Legislative Summary **LS-382E**

BILL C-4: CANADA FOUNDATION FOR SUSTAINABLE DEVELOPMENT TECHNOLOGY ACT

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LEGISLATIVE HISTORY OF BILL C-4

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
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N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BILL C-4: CANADA FOUNDATION FOR SUSTAINABLE DEVELOPMENT TECHNOLOGY ACT

Bill C-4, an Act to establish a foundation to fund sustainable development technology, was given first reading on 2 February 2001. It succeeds Bill C-46 which was introduced on 4 October 2000 but which died on the *Order Paper* when the general election was called. Sponsored by the Minister of Natural Resources, Bill C-4 would create a corporation – the Canada Foundation for Sustainable Development Technology (the Foundation). The Foundation's purpose would be to provide funding for the development and demonstration of new technologies aimed at promoting sustainable development, including technologies to address climate change and air quality issues.

BACKGROUND

The creation of the Canada Foundation for Sustainable Development Technology is one of the initiatives announced by the federal government in its February 2000 budget to promote environmental technologies and practices. The Foundation would operate as a not-for-profit organization and would consist of a Chair, 14 directors and 15 Foundation members, only some of whom would be appointed by the government. The Foundation would be responsible for administering the Sustainable Development Technology Fund (the Fund), which would have an initial allocation of $100 million. As well, the Foundation would be required to table an annual report on its activities before Parliament.

According to the backgrounder entitled *Canada Foundation for Sustainable Development Technology*, released by the government when the bill was tabled, the Foundation would provide funding in two dominant areas: new and emerging climate-friendly technologies that had the potential to reduce greenhouse gas emissions; and technologies to address clean air issues. Examples given include:

- renewable and alternative energy technologies, such as fuel cells, electric vehicles and associated battery technologies;
- technologies to recover and use landfill gas emissions;
- more innovative processes to produce, transport, consume and export all forms of energy;
- technologies that contribute to reducing volatile organic compounds, nitrogen oxide and other substances that pollute the air; and
- eco-efficient technologies such as resource recovery and closed loop wastewater treatment technologies.

Funding would be made available on a project-by-project basis. To derive maximum impact, the Foundation would accept proposals from existing and new collaborative arrangements among technology developers, suppliers and users, universities, not-for-profit organizations, and organizations such as industrial associations and research institutes. Small and medium-sized enterprises would be strongly encouraged to participate and lead projects supported by the Foundation.

The Foundation's activities are intended to complement other government programs that encourage technological innovation, such as: the Technology Early Action Measures component of the Climate Change Action Fund, and Technology Partnerships Canada's program for environmental technologies.

DESCRIPTION

Clauses 1 and 2: Title and Interpretation

Clause 1 establishes the short title of the Act, the Canada Foundation for Sustainable Development Technology Act.

Clause 2 defines key terms used in the bill, including "eligible project" and "eligible recipient":

> "eligible project" means a project carried on, or to be carried on, primarily in Canada by an eligible recipient to develop and demonstrate new technologies to promote sustainable development, including technologies to address climate change and air quality issues.

> "eligible recipient" means an entity that:
>
> (*a*) is established in Canada and carries on or, in the opinion of the board, is capable of carrying on eligible projects;
>
> (*b*) meets the criteria of eligibility established in any agreement entered into between Her Majesty in right of Canada and the Foundation for provision of funding by Her Majesty to the Foundation; and
>
> (*c*) has legal capacity or is composed of organizations, each of which has legal capacity.

The term "Minister" is defined as the member of the Privy Council designated by the Governor in Council as the Minister for the purposes of this Act.

This clause also provides the conventional definition of "sustainable development," namely:

> "sustainable development" means development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

Clauses 3 to 8: Establishment of the Foundation

The Canada Foundation for Sustainable Development Technologies (the Foundation) would be created under clause 3 as a corporation without share capital and would consist of directors and members (discussed later). Its head office would be located in Canada, in an area designated by the Governor in Council (clause 7).

