

# **Review of the Board of British Columbia Ferry Services Inc.**

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Prepared for the B.C. Ferry Authority

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June 30, 2021

## Terms of Reference

The BC Ferry Authority (BCFA) is responsible for making appointments to the BC Ferry Services (BCFS) Board. In 2020, the BCFA added three new members to the BCFS Board, increasing the number of Board Directors to 12. In 2019, the Coastal Ferry Act reframed the ferry services model to better reflect the public interest. In light of both of these events, the BCFA Board is undertaking a review of the BCFS Board in order to help inform the decision-making process for future appointments and to ensure good governance. The review is not an evaluation or assessment of BCFS directors.

The Consultant will:

- Examine the BCFS Board – including the legislative framework, appointment process, board size, composition, skills profile, skills set and succession plan – and assess whether the current structure adequately supports governance in the public interest.
- Seek input from the BCFA Chair, BCFS Chair and other individuals mutually agreed upon.
- Consider an optimal board size for effective governance after examining other boards of similar scope and impact.
- Consider how best to ensure the BCFS Board reflects the diversity of the province, including Indigenous peoples.
- Consider how the BCFA can best understand and determine the overall effectiveness of the BCFS Board when making decisions on appointments.
- Make recommendations to enhance the BCFS Board structure and governance in light of the matters listed above.

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## **A. Introductory Context: BC Ferries and the Public Interest**

BC Ferries is an independently managed but provincially regulated transportation operating company that also has a vessel and terminal capital program. Its debt is borrowed from private markets. It is not a Crown Corporation and is not an agent of the Crown.

That said, BC Ferries is not a private company either. It has no publicly traded stock. Because it exists to support transportation needs of the general public – and, in particular, ferry dependent communities - it might be thought of instead as a “quasi-Crown”.

The sole voting shareholder is the British Columbia Ferry Authority which is responsible for appointing the directors of British Columbia Ferry Services Inc.

BC Ferries was converted to its current status through provincial legislation. It is a natural monopoly providing essential transportation services. It is overseen by a provincial regulator and is reliant on provincial government funding provided through the Coastal Ferry Services Contract, as well as smaller amounts of federal government funding.

It is for those and other public policy reasons that the provincial government, in 2019, added ‘public interest’ considerations to the legislated mandates of both the Authority and the Commissioner. The repeal in 2019 of a former requirement that ferry operators be encouraged to adopt a ‘commercial approach’ further reinforced the public purposes of BC Ferries.

The Act (section 1) defines “ferry users” as ferry passengers and their families, the communities served by coastal ferries and the businesses that rely on or utilize ferry services, but the public interest is broader than that.

Publicly funded, legislated and regulated coastal ferry service is in the public interest because it connects and supports coastal communities, including First Nations, helps move goods reliably and supports numerous economic sectors. Further, it is in the public interest for coastal ferry services to be reliable, affordable, resilient and efficient. Planning for coastal ferry services should ideally be done within the context of a broader multi-modal transportation network and should help meet provincial goals such as reducing greenhouse gases.

The recent inclusion of public interest considerations in the legislation governing the provincial ferry system help to direct the Authority, BC Ferries,

and the regulator to take those and similar public interest factors into account when making Board appointments and other governance decisions.

Directors of BC Ferries will increasingly be called on to govern the company with the public interest in mind, especially as B.C. and the ferry service recover from the pandemic. To do this effectively, they will need to ask challenging questions, encourage healthy debate and actively drive positive change in the company's culture while also keeping top of mind their responsibilities to the shareholder and the general public of B.C.

## **B. Background: Current BCFS Board Structure and Governance**

### **1. | Legislative Framework**

The following is a general overview of the elements of the legislative framework that are pertinent to this project. It is not a legal opinion.

Both the BC Ferry Authority (BCFA or 'the Authority') and British Columbia Ferry Services Inc. (BCFS or 'BC Ferries') are established by the provincial Coastal Ferry Act (the Act).<sup>1</sup>, though BCFS is also a company incorporated under the Business Corporations Act. The Coastal Ferry Act first established the BCFA in 2003 while also providing for the conversion of the former British Columbia Ferry Corporation (a Crown Corporation) into the current independently managed BCFS. The Act has subsequently been amended from time to time, most recently in 2019.

The BCFA is established as a corporation without shares. The Authority is not a Crown Corporation and only 4 of its 9 directors are appointed by the Lieutenant Governor in Council. The Authority is the holder of the single common (and voting) share of BCFS. The BCFA, as sole voting shareholder (or in other words the beneficial shareholder), appoints the directors of BCFS. The BCFA also establishes or amends the remuneration plan for directors of BCFS as well as the compensation plan for the executives of BCFS. Criteria for these compensation plans and rules for their methodology are set out in the Act.

