering corporate names can range from an automated review that rejects only exact matches to a labour intensive approach that considers potential name confusion. Name confusion can ultimately lead to a company being forced to change its established name.

While the level of scrutiny applied in each jurisdiction is related to the legislative requirements each has, a certain degree of discretion is available. More up-front labour-intensive reviews should potentially reduce the number of back-end allegations of name confusion. Corporations Canada applies some manual review of all name proposals.

The first important consideration for this issue is whether clients perceive that Corporations Canada applies a higher level of scrutiny than other jurisdictions in Canada. The high volume intermediaries in our survey, who generally represent clients both for federal and provincial/territorial incorporation, largely (66%) believed that a higher level of scrutiny is applied by Corporations Canada.

Given that clients generally perceive that Corporations Canada applies greater scrutiny, the evaluation examined whether clients value this higher level of scrutiny. In this regard, almost half (46%) of the intermediaries interviewed suggested that this higher level of scrutiny provides great benefits to their clients and an additional 36% reported that it provides a moderate benefit to clients. The nature of this benefit was largely described (77%) as improved name protection for clients. Further, intermediaries who have used the name search process were asked whether they feel that Corporations Canada should continue with the same level of scrutiny of corporate name proposals or reduce the level of scrutiny. Seven in ten of these respondents (70%) said that Corporations Canada should maintain the same level of scrutiny. One in five (19%) believed that Corporations Canada should reduce the level of scrutiny to some extent, but should retain a level higher than that of provincial authorities, and one in ten (9%) felt that Corporations Canada should reduce the level of scrutiny to one that is comparable to its provincial counterparts.

From the perspective of self-filers, 53% of respondents in the survey who used the name approval process found that it was relatively easy while 25% found it relatively difficult (22% were neutral). Further, 90% of those that used the process believed that it was adequate to protect the unique identity of their business name.

In terms of outcomes, allegations of confusion are expected to be higher when lower levels of scrutiny are applied. Table 10 displays the results for Corporations Canada over the last three fiscal years. These figures show that extremely few allegations are made each year regarding name confusion and even less result in a decision ordering a name change. In each of the three years, the ratio of allegations to total names accepted is less than 0.1%.

**Table 10: Allegations of Name Confusion 2009-2010 through 2011-2012**

	Year		
	2009-2010	2010-2011	2011-2012
Names accepted	14,438	15,785	15,521
Total Allegations	9	6	8 <sup>12</sup>
Outcome – decision resulting in ordering a name change	4	3	2
Outcome – decision resulting in not ordering a name change	5	3	4

The evaluation also looked at the experience of other jurisdictions. Those in Canada reported varying levels of scrutiny. Saskatchewan, for example, suggests that its level of scrutiny is higher

<sup>12</sup> For 2011-2012, one case is still pending and 1 corporation was dissolved before a decision was rendered.

than Corporations Canada, resulting in about a half dozen complaints per year. While they are currently satisfied with their approach, they plan on doing a comprehensive registry review in a couple of years and one area of focus will be on whether it is worth continuing to be as strict in their name approval process. BC also views its process as more rigorous than Corporations Canada's but they would like to remove some of the manual subjectivity to lower labour costs.

The approaches found in international jurisdictions also vary. Among the international jurisdictions consulted as part of this study, increasing efforts are being made to automate the process and limit the requirements for manual reviews.

At one end of the scale, Singapore has implemented a system that is close to being completely automated. Corporate name applications can only be submitted online, and the system completes the review using pre-programmed tests that ensure the proposed name is not identical to an existing name, or that the proposed name does not contain unauthorized terms. There are no tests applied in Singapore to determine whether the proposed name could be too similar to an existing name or if it could create confusion. Only when a decision is appealed will there be a manual review. At this point, less than 5% of applications require such a review. The representative from Singapore expressed a high level of satisfaction with the approach.

Australia has recently implemented a new, centralized, name granting system. The new system has been in place since May 2012. The new system operates much like the system in Singapore, with the distinction that tests are applied to determine whether a name could be considered "nearly identical." The process is automated, and only in cases where a company appeals the decision rendered by the system will there be a manual review. It is estimated that approximately 10% of cases require manual reviews.