The objects and purposes of the Foundation would be to provide funding to eligible recipients for eligible projects (clause 5). When carrying out these objects and purposes, the Foundation would have the capacity and, subject to the bill's provisions, the rights, powers and privileges of a natural person (clause 6).

The Foundation would not be an agent of the Crown (clause 4). Nor would it be subject to the provisions of the *Canada Corporations Act* (clause 8(3)). However, it would be subject to selected provisions of the *Canada Business Corporations Act* as if:

- it were a corporation incorporated under that Act;
- the provisions of the bill were its articles of incorporation; and
- its members were its shareholders (clause 8(1)).

Clause 8(1) specifies the provisions of the *Canada Business Corporations Act* to which the Foundation would be subject. These provisions deal mainly with corporate governance issues applicable to federally incorporated companies.

Clauses 9 to 16: Directors and Members

Clause 9 calls for the appointment of a Board of directors to supervise the management of the business and affairs of the Foundation and, subject to the Foundation's by-laws, to exercise all of its powers. The Board would consist of a Chair and 14 directors (clause 9(2)). It would be supplemented by 15 Foundation members (clause 13). Note that under the definition of "director" in clause 2, any reference to "director" in the bill automatically includes the Chair.

The Governor in Council would be responsible for appointing the Chair, six of the 14 directors and seven of the initial 15 Foundation members, on the recommendation of the designated Minister, as proposed by the Ministers of Natural Resources and of the Environment, after consultation with the Minister of Industry (clauses 9(2((a)) and 13(2)). There is no specific timeline within which the Governor in Council would have to appoint the Chair and the six directors, but the initial seven Foundation members would have to be appointed without delay, upon the coming into force of the bill (clause 13(2)).

The remaining directors and Foundation members would be appointed in the following manner. As soon as possible after the initial Foundation members had been appointed by the Governor in Council, the designated Minister would be required to arrange a first meeting for them. At that meeting (or at a meeting held as soon as possible thereafter), these members would have to appoint the remaining eight members of the Foundation. The full membership would then be required to hold a meeting as soon as possible to appoint the remaining eight directors, in accordance with the Foundation's by-laws (clauses 9(2)(c) and 13(3) to (5)).

Clause 9(4) specifies the initial organizational powers that the Chair and any Governor in Council-appointed directors could exercise before the Foundation members had made their initial eight appointments to the Board under clause 13(5). This partially complete Board would be empowered to:

- undertake the organization of the Foundation including the appointment of officers and employees;
- make banking arrangements for the Foundation;

- enact organizational by-laws for the Foundation; and
- receive on behalf of the Foundation any monies paid to it.

Clause 9(5), however, would expressly preclude the Board from providing any funding from the funds of the Foundation or entering into any agreements or arrangements, or reviewing any applications, for the provision of such funding, until all of the Foundation member-appointments to the Board had been made.

The bill does not specify the qualifications needed for an individual to be appointed as a Foundation member or a director. However, clauses 11 (directors) and 15 (members) stipulate that these appointments would have to be made having regard to the following considerations:

- the need to ensure, as far as possible, that at all times the appointees are representative of:
  - persons engaged in the development and demonstration of technologies to promote sustainable development, including those related to climate change and air quality issues;
  - the business community; and
  - not-for-profit **organizations** (clause 2 defines "not-for-profit organization" as a corporation, society, association, university, research institute, organization or body no part of whose income is payable to or otherwise available for the personal benefit of any of its proprietors, members or shareholders);
- the importance of having appointees who are representative of Canada's various regions and who include men and women who are able to contribute to the achievement of the objects and purposes of the Foundation; and
- the need for the appointees to have sufficient knowledge of technologies that promote sustainable development.

Clauses 9(3) and 13(8) would disqualify the following persons from being appointed to the Foundation, either as a director or a member:

- a member of the Senate, House of Commons or provincial legislature;
- an employee of the Crown (federal or provincial);
- a person who does not ordinarily reside in Canada; and

- a person who is ineligible under section 105 (1) of the *Canada Business Corporations Act* (i.e., anyone who is less than 18 years of age; who is of unsound mind and has been so found by a court in Canada or elsewhere; a person who is not an individual; or a person who has the status of bankrupt).