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<sup>1</sup> [https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/03014\\_01](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/03014_01)

The Province is responsible for establishing public policy related to ferry service. It also owns 75,477 non-voting 8% cumulative shares of BCFS, each with a par value of \$1000. If the BCFA ever sells its single voting share, then the government must receive replacement of its capital and the Authority is dissolved. On the dissolution of the BCFA, all remaining assets of the Authority vest in the Province of B.C.

The Authority is subject to sections of the Business Corporations Act,<sup>2</sup> which pertain to the duties and qualifications of corporate directors.

Section 20 of the Coastal Ferry Act stipulates that BC Ferries must pay any expenses incurred by the Authority in performing its obligations and conducting its affairs.

Section 21.1 of the Act defines the factors and limits to be considered in appointing directors of BCFS. It states: *“(1) The directors of the Authority, when electing directors to the board of BCFS, must select individuals in such a way as to ensure that, as a group, the directors of BCFS are qualified BCFS candidates who hold all of the skills, and all of the experience, needed to oversee the operation of BCFS in an efficient and cost effective manner.”*

Additionally, that section stipulates that the Authority may set the term of an individual director, which term may not exceed 4 years. As well, it stipulates that no individual may hold office as a director of BCFS for a consecutive period of more than 8 years.

The definitions section (1) of the Act stipulates that a qualified BCFS Board director candidate is an individual who: *(a) does not hold elected public office of any type; (b) is not an employee, steward, officer, director, elected official, or member of any union representing employees of BCFS; (c) is not an employee of a municipality, regional district, trust council, or greater board within the appointment area, and (d) is not an employee, director, or officer of the Authority or an employee, officer or executive of BCFS*

The 2019 amendments to the Coastal Ferry Act added a new strategic oversight responsibility for the Authority. Section 21.01 (1) states: *“The Authority, as sole voting shareholder of BCFS, is to oversee the strategic direction of BCFS in support of the public interest, including the public’s interest in safe, reliable and affordable coastal ferry service in British Columbia.”*

BC Ferries must provide to the Authority information reasonably required to carry out this oversight role. The Authority, for its part, must publish an

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<sup>2</sup> [https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/02057\\_01](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/02057_01)

annual report describing findings made and actions taken with regard to its oversight of the strategic direction of BCFS.

The Act states (in section 22) that BCFS is not an agent of the government nor is it a common employer with either the Authority or the government.

The land upon which BCFS terminals are located is leased from the BC Transportation Financing Authority on behalf of the Province.

The Act provides (in Part 3) for “ferry service operators” to enter into contracts with the provincial government to operate ferry services on one or more routes. BC Ferries is the sole regulated ferry services contractor for the provincial government.<sup>3</sup>

The Province provides annual funding to BC Ferries through a 60 year Coastal Ferry Services Contract that defines routes and service levels, including for social policy initiatives such as assistance for medical travel and discounts for senior citizens.<sup>4</sup> The original contract was concluded in 2003 and has been amended 16 times since. In addition, two temporary service level adjustment agreements were reached in 2020 in response to the COVID-19 pandemic.

Part 4 of the Act sets out the ways in which BCFS, as the core ferry services operator, is regulated by the British Columbia Ferries Commissioner. In brief, the Commissioner establishes a price cap for every four year “performance term”. This means BC Ferries can make decisions about specific fares so long as the overall pricing is within the percentage price cap established by the regulator. The Commissioner also reviews BCFS major capital expenditures, regulates a fuel deferral account, oversees a customer complaints process and makes other orders consistent with the Act.

The Act states (in section 38 (1)) that the Commissioner “...*must undertake that regulation in the public interest and in accordance with the following principles: the primary role of the commissioner is to balance, in the manner the commissioner considers appropriate, (i) the interests of ferry users, (ii) the interests of taxpayers, and (iii) the financial sustainability of ferry operators; (a.1) ferry operators are to be encouraged to meet provincial greenhouse gas targets in their operations and when developing capital plans...*”.

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<sup>3</sup> However, BC Ferries is not the only coastal service provider. In addition, there are 8 unregulated ferry routes whose contracted operators are funded by the provincial government to serve smaller and more isolated communities, several of them First Nations. BC Ferries administers these contracts on behalf of the Province.

<sup>4</sup> In addition to the annual provincial government service fee set out in the contract, BC Ferries is funded by a combination of fares paid by users, provincial social program payments, an annual federal government subsidy, and ancillary revenue from services like parking and food.

The public interest and greenhouse gas requirements were added as part of the 2019 amendments to the Act.

## 2. | Appointment Process

As noted, the legislation requires the Authority to elect individual directors of BC Ferries so that, as a group, the directors are qualified and have all the skills and experience to oversee BCFS in an efficient and cost-effective manner.