Delaware is currently implementing a new system that is expected to streamline the review process. It is worth noting that when a proposed name is raising issues, it will automatically be transferred to an agent who will discuss the matter with the applicant and attempt to find a suitable solution.

At the other end of the scale is Sweden, which proceeds with a thorough review of each proposed name. In addition to standard tests to identify identical names, names are also verified to determine whether they contain family names that the company does not have the right to use. Sweden is also the only European country that compares proposed names to trademarks registered in Sweden, as well as in Europe. The option of moving to a system that would resemble the one currently in place in Singapore was considered and rejected by the Swedish authorities. The Swedish registrar considered the current system as meeting the needs of Swedish companies and as being efficient.

The analysis of other jurisdictions shows that jurisdictions make a choice between front-end and back-end efforts. Corporations Canada is more at the front-end end of the scale but other jurisdictions such as BC and Saskatchewan which also apply more front-end scrutiny are questioning whether they can reduce the degree to which they employ a manual review of name proposals.

### 3.2.4 Are there opportunities for Corporations Canada to become more innovative or cost-effective?

**Key Finding:** The evaluation found that most clients and stakeholders do not see the need for Corporations Canada to be any more innovative or cost-effective. However, some clients and stakeholders suggested that Corporations Canada could improve or expand its electronic offerings.

A wide range of sources were used to identify potential improvements Corporations Canada could implement to become more innovative and/or cost-effective. Clients and stakeholders were asked broad questions on how Corporations Canada could become more innovative and/or cost-effective. In addition, Corporations Canada management identified a number of specific areas which it wanted the evaluation to examine.

#### **Broad Areas for Potential Improvements**

In the survey of intermediaries, respondents were asked if they felt that Corporations Canada could be more innovative. Two-thirds (65%) did not feel the agency needs to do anything to be more innovative. One-third (35%), however, believed that there are areas in which Corporations Canada could be more innovative in its service offerings. Half of these respondents suggested that the organization improve or expand its online and e-filing services. Corporations Canada staff and external stakeholders were also of the opinion that Corporations Canada should expand its online services/e-filing services/digital offerings.

#### **Specific Areas of Interest to Corporations Canada**

Corporations Canada management were particularly interested in what the evaluation could identify in the following areas:

- the processing of incorporation applications;
- the processing of annual reports;
- compliance/enforcement activities; and
- name approval process.

The first two areas were of interest because of the high volume of transactions (in 2011-2012 there were 26,287 CBCA incorporations and 196,096 CBCA annual returns) and the potential to improve cost-effectiveness through small changes. The next two areas were of interest because Corporations Canada has a fair degree of discretion in the level of effort they can apply and hence cost-effectiveness is important.

#### ***Processing of Incorporation Applications***

All of the jurisdictions interviewed, both provincial/territorial and international, are striving to automate their incorporation process as much as possible. In Canada, eight of fourteen



jurisdictions, including Corporations Canada, offer e-filing.<sup>13</sup> In 2011-2012, 98% of Corporations Canada CBCA incorporations were completed electronically.<sup>14</sup> Other than increasing automation and the proportion of electronic filing, none of the jurisdictions identified any additional measures to improve the innovativeness or cost-effectiveness of this process.

### ***Processing of Annual Reports***

Similar to the processing of incorporation applications, all jurisdictions interviewed are trying to automate the processing of annual reports and increase the proportion of e-filing as much as possible to reduce costs. In 2011-2012, Corporations Canada was successful in having 93% of CBCA annual returns submitted electronically. Some innovations implemented by other jurisdictions include not requiring annual returns for companies with less than \$5 million in annual revenue (Singapore) and using the corporate tax return as a way to verify corporate information for the registrar (Quebec).

### ***Compliance/Enforcement Activities***

There are two types of compliance activities related to incorporations that were examined in this evaluation:

- **Administrative compliance:** This type of compliance activity ensures that corporations file their annual report every year and implement measures to enforce dissolution of corporations that fail to meet these reporting requirements.
- **Legislative compliance:** This type of compliance activity relates to failures from corporations to meet their obligations as stated by the applicable legislation (e.g., a corporation that fails to hold its annual meeting of shareholders).