In addition, a person could not be appointed as a member of the Foundation if he or she was already sitting as a director of the Board (clause 13(8)(c)).

The Chair, the directors and the Foundation members would hold office for a term of five years during good behaviour and they could be reappointed for further terms of up to five years each. If they had been appointed by the Governor in Council, they could be removed for cause by that body. If they were Foundation member appointments, they could be removed for cause only by special resolution of the members (clauses 10 and 14). The term "special resolution" is defined in clause 2 to mean a resolution of the members passed by a majority of not less than two-thirds of the votes cast by the members who voted on the resolution at a meeting or signed by all the members entitled to vote on the resolution.

Under clause 13(6), members of the Foundation would be responsible for appointing a new member when an incumbent's term had expired. However, there would not appear to be a comparable provision regarding the replacement of the eight directors appointed by the Foundation members.

Clauses 10(3) and 14(3) provide that, unless they cease to hold office on specified grounds, the directors and Foundation members would continue in their functions until their successors are appointed. Under clauses 10(6) and 14(6), a director or member would cease to hold office when he or she:

- dies or resigns;
- is appointed to the Senate or elected to the House of Commons or provincial legislation;
- becomes a Crown employee (federal or provincial);
- ceases to be ordinarily resident in Canada;
- becomes disqualified under section 105(1) of the *Canada Business Corporations Act* (described earlier);
- is removed for cause or, in the case of a member, is appointed to the Board.

Under clause 12(1), the Chair and directors could be paid such remuneration as had been fixed by the Foundation's by-laws; as well, they would be entitled to be reimbursed for reasonable travel and living expenses incurred in the performance of their duties while absent

from their ordinary place of residence. Foundation members would also be entitled to be reimbursed for their reasonable travel and living expenses, but in contrast to the Chair and directors, they could not be remunerated for their services (clause 16(1)). Except for the foregoing payments, the Chair, the directors and members would be precluded from profiting or gaining any income or acquiring any property from the Foundation (clauses 12(2) and 16(2)).

Clause 17: Staff

Clause 17 would empower the Board to appoint any officers, employees and agents of the Foundation that it considered necessary to carry out the objects and purposes of the Foundation. Directors and members could not fill these positions. Subject to the Foundation's by-laws, the Board could also designate the offices of the Foundation and specify the duties and functions of each office. Clause 17(4) provides that directors, members and the Foundation personnel would not be part of the public service of Canada by virtue of their position within the Foundation.

Clause 18: Payment of Operating Expenses

Clause 18 would authorize the Foundation to pay from its funds all of its operating expenses, including the salaries and wages of its officers, the rent for its accommodation, the remuneration for its directors and agents, and the reimbursement for reasonable travel and living expenses incurred by the directors and members carrying on business away from their ordinary place of residence.

Clause 19: Funding for Eligible Projects

Clause 19(1) would authorize the Foundation to provide funding to "eligible recipients" to be used by them solely for the purposes of "eligible projects" in accordance with any terms and conditions specified by the Foundation in respect of the funding, including terms and conditions regarding repayment, intellectual property rights, and the maximum amount and proportion of funding that the Foundation would provide. As mentioned earlier, clause 2 would define "eligible recipient" and "eligible project" as follows:

> "eligible project" means a project carried on, or to be carried on, primarily in Canada by an eligible recipient to develop and demonstrate new technologies to promote sustainable development,

> including technologies to address climate change and air quality issues.
>
> "eligible recipient" means an entity that:
>
> > (*a*) is established in Canada and carries on or, in the opinion of the board, is capable of carrying on eligible projects;
> > (*b*) meets the criteria of eligibility established in any agreement entered into between Her Majesty in right of Canada and the Foundation for provision of funding by Her Majesty to the Foundation; and
> > (*c*) has legal capacity or is composed of organizations, each of which has legal capacity.