Following concurrence on a ten year “Protocol Agreement” in 2010, the Authority and the BCFS Board instituted a joint committee of four individuals – two from the BCFA and two from BCFS – to identify suitable candidates for election as directors of BCFS. The Chairs of both the Authority and BC Ferries were each on this committee. The Protocol Agreement expired in June of 2020.

In August of 2019, the respective Chairs of the Boards of both the Authority and BC Ferries agreed to “Terms of Reference for the Joint Committee for the Recruitment of Directors of British Columbia Ferry Services Inc.” However, these Terms of Reference were apparently never ratified by the full Board of Directors of the Authority. The Authority is not implementing them now and has established its own recruitment and appointment process instead.

Still, it is worthwhile to review the appointment procedure set out in those former Terms of Reference of 2019. In summary, the steps were: (i) candidates were to be identified by a ‘search process’ that includes the engagement of a search firm; (ii) the Joint Committee recommends preferred candidates; (iii) the BC Ferries Board considers the recommendation of the Joint Committee and makes a recommendation to the Board of the Authority; (iv) the Authority Board considers the recommendation; (v) if the appointment is not agreed to by the Authority Board further candidates are considered and recommended by the Joint Committee.

The process in those Terms of Reference was collaborative but put the BCFS Board in the lead with regard to recommending for or against the advice of the Joint Committee.

In November of 2020, the BCFA Board approved a new Director Appointment Process for the BCFA Governance Manual. It reinforces that the Authority Board has sole authority for appointing directors to the BCFS Board and does not continue the previous joint committee approach.

Rather, the Process focuses on a Services Boards Skills and Experience Profile which sets out the skills, experience, and expertise that should be represented on the BCFS Board. The Authority Board will review the Skills Profile from



time to time “...or request the Services Board to review the Profile as required...” and make amendments as required. Further, “The Services Board should review the Skills Profile from time to time, or as required by the Authority Board, and bring forward any recommended changes to the Authority Board for consideration and approval.”

In addition to statutory qualifications, personal attributes, and representation considerations the key skills and experience for the Board as a whole set out in the profile (that each individual member must possess more than one of) are:

- Senior level management experience of a large or complex commercial or non-profit entity;
- Business operation experience;
- Board experience (again with a commercial or non-profit entity);
- Accounting and finance expertise
- Information technology leadership skills
- Legal training or experience;
- Transportation experience, including environmental or safety issues;
- Marketing experience;
- Tourism knowledge and experience;
- Labour management and human resources experience;
- Regulatory experience, particularly with a commercial entity regulated by statute;
- Stakeholder relations experience
- Construction and contract management experience

### **3. | Recruitment Process**

Finally, the BCFA also established in November 2020 a Recruitment and Appointment Process and Recruitment Process Steps.

The Authority Board leads the process for identifying potential candidates for the BCFS Board.

In summary, the process involves:

- The BCFA Board potentially striking a recruitment committee;
- The Services Board presenting to the Authority Board any preferred skills, experience, expertise, and specific diversity priorities;
- The Authority Board considering the Services Board’s preferences, succession plan, background of both the extant BCFS Board directors and nominees, the Skills Profile, and the particular diversity priorities of that search;
- The BCFS Board recommending potential candidates;

- The Authority Board and its committee considering candidates based on merit as measured against potential diversity criteria and benefits.

The Process Steps provide more detail and include:

- The BCFS Board bringing forward to the Authority Board the need for new board appointment(s), any update to the skills profile for the particular recruitment, personal attributes sought, and an update to the skills matrix to show how the planned recruitment will fill an experience gap or contribute to the diversity of the Board;
- The Authority or its committee retaining a search firm to assist with identifying potential candidates, advertisement of vacancies, establishing a long list of candidates (including any recommended by BCFA and BCFS Board members), conducting preliminary interviews and recommending a short list, coordinating interviews with the short list, and conducting reference checks;
- The BCFS Board Chair or a director may join the Authority Board or its committee for interviews;
- A candidate selection decision is made by the Authority based on the interviews and reference checks and the BCFS Board is informed of the decision;
- Selected candidates are confirmed via letter of offer and, once confirmed, a news release is issued.

The new recruitment and appointment process provides for involvement of - and input from - the BCFS Board but clarifies that the Authority Board has sole responsibility for appointments, as per the statute. This is a clearer process than the somewhat confused and muddy system reflected in the former Terms of Reference of 2010 and 2019. It is now up to the Authority Board to ensure it implements the new process in an expedited and thorough manner, receiving input and advice from the BCFS Board as appropriate. Once both entities become used to it the result should be a thorough search and the appointment of good quality candidates.

#### 4. | Board Composition

The current BCFS Board is composed of eleven members, five of whom are women, one of whom is Indigenous, and one of whom is Asian-Canadian. All have served as directors on a variety of boards in the public, private and not-for-profit sectors.