Most of the jurisdictions that were interviewed have measures in place to enforce annual reporting requirements as defined by their enabling legislation. Typically, across the provincial jurisdictions covered by this study and the federal level, corporations that fail to submit their annual reports will receive a notice to that effect and, after two years of non-conformance, procedures are initiated to dissolve the corporation.<sup>15</sup> This process is largely automated and normally requires a manual review once the dissolution process is undertaken. The procedure is largely similar at the international level. It is worth noting that Singapore has a fully-automated system that includes the process of dissolution. In such cases, a notice is automatically transferred to the court systems, where dissolution procedures are initiated.

Another innovative strategy is employed in Singapore. Instead of relying solely on notices and fees, Singapore has initiated activities that aim to better inform incorporated entities about their obligations and provide additional incentives to meet reporting requirements. For instance, corporations that fail to meet their reporting requirements could be invited to participate in a

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<sup>13</sup> Corporations Canada Business Analysis 2011

<sup>14</sup> Corporations Canada, March 2012 Statistical Report

<sup>15</sup> Quebec is an exception as they have not dissolved any corporations over the last few years. In addition, New Brunswick reported that it was about 9 months behind in its dissolutions

training session where information will be provided on the importance of meeting reporting requirements.<sup>16</sup> In addition, Singapore has launched a website that allows any interested person to verify whether a corporation is in good standing or not.

Australia has an online complaints process where the public can input complaints about a company's compliance. The registry's team then investigates complaints received. The interviewee suggested that it can be challenging sometimes to determine whether the registry has jurisdiction to deal with certain complaints. Another challenge is allocating limited resources to dealing with a large volume of complaints.

As for legislative compliance, no jurisdictions, in Canada or internationally, that were consulted offer direct services to assist individuals who wish to challenge a corporation on the grounds that it has breached a legislative obligation. Individuals are essentially expected to seek legal advice and use the court system to enforce a legislative breach. A number of interviewees consulted in provincial jurisdictions indicated that they have neither the legal authority nor the resources to provide such assistance. Only general guidance can be offered, such as the 1-800 helpline offered by Corporations Canada; actual enforcement requires a court-based process.

### ***Name Approval Process***

In the survey of self-filers, respondents were asked about the name approval process. While 90% (793) of respondents were satisfied the Corporations Canada process is adequate to protect the unique identity of a business name, one third of those who were not satisfied (3% of all respondents) identified the lack of trademark protection of the name as an issue. While the Corporations Canada website provides information on protecting a corporate name through trade-marking, this does not represent an integration of services. Self-filers were not asked about the trade mark process, nor was their knowledge of the benefits of trade-marking a business name tested by this study. This begs the question of whether or not all self-filers are fully aware that incorporation and a trade-mark-protected name are different degrees of name protection. In circumstances where a self-filer is not aware, they would not consider it an issue. Where both processes require name searches and an approval process, there may be efficiencies found for both government and businesses in exploring more coordinated or integrated services.

#### **3.2.6 To what extent are Corporations Canada's regulatory requirements appropriate? Are there ways to reduce regulatory burden while still achieving Corporations Canada's objectives?**

**Key Finding:** The evaluation found that the regulatory burden is small and appropriately balances Corporations Canada's objectives to support entrepreneurship while promoting good corporate governance practices. The majority of clients do not see significant barriers created nor do they see unnecessary requirements.

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<sup>16</sup> It should be noted that Corporations Canada's reporting requirements are less onerous than Singapore's which likely would lessen the need for Corporations Canada to provide similar training.

Puri (2007) did an extensive analysis of the regulatory burden imposed by the CBCA. She suggested that out of 211 legal rules set out in the CBCA, 69 of these are mandatory, and only 17 percent of all rules in the CBCA are mandatory for small and medium sized enterprises. Puri concludes that:

“The CBCA is, therefore, meant to facilitate business, and does not unduly fetter the freedom of commercial enterprises. The rules provided in the statute and the regulations framed under it are mostly of the enabling variety, and do not seriously intervene in or interfere with the business and affairs of the corporations. There are some mandatory rules, which are meant to promote managerial accountability and to protect the shareholders and at times, other stakeholders, such as creditors and employees. The mandatory rules are limited in number, and they do not interfere with the general freedom of corporations to manage their business and affairs”.