Under clause 19(2), the Foundation would be required to enter into an agreement with an eligible recipient to deal with, among other things, the following matters:

- how and when funding advances would be made;
- any terms and conditions on which the funding would be provided, including those mentioned in clause 19(1) regarding repayment, intellectual property rights, and the maximum amount and proportion of the funding provided by the Foundation;
- the evaluation of the eligible recipient's performance in achieving the objectives of the project and the evaluation of the project's results, including the potential performance of the technology that was developed and demonstrated by the project; and
- where the eligible recipient was composed of organizations, each having legal capacity, the requirement for those organizations to be jointly and severally liable for the obligations of the eligible recipient.

When funding an eligible project, the Foundation would be precluded under clause 19(3) from acquiring any interest in any "research infrastructure" acquired by the eligible recipient for the project. The term "research infrastructure" is not defined in the bill.

Clause 20: Donations to the Foundation

Clause 20 would allow the Foundation to accept conditional or unconditional donations of money, provided the donation was for a purpose that came within the Foundation's objects and purposes. This proviso would not apply, however, if the conditions of the donation merely restricted or directed the manner of investing the money until it could be used to fund the eligible projects. The Foundation would be required to use all money donated to it, including any income from the investment of that money, to carry out the objects and purposes of the

Foundation, in accordance with such terms and conditions as had been agreed upon between the Foundation and the donor.

Clauses 21 to 23: Investments and Prohibited Business Activities

Clause 21 would require the Board to establish investment policies, standards and procedures that a reasonably prudent person would apply regarding an investment portfolio to avoid undue risk of loss and obtain a reasonable return, having regard to the Foundation's obligations and anticipated obligations. Clause 22(1) would in turn require the Foundation to invest its funds and reinvest any income from those funds, in accordance with the Board's investment policies, standards and procedures, subject to any investment restrictions that had been made in relation to donated money.

Except for the investment of its funds, the Foundation would be precluded from carrying on any business for gain or profit, or holding or acquiring any interest in any corporation or enterprise (clause 22(3)). It would also be precluded from:

- causing any corporation to be incorporated or participate in the incorporation of a corporation or become a partner in a partnership (clause 22(2));
- borrowing money, issuing any debt obligations or securities, giving any guarantees to secure a debt or other obligation of another person or mortgage, or pledging or otherwise encumbering the Foundation's property (clause 23(1)); and
- purchasing or accepting a donation of real property or immovables (clause 23(2)).

Clause 24: Restrictions on the Delegation of Powers

Under clause 24, the Board could delegate its powers or rights to the Chair, a committee of directors or a Foundation officer, except for the following:

- the enactment, amendment or repeal of the by-laws;
- authorization to provide funding to eligible recipients for eligible projects;
- the appointment of directors to a committee of the Board and filling the vacancies on such committees;
- the appointment of officers of the Foundation and the fixing of their remuneration;
- the acceptance of donations;

- the approval of the annual financial statement or reports of the Foundation; and
- the submission to the Foundation members of any matter requiring their approval.

Clause 25: Budget Preparation and Record-keeping Obligations

The Board would be required under clause 25(1) to ensure that an operating budget and a capital budget of the Foundation were prepared for each fiscal year and submitted to the Foundation members at their annual meeting. The Board would also be required to cause books of account and other records to be kept, and it would have to establish financial and management controls, information systems and management practices that would ensure that the business and affairs of the Foundation, as well as the Foundation's financial, human and physical resources, were managed effectively, efficiently and economically (clause 25(2)).

Clause 25(3) would require that the Foundation's books of account and other records be maintained in such a way as to ensure that the assets of the Foundation were properly protected and controlled and that its business and affairs were carried out in compliance with the bill. In particular, the books of account and other records would have to be managed in such a way as to show:

- the description and book values of all investments of the Foundation; and
- the eligible recipients who had or were about to receive funding from the Foundation for an eligible project, the nature and extent of the projects that were funded, and the amount of the funding.