The Chair of the BCFS Board is **Brenda Eaton**, an economist, corporate director, and former senior Deputy Minister of the B.C. government. She is a former Deputy Minister to the Premier.

The Vice-Chair is **Jan Grude**, a former Chief Executive Officer in the finance and insurance fields. He holds a designation from the Institute of Corporate Directors (I.C.D.).

**Bruce Chan** is a senior manager in the marine transportation sector who holds accounting designations and has earned an M.B.A.

**Eric Denhoff** is a former Deputy Minister of both the B.C. and Alberta governments who also has senior experience in the federal public service and the private sector.

**Gordon Kukec** is a consultant in the technology, commercial aviation, and environmental fields who has earned an M.B.A.

**Shona Moore** is a lawyer and Queen's Counsel who has specialized in labour and administrative law and is a former Vice-Chair of the B.C. Labour Relations Board.

**Sarah Morgan-Silvester** is a former executive in the Canadian banking sector, past Chair of the Vancouver Fraser Port Authority and Chancellor Emeritus of the University of British Columbia.

**Janine North** is a corporate director with an I.C.D. designation. She is former C.E.O. of the Northern Development Institute Trust and lives in Haida Gwaii.

**David Podmore** is a real estate and infrastructure developer who led development of facilities for the 2010 Olympics and Paralympics like the Vancouver Convention Centre expansion and BC Place refurbishment.

**Michael Pucci** is a container terminal manager from Prince Rupert who serves on the board of the Prince Rupert and District Chamber of Commerce.

**Judith Sayers** is President of the Nuu-chah-nulth Tribal Council and a member of the Hupacasath First Nation from the west coast of Vancouver Island. She is an adjunct professor at the University of Victoria and was formerly on the political executive of the First Nations Summit.

Ms. North and Mr. Pucci are from the North Coast of B.C. while Ms. Sayers is from the west coast of Vancouver Island. The other directors reside in the larger urban communities of the South Coast.

While several members have experience on both public and private boards, only Ms. Eaton and Mr. Denhoff have direct experience in provincial public service. Given new public interest requirements, the importance of BC Ferries as a provincially funded and regulated essential service, and the ongoing need to improve relations with the provincial government, there may be merit in

seeking others with public service and/or Crown Corporation experience in the future.

Mr. Podmore is experienced in capital project management which is important for an organization with a significant and expensive capital program. Especially in light of pandemic related ridership declines, changing travel patterns and new mobility technology, BCFS directors will be called on to ask hard questions about the future size of the BC Ferries capital program.

Mr. Chan has brought his particular experience with marine transportation business to the BCFS Board during his tenure which has reportedly been helpful for an organization that moves a lot of freight and cargo. When Mr. Chan leaves the Board, there may be merit in seeking another appointee with marine transportation experience.

Mr. Kukec is experienced in the technology field but is set to leave the Board in the next year. BC Ferries took longer than hoped to implement the most recent improvements to its online reservation system. Given the increasing importance of data management for all transportation entities and the need for effective Board oversight of I.T. investments, the Authority may wish to prioritize future appointees who bring innovation experience and information technology expertise.

Ms. Moore has considerable legal experience in the labour relations and human resources areas, which is important, but there is currently no director specifically from the trade union sector. This seems to be a gap given the crucial importance of labour relations for a unionized essential service like BC Ferries.

Mr. Grude and Ms. Morgan-Silvester both have finance and banking backgrounds. While BCFS directors (like all corporate directors) have important responsibilities to oversee the financial operations of the organization and financial literacy is essential, banking or insurance experience is not necessarily directly pertinent to the operation of a ferry service.

Six of the eleven current directors come from private sector business fields. While some business directors are important for a company like BC Ferries which relies on fare revenue and goods movement for much of its revenue, it is also desirable to have a balance of backgrounds. Consideration should be given to those who bring community perspectives as well. Directors who have lived experience with how essential the ferry service is to the day to day life of many on the coast will particularly contribute to an understanding of the public interest as will those with public sector and not-for-profit governance experience. That said, the number of current directors with corporate director

training, designations and experience are no doubt helpful for good corporate governance.