In the survey of intermediaries, 64% of respondents thought that the requirements to incorporate a business at the federal level were a fairly minor barrier. However, a significant majority (88%) did not see any of the requirements as unnecessary. This figure was even higher for self-filers at 95%. The 12% of intermediaries who suggested that there were unnecessary requirements mostly referred to residency requirements (8 respondents), the name process (3 respondents) and the frequency of annual returns (2 respondents).

When asked if anything could be done to reduce the regulatory burden, 23% of self-filers and 16% of intermediaries surveyed answered affirmatively. Self-filers largely referred to web content (25% of suggestions) as a way of reducing burden by providing more online entry, improving online content and providing templates. Taxation issues were the next most frequently cited (14% of suggestion) way of reducing burden but these are out of the scope of this study. The next most suggested ways of reducing burden were streamlining with OGDs (6%) such as integrating incorporation with HST registration and integrating tax returns with annual returns for Corporations Canada. Finally, 6% of suggestions related to reducing or eliminating the costs associated with filings. Intermediaries had fewer suggestions related to reducing regulatory burden but referred mostly (44% of suggestions) to issues regarding the annual report (lowering/eliminating fee, less frequent, integrating with provincial returns/tax returns, etc).

From the view of CBCA subject matter experts interviewed, most saw the CBCA as striking the right balance between government objectives and the regulatory burden placed on businesses. Further, most suggested that what is currently required under the CBCA is appropriate and should not be changed.

Not-for-profit subject matter experts interviewed also felt that the new not-for-profit legislation provides a good balance between government objectives and the regulatory burden placed on not-for-profits.

## 4.0 CONCLUSIONS AND RECOMMENDATIONS

Major conclusions reached during the evaluation are summarized. A set of recommendations are presented to improve the ability of Corporations Canada to meet its objectives.

### 4.1 Conclusions

Regarding relevance, the evaluation determined that:

- There is a continued need for Corporations Canada to provide a framework that allows businesses to incorporate at the federal level.
- While federal incorporation is similar to provincial incorporation in many respects, it provides unique benefits which provide competitive choices in the marketplace.
- Corporations Canada is aligned with federal government priorities related to supporting businesses to improve competitiveness and open new markets.
- Corporations Canada's activities are consistent with federal roles and responsibilities.

Regarding performance, the evaluation determined that:

- Corporations Canada is largely achieving its immediate and intermediate expected outcomes, particularly related to low barriers to business, compliance with legislation, and strong corporate governance in support of entrepreneurship. Client awareness is good overall; however it is lower with respect to some products and services.
- The evaluation is inconclusive on whether two longer-term outcomes have been achieved, namely marketplace certainty in support of entrepreneurship and informed decision-making, as the outcomes and related indicators require clarification and further definition.
- Corporations Canada exerts a leadership role in corporate law in Canada.
- While clients of Corporations Canada see a benefit of the high level of scrutiny it applies in reviewing corporate name requests and the majority feel that the level of scrutiny be maintained, there are other jurisdictions that provide lower levels of scrutiny and believe it is a more cost-effective approach.
- The majority of Corporations Canada's clients do not see the need for increased innovation. However, some clients and stakeholders would like to see expanded electronic offerings.
- The regulatory burden placed on Corporations Canada's clients is small and appropriately balances the objectives to support entrepreneurship with the objective of promoting good corporate governance.

## **4.2 Recommendations**

The conclusions of the evaluation led to the following recommendations:

1. As Corporations Canada's performance measurement strategy evolves, it should ensure that the longer term expected outcomes contained in its logic model are clarified and well-defined and that appropriate data is collected in relation to them. This will ensure that Corporations Canada can assess whether desired outcomes are being achieved.
2. Corporations Canada should consider expanding its online and e-filing services.