Clause 26: Yearly Audits

Clause 26(1) would require the Foundation members, at their first meeting and **subsequent annual meetings**, to appoint an auditor for the Foundation for the fiscal year and to fix (or authorize the Board to fix) the auditor's remuneration.

Clause 26(2) sets out the qualifications for appointment. Notably, the auditor, if a natural person, would have to have at least five years of experience at a senior level in carrying out audits. He or she would also have to be independent of the Board, its directors, and the Foundation members and officers. Alternatively, the auditor could be a firm of accountants, a member or employee of which had been jointly designated by the Board and the firm to conduct the audit on the firm's behalf, provided that the designated individual met the qualifications prescribed for natural persons under this clause.

Where an auditor was not appointed at the **annual general meeting in any fiscal year**, clause 26(3) would retain the incumbent in office until a successor had been appointed. Clause 26(4) provides that an auditor could be removed from office by special resolution of the Foundation members (there is no requirement that the removal be "for cause"). Clause 26(5) defines the circumstances under which an auditor would cease to hold office, whereas clauses 26(6) and (7) deal with the appointment of a replacement auditor.

Within four months after the end of each fiscal year, the auditor would be required under clause 27 to complete the audit and submit his or her report to the Foundation members. The Board, on the other hand, would be required under clause 28 to appoint an audit committee of not fewer than three directors and fix the duties and functions of the committee. In addition to any other duties and functions that it might be required to perform, the audit committee would have to have internal audits conducted to ensure compliance by the officers and employees of the Foundation with management and information systems and controls established by the Board.

Clause 29: Annual Meeting

No later than six months after the end of each fiscal year, the Board would be required under clause 29 to call an annual meeting of the Foundation members for the following purposes:

- to examine the audited financial statement and the auditor's report for the previous fiscal year;
- to examine the Foundation's annual report for the previous fiscal year;
- to examine the operating budget and capital budget submitted by the Board;
- to consider and confirm, reject or amend the by-laws made by the Board, including any amendments and repeals made to them;
- **to appoint an auditor for the fiscal year; and**
- to consider any other matter respecting the Foundation's operations.

Clauses 30 to 31: Annual Report

Clause 30 would require the Foundation, five months after the end of each fiscal year, to prepare an annual report, in both official languages, of its activities during the previous fiscal year. Before being distributed to the public, the report would have to be approved by the Board and examined by the Foundation members at a meeting of the members. Once approved,

the report would have to be made public in accordance with the Foundation's by-laws. A copy would also have to be sent to the designated Minister who would be required to lay the report before each House of Parliament on any of the first 15 days on which that House was sitting following its receipt by the Minister. The report would have to include the following matters:

- the Foundation's financial statements for the year, as approved by the Board, and the auditor's report respecting those statements;
- a detailed statement of the Foundation's investment activities during the year, its investment portfolio at the end of the year and its investment policies, standards and procedures;
- a detailed statement of the Foundation's funding activities;
- a statement of the Foundation's plans for fulfilling its objects and purposes; and
- an evaluation of the overall results achieved by the Foundation's funding of eligible projects during the year under review, as well as since the Foundation's inception.

After publishing its annual report, the Foundation would be required under clause 31 to convene a public meeting, at a city in Canada selected by the Board, to consider the report and any other activities of the Foundation during that year. At least 30 days notice would have to be given before the meeting was held, indicating the time and place of the meeting in accordance with the Foundation's by-laws.

Clause 32: Winding-Up

Clause 32 provides that if the Foundation were wound up or dissolved, any Foundation property that remained after its debts and obligations had been paid off would have to be liquidated and the ensuing proceeds distributed among the eligible recipients who had received funding from the Foundation and who were still carrying on projects to develop and demonstrate new technologies to promote sustainable development. The eligible recipients would have to use the money received for the purposes of such projects. The sum to which they would be entitled would be proportionate to the amount they had received from the total amount of funding provided by the Foundation to all of the eligible recipients entitled to share in the liquidation proceeds.

Clause 33: Official Languages

Clause 33 would make the *Official Languages Act* apply to the Foundation as if it were a federal institution.