## 5. | Skills and Experience Profile

The following Skills and Experience Profile shows in a matrix format the skills and experience of current BCFS Board members:

**BRITISH COLUMBIA FERRY SERVICES INC.  
BOARD OF DIRECTORS SKILLS AND EXPERIENCE**

Director	Term End*	Leadership	Business	Board Experience	Accounting & Finance	Information Technology	Legal	Transportation	Marketing	Tourism	Human Resources	Regulatory	Stakeholder Relations	Construction and Contract Management
Eric Denhoff	2024													
Shona Moore	2024													
Janine M. North	2024													
Michael Pucci	2024													
Sarah A. Morgan-Silvester	2024													
David R. Podmore	2023													
Bruce A. Chan	2022													
Gordon M. Kukec	2022													
Brenda J. Eaton	2022													
Judith F. Sayers	2022													
Jan K. Grude	2022													

\* Appointments are for a term ending effective the termination of the Annual General Meeting ("AGM") of British Columbia Ferry Services Inc. under the Business Corporations Act. The AGM is generally dealt with by unanimous consent resolution, which is scheduled to be considered by B.C. Ferry Authority in June.

1. **Leadership** – experience at a senior level managing the operations of a large or complex commercial or non-profit entity.
2. **Business** – experience in operating a business in British Columbia.
3. **Board Experience** – previous experience as a member of a Board of Directors of a commercial or non-profit entity.
4. **Accounting and Finance** – accounting or financial expertise.
5. **Information Technology** – information technology leadership skills.
6. **Legal** – a law degree or experience in managing legal issues of a complex commercial nature.
7. **Transportation** – knowledge of and experience in addressing marine transportation issues, including environmental and safety issues.
8. **Marketing** – experience in developing and/or leading marketing or customer service initiatives.
9. **Tourism** – knowledge of and experience in the tourism industry in British Columbia, including the hospitality and retail sectors.
10. **Human Resources** – knowledge of and experience in human resources and labour relations practices in British Columbia.
11. **Regulatory** – experience working in, or significant knowledge of the issues associated with, a commercial entity regulated by statute.
12. **Stakeholder Relations** – public and/or stakeholder relations experience.
13. **Construction and Contract Management** – experience working with major construction projects

Based on the matrix, the main skill gap areas amongst current Board members are: marketing; tourism; information technology; construction and contract management; and legal.

Given the recent emphasis on the public interest in amendments to the Coastal Ferry Act it is noteworthy that the Skills and Experience Profile does not currently track areas such as government relations, public service experience,

Indigenous relations, innovation, or public engagement. The closest areas to those in the matrix are regulatory experience and stakeholder relations.

Of course, the matrix alone is not sufficient for identifying the kinds of personal qualities that make for an excellent corporate director.

The main personal strengths that the Authority is looking for in BC Ferries directors are set out in the Skills and Experience Profile including the following personal attributes: 1. High ethical standards and integrity in professional and personal dealings; 2. Ability and willingness to raise potentially controversial issues in a manner that encourages dialogue; 3. Flexibility, responsiveness, and willingness to consider change; 4. Ability and willingness to listen to others; 5. Capability for a wide perspective on issues; and 6 Ability to work as a team member.

Further, the Profile identifies required core competencies: 1. Well developed faculty for critical analysis; 2. Financial literacy, including an ability to read financial statements and ability to understand the use of financial ratios and indices to measure performance; 3. Appreciation of the unique role of the Authority as the governing body of BCFS; 4. Thorough knowledge of the responsibilities and duties of a director; and 5. Ability to distinguish corporate governance from management.

These are all on point. Any director with those attributes and qualities, in combination with the skill sets being sought, would make a strong contribution to the BC Ferries Board.

The Authority could also emphasize the importance of directors asking challenging questions and seek out directors with experience at motivating organizational change. Good healthy debate leads to better decisions.

## **6. | Succession Planning**

As per the statute, BCFS directors are appointed for a term of up to 4 years. At its sole discretion, the Authority Board may choose to reappoint for a further term of up to 4 years. No BCFS director may serve for a consecutive period of more than 8 years in total.

The general practice of the Authority for some time has been to appoint directors for initial terms of 3 to 4 years followed by reappointment.

Another option would be to adapt the practice of the provincial government, which is to appoint new agency directors to an initial term of 1 year, followed by 2 years, then 3 for a maximum term limit of 6 years.

The Crown Agencies and Board Resourcing Office (CABRO) implements this policy while at the same time collaborating with board chairs on the evaluation process for directors. Prior to possible reappointment there are organized review opportunities for all involved.

While this is the general provincial practice, some agencies (such as health authorities) have their own legislation and regulations which result in initial appointment terms of 2 years. In all cases, though, the initial terms are not long.

In the BCFS context – with an 8 year term limit and the need to stagger terms for succession purposes – all new directors could have an initial term of 1 year followed by reappointment for terms that ensure staggering of appointments i.e. 2, 3 or 4 years as appropriate. Currently, 5 directors are appointed for terms ending in 2024 and 1 in 2023 so this core will provide continuity even as shorter terms are implemented for new or returning directors.

In any event, reappointment to the BCFS Board after conclusion of an initial term should not be assumed as a given. The Act provides for flexibility with regard to the duration of appointment terms and the Authority needs to always consider the best mix of possible directors whenever it decides on a possible reappointment. A balance needs to be struck between stability and renewal.

The Authority should consider implementing an initial appointment term of 1 year and should collaborate with the Chair of BCFS on a director evaluation process that informs any potential reappointments.

The appointment dates and terms of current BC Ferries directors are shown below:

Director	First Elected	Current Term End (late June)	Subsequent Term Duration (Maximum 4 years)*	Subsequent Term End (if reappointed for maximum term)	Consecutive Years Served (if appointed for a full subsequent term)
Gordon Kukec	June 26, 2014	2022			8 years
Bruce Chan	June 26, 2014	2022			8 years
Sarah Morgan-Silvester	June 23, 2016	2024			8 years
Jan Grude	June 29, 2017	2022	3 year	late June 2025	8 years
Judith Sayers	June 28, 2018	2022	4 year	late June 2026	8 years
Brenda Eaton, Chair	January 1, 2019	2022	3.5 years	late June 2026	7.5 years
David Podmore	February 1, 2019	2023	3 years 7 months	January 31, 2027	8 years
Janine North	June 23, 2020	2024	4 years	late June 2028	8 years
Eric Denhoff	August 14, 2020	2024	3 years 10 months	late June 2028	7 years 10 months
Shona Moore	August 14, 2020	2024	3 years 10 months	late June 2028	7 years 10 months
Michael Pucci	August 14, 2020	2024	3 years 10 months	late June 2028	7 years 10 months

*\* Subsequent Term Duration means the maximum term duration the director can serve if they were re-appointed subject to the 'up to 4 years' and '8-year consecutive years served' rules.*

The staggered terms permit a continuing balance between experienced and new BCFS directors and enables BCFA priorities such as increased diversity.

The current terms of five directors will conclude at the end of June 2022.

Directors Kukec and Chan will reach their 8 year term limits at the end of June next year. Consideration of whether or not to replace or supplement their technology and marine transportation expertise – and if so how - should commence soon.

The first 4 year terms of directors Grude and Sayers ended in June 2021 and both have been extended for a further year to the end of June 2022. Decisions about matters such as director indigeneity, the role of a vice-chair, and the relative priority of financial expertise will all need to be made before then.

Board Chair Brenda Eaton's first term will end in a year's time. She is leading in a key position and has considerable experience in both government relations and corporate directorship so, in the interests of stability and effective transition, a decision about whether or not to extend her term should also be made soon.



## 7. | BCFS Committee Structure

The best publicly available source for information on the work of the BC Ferries Board is found in Schedule A of the 2019/2020 Performance and Accountability Report<sup>5</sup> of BCFS.

That most recent annual report states that in fiscal 2019/20 the BCFS Board operated with six board committees. Those committees were: Audit and Finance; Safety, Health, Environment and Security; Governance and Nominating; Human Resources and Compensation; Information Technology Governance; and Capital Projects.

BCFS Board Chair Brenda Eaton, reports that those six committees have now been reduced to four. The four are now: Audit and Finance; Governance and Human Resources; Safety; and Capital Projects. Information technology governance is now a responsibility of the entire Board.

Ms. Eaton also explained that the BCFS Board operates with somewhat of a “Committee of the Whole” approach whereby all Board members attend the regular meetings of each of the Board committees even though only certain members are designated as actual members of those committees. This enables all Board members to be informed about the work of each committee and to potentially contribute to the work of each.

While it is an efficiency improvement to reduce the number of Board committees, there may still be room to scale back further given that – in reality – all Board members are at least listening to the deliberations of each committee, if not actually contributing to the discussion. Many other corporate boards focus primarily on Audit and Finance and Human Resources (i.e., compensation). However, given the significant and potentially risky capital program of BC Ferries as well as the overriding safety imperative, it is understandable why the BCFS Board has committees which focus on those areas as well.

## 8. | Board Information from SEDAR Compensation Disclosure

Because BC Ferries borrows money on the private marketplace, it is subject to securities regulations. As a result, certain more comprehensive information is provided to investors and securities regulators via the SEDAR website than is provided to the general public in the BCFS annual reports. SEDAR is the System for Electronic Document Analysis and Retrieval ([www.sedar.ca](http://www.sedar.ca)).

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<sup>5</sup> [http://www.bcferrries.com/web\\_image/h33/hc4/8815163146270.pdf](http://www.bcferrries.com/web_image/h33/hc4/8815163146270.pdf)

See pages 78-86

Amongst other reports on the SEDAR site, one can find a BCFS Statement of Executive Compensation for the fiscal year ended March 31, 2020 dated June 11, 2020. This report is different, and in some respects more detailed information, than the Executive Compensation Disclosure produced per requirements of the Coastal Ferry Act.