Clause 34: Mandatory By-laws

Clause 34 would require the Foundation to make provision in its by-laws for the following matters:

- the right of an eligible recipient who had applied to the Foundation for funding to request the Board to rule as to a possible conflict of interest of a director in the consideration or disposal of his or her application;
- the establishment of procedures to be followed by the Board in responding to such a request and making the related ruling;
- the determination of the Foundation's fiscal year;
- the requirement to create advisory committees, including technical advisory committees, and specifying their mandates; and
- the determination of remuneration for directors.

Clauses 35 to 39: Optional Designation

Clauses 35 to 39 were not contained in Bill C-46, the precursor to Bill C-4. According to government documents, these clauses were added to the new bill to enable the Governor in Council to call upon a private-sector corporation to administer the Fund, if necessary, until the bill is passed. Eligible projects could thus be funded in the interim and, once the legislation was proclaimed in force, the Governor in Council could "convert" the private-sector corporation into the Foundation for the purposes of the Act.

Specifically, clause 35 would authorize the Governor in Council to issue an order designating any not-for-profit corporation incorporated under Part II of the *Canada Corporations Act* as the Foundation for the purposes of the Act. Where such a designation was made, the measures under clauses 36 to 39 would apply; among other things, they would provide that:

- any power, duty or function vested in, or exercisable by, the corporation under any federal instrument or any contract, licence or other document would become vested or exercisable by the Foundation;
- all rights, property and obligations of the corporation would become those of the Foundation;
- any legal proceedings regarding an obligation or liability incurred by the corporation could be brought against the Foundation; similarly, any proceedings involving the corporation that were pending at the time of the proclamation of the clause could be continued by or against the corporation;
- every by-law of the corporation that was not inconsistent with the Act would become a by-law of the Foundation;
- all officers and employees of the corporation would become officers and employees of the Foundation; and
- all directors and members of the corporation would no longer hold their positions and new ones would be appointed for the Foundation in accordance with the process set out in the bill (described earlier under clauses 9 to 16).

Clause 40: Coming into Force

Clause 40 provides that the bill would come into force on a day fixed by order of the Governor in Council.

COMMENTARY

The creation of a funding body to promote the development of environmental technologies was recommended by the Technology Issues Table, one of the Issue Tables set up to advise the federal and provincial ministers of energy and of the environment as part of the National Implementation Strategy on Climate Change.

In its 10 December 1999 report entitled *Enhancing Technology Innovation for Mitigating Greenhouse Gas Emissions*, the Technology Issues Table recommended that a Climate Change Technology Development Fund be established to support the development of targeted technologies that held potential for domestic greenhouse gas abatement and international sales (Option Three). It foresaw the need for an initial investment in the fund of

$20 million per annum, which would increase to $200 million per annum in year five. It also advocated that the funding be provided on a cost-share basis, with 50% from federal sources, 25% from provincial sources and 25% from industry, but added that funding ratios could be different for different projects.

Underscoring the fact that a major challenge in innovation was the initial introduction of new technologies and services in the marketplace, the Technology Issues Table further recommended that a Climate Change Technology Demonstration Program be established to offset some portion of the financial risks involved in early domestic commercialization of greenhouse gas mitigation technologies (Option 4). This option was viewed as requiring a start-up investment of $60 million per annum, which would increase to $300 million per annum in year five, with the federal government providing, on a portfolio basis, up to 30% of the investment, which would be repayable; the remainder would originate from provincial and industry sources.

Against this background, the federal government opted in its February 2000 budget to create the Canada Foundation for Sustainable Development Technology, which would cover both project development and demonstration, but which would not be restricted to funding climate change technology projects; it would apply to all manner of projects to promote "sustainable development" technologies – by definition, a much broader category of projects.