One learns at page 6, for example, that in the 2019/20 fiscal year there were five voting members of the Human Resources and Compensation Committee. (i.e., the Board Chair and directors Chan, Kukec, Podmore and Sayers.) *“The BC Ferries Board recognizes the importance of appointing knowledgeable and experienced individuals to the H.R. & C. Committee who have the appropriate background and expertise in executive compensation and risk management to fulfill the committee’s responsibilities. Most members of the H.R. & C. Committee in the fiscal year had experience in these areas as senior leaders of large or complex commercial businesses and through their prior or current membership in the H.R. & C. Committee.”*

Further, three of those H.R. & C. members also served on the Audit and Finance Committee, five on the Capital Projects Committee, three on the Governance and Nominating Committee, three on the Safety, Health, Environment, and Security Committee, and two on the Information Technology Governance Committee. *“This cross membership between committees supports the effective oversight of compensation and its alignment with corporate financial, strategic and operational objectives.”*

To an outside observer, this seems to be a great deal of committee work. The objective of cross membership to inform the compensation decisions of the H.R.&C. Committee makes some sense but the fact that BCFS uses a holdback rather than bonus system for its senior executives is important context in that regard. Likewise, the fact that a ‘committee of the whole’ practice has evolved (as described in section 7 above) is important to consider as well.

The SEDAR executive compensation report provides detail on director remuneration as well (at page 16). In accordance with the director’s compensation plan approved by the BCFA, the following remuneration is provided:

- Annual Retainer for Board Chair - \$100,000
- Base Retainer for all directors excluding the Chair - \$25,000
- Vice Chair Retainer - \$8,000
- Audit and Finance Committee Chair Retainer - \$8,000
- Other Committee Chair Retainer - \$5,000
- Committee Member Retainer excluding the Chair - \$3,000

- Per diem fees for all Directors except Board Chair – up to \$1200 per day
- Ferry travel pass for directors and eligible members of their immediate families, for complimentary vehicle and personal travel on BC Ferries' vessels

For Board directors other than the Chair, this generally worked out to between fifty to sixty thousand dollars per year in fiscal 2019/20. Specifics are in the report.

## 9. | Synopsis of Discussion with BCFS Board Chair Brenda Eaton

As per the terms of reference for this review, input was sought from BCFS Board Chair Brenda Eaton.

Some of the points made during the discussion include:

- Ms. Eaton feels an appropriate number of BCFS directors would be 9 or 10.
- BC Ferries is a regulated operating company which, though independent, can be viewed as a “quasi-Crown” given its importance for the general public.
- BCFS directors should have a broad diversity of views and perspectives.
- BCFS directors should ideally have been part of a governance board in the past. Crown Corporation board experience would be useful for some of the directors given that BC Ferries is a primary transportation contractor for the Province, is a regulated utility, and the provincial government sets the environment in which it operates.
- The pattern for BCFS Board meetings is generally one day for committee work (as described in section 7 above) and one day for the full Board.
- There is no anonymized Board evaluation survey of BCFS directors. Rather, the Chair speaks with each director one on one about Board performance.
- With regard to skill sets of future directors, it is important that they be interested in the whole of the company and not simply be advocates for one issue or perspective. A willingness to learn and take courses is important. Some experience in a regulated environment would be useful. Financial literacy is crucial. Vision about the future of the ferry service and business transformation is important, rather than a sole focus on incremental change of what exists now. I.T. and strategic use of data is key for all companies today and particularly for BC Ferries. When directors Chan and Kucek leave there will be significant gaps with regard to marine transportation and technology. More depth

with regard to capital to supplement director Podmore's expertise would be helpful.

- Collaboration between the Authority and BCFS Boards is beneficial.
- All involved are struggling a bit to understand how to implement new public interest requirements. It will be best if BCFA and BCFS work together on this. There is a parallel between the Airport Authority model and the BCFA/BCFS paradigm. As a regulated essential service, BC Ferries must strive to have a good relationship with the government even though it is no longer a Crown. Public interest considerations primarily come into play with regard to smaller coastal routes, the contract with the Province and cross-subsidization from the more profitable routes.
- With regard to the pandemic, the BCFS Board had a lot of debate but in the end did not cut employee pay or services.<sup>6</sup> They have made some changes to the holdback arrangements for executives in light of financial targets and the significant decline in ridership.
- There is a capital review underway at BC Ferries, but the actions taken so far have mostly been fine tuning i.e. small deferrals rather than any major reduction or deferral of the approved capital plan.<sup>7</sup>
- The \$308 million in federal/provincial Safe Restart funding has obviously been very beneficial for BC Ferries, greatly improving its liquidity amongst other things. However, ridership is still down 40 to 60% and contingency is being used up. Unless international travellers, in particular, return soon either additional senior government funding or some tough decisions about rate increases will be necessary both in the short term as well as during the next regulated Performance Term (PT6).