Although the government indicated that emphasis would be placed on funding new climate change and clean air technologies, this priority is not explicitly stated in the proposed legislation. The bill merely calls for the funding of sustainable development technologies, "including technologies to address climate change and air quality issues" (as per the definition of "eligible project" in clause 2), but does not give express priority to the latter types of project. **However, under the definition of "eligible recipient" in clause 2, the government would be able to enter into agreements with the Foundation to establish "eligibility criteria" that eligible recipients would have to meet in order to receive funding. Presumably, the government could use this power to direct the Foundation on the types of projects that should be funded.**

The Foundation proposed in the bill is modelled on the Canada Foundation for Innovation, which was created under the *Budget Implementation Act, 1997.* Since its inception, this Foundation has received (or has been promised) more than $3.1 billion of government funding: from an initial allotment of $800 million in 1997, it received an additional $200 million in the 1999 budget, $900 million in the 2000 budget, $500 million in

the government's Economic Statement and Budget Update 2000. The Minister of Industry announced a further sum of $700 million on 6 March 2001.

In comparison, the Canada Foundation for Sustainable Development Technology is to be given an initial allotment of $100 million. Questions have been raised about the adequacy of this funding, particularly in light of the much larger sums conferred on the Canada Foundation for Innovation. Questions have also been raised about the need to have a separate Foundation, outside of government, to fund sustainable development technology. There is concern that as a non-governmental agency, the Foundation will not be subject to the *Access to Information Act.* Nor will its activities come under the scrutiny of the Auditor General of Canada. Although the Auditor General could audit the general funding agreements entered into between the government and the Foundation, he or she would not have the authority to evaluate the Foundation's operations, including its funding decisions. Concerns about the lack of transparency and accountability have thus been expressed in relation to the proposed Foundation.

The use by government of outside agencies to distribute public funds has been an on-going concern for the Auditor General of Canada. In his November 1999 report, the Auditor General made the following observations regarding what he referred to as these "new governance arrangements":

> **In Chapter 23 of this Report, I discuss the results of a government-wide audit of accountability in new types of governance arrangements that involve organizations outside the federal government in the delivery of federal objectives. The Labour Market Development Agreements with the provinces, the Canada Foundation for Innovation, the National Child Benefit, the Canada Millennium Scholarship Foundation and the St. Lawrence Seaway Management Corporation are examples. There has been a significant growth in the use of such arrangements and they hold promise of more effective and efficient delivery of federal programs and services.**
>
> **I am concerned, however, that the government has not given proper attention to the implications for accountability and good governance. By their very nature, these arrangements challenge the traditional accountability relationship that sees ministers answerable to Parliament for their policies and programs and, through Parliament, to citizens at large. Since other parties are also involved in these arrangements, ministers are never wholly**

responsible for them. In some cases, arrangements have intentionally been set up to be totally independent from ministers, even though they may depend on federal funds and federal authority. Without appropriate accountability and good governance mechanisms, these arrangements can erode the ability of Parliament to scrutinize the use of federal power and the right of citizens to accountable government.

Our government-wide audit found significant weaknesses in existing accountability mechanisms. Arrangements have been established without adequate provision for Parliament to scrutinize the way they operate or to hold the government to account for their performance. And they do not always provide means for public input, citizen redress, or recourse when the public's expectations are not met. Indeed, there are few mechanisms in place that would allow the government itself to monitor these arrangements effectively. As things now stand, the government does not know to what extent it is using these arrangements or whether, as instruments of federal policy, they are performing well or failing.

Fiscal and technological forces are pushing governments to use innovative, non-traditional ways of delivering programs and services. Reliance on new governance arrangements is therefore likely to grow in the future. As we move to these new forms of delivery, however, we should be careful not to jettison fundamental principles of parliamentary democracy along the way. Whenever the government enters into new arrangements for program delivery, it must ensure that they address several key elements: credible reporting, effective accountability mechanisms, adequate transparency and protection of the public interest. Parliament itself needs to consider carefully what governing framework it expects in such new arrangements. While increased reliance on new forms of public service delivery may be inevitable, it need not be at the expense of accountability to Parliament and the public.[(1)]

(1) Report of the Auditor General of Canada – November 1999, *Matters of Special Importance – 1999*, p. 18.