## C. Board Size

### 1. | Scope and Impact of BC Ferries

BC Ferries is a regulated coastal transportation operating company which also has a capital and maintenance program for ships and terminals. It operates 35 vessels on 25 routes using 47 terminals.

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<sup>6</sup> On April 4, 2020 (at the early stages of the pandemic) BC Ferries served layoff notice to 425 regular employees and 690 casual employees. BC Ferries rescinded that decision for regular employees by April 11 but kept the layoffs in place for casual employees. Arbitrator John Hall ruled on September 28, 2020 that BC Ferries did not have an inherent management right to layoff the employees at all.

<sup>7</sup> According to the February 2021 Management Discussion and Analysis document posted to SEDAR, approximately \$100 million of capital has been deferred beyond 2021.

BC Ferries has approximately 5,074 employees at peak season, composed of 3,606 regular full and part-time employees, 1,037 casual and fixed term employees, and 431 seasonal employees.

In fiscal 2020, BC Ferries provided 8.8 million vehicle and 21.7 million passenger trips, a reduction of 1% and 2.7% respectively compared to the previous fiscal. System wide there were 82,288.5 round trips in the year. Revenue from vehicle and passenger traffic totalled \$613.2 million in fiscal 2020, a decrease of \$5 million from the previous year.<sup>8</sup>

In fiscal 2020, the company had earnings before interest, taxes, dividends and amortization (EBITDA) of \$264.1 million. It reported net earnings of \$28.8 million for fiscal 2020, a significant drop from \$52.2 million in the previous year. For the three months ending March 31, 2020 the company had an adjusted net earnings loss of \$69.6 million. The company has total assets valued at \$2.36 billion and total long-term financial liabilities of \$1.51 billion.

Some 24% of the company's revenue in fiscal 2020 came from provincial ferry transportation fees (per its contract with the Province), federal/provincial subsidies, and additional provincial contributions. In fiscal 2020, those provincial and federal government contributions totalled \$232.1 million.<sup>9</sup>

On September 18, 2020, the B.C. and federal governments announced that they would provide an additional \$308 million to BC Ferries (cost-shared 50/50 between the two levels of government) to assist BC Ferries to deal with the global COVID-19 pandemic. Combined with the provincial/federal funding already provided to BC Ferries, Safe Restart means the company received some \$540 million from senior governments in fiscal 2020 (though only \$186 million of Safe Restart funds were recognized for accounting purposes in fiscal 2021).

Safe Restart funding has greatly improved the liquidity of the company. One of the key goals of Safe Restart for BC Ferries was to ensure that service levels were maintained despite declining ridership.

On June 18, 2021 the company announced its year end results for the fiscal ending March 31, 2021. Compared to fiscal 2020, BC Ferries saw passenger trips decline by 40% and vehicle trips decline 24%. Net earnings for fiscal 2021 were \$21 million, primarily because the company recognized \$186 million from the total Safe Restart allocation of \$308 million. Without the Safe

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<sup>8</sup> British Columbia Ferry Services Inc. Annual Report to the British Columbia Ferries Commissioner Year Ended March 31, 2020 page 5.

<sup>9</sup> Source: British Columbia Ferry Services Inc. Fiscal Year 2019-2020 Performance and Accountability Report (Incorporating the annual report of BCFS Inc.).

Restart funding the net loss for fiscal 2021 would have been \$165 million. Without the Safe Restart funding total revenues would have declined 27.8 per cent in fiscal 2021 compared to fiscal 2020.<sup>10</sup>

Some potentially comparable or relevant companies and their Board sizes are summarized below.

## 2. | Washington State Ferries (W.S.F.)

Washington State Ferries has **no** Board of Directors because it is an integrated part of the Washington State Department of Transportation. It is directed by an Assistant Secretary of the Department.

In calendar 2020, W.S.F. carried 7.6 million vehicles and 6.3 million passengers (approximately 14 million in total) which was a decline of 27% and 52.7% respectively compared to 2019. In a non-pandemic year like 2019, the total of vehicles and passengers was closer to 24 million. W.S.F. serves 10 routes with a fleet of 23 vessels and operates 20 terminals. It has about 2,000 employees.

It is not fully comparable to BC Ferries because it serves relatively short routes, many of them for commuters (such as Seattle to Bremerton), and has no long haul routes like Tsawwassen to Swartz Bay or Prince Rupert to Port Hardy. In that sense, although the WSF ferries are ocean going, it is somewhat similar to the inland ferry services provided by the B.C. Ministry of Transportation and Infrastructure. As well, W.S.F. is subject to frequent service disruptions due to its aging fleet.

Still, it is interesting that W.S.F. operates without a Board.<sup>11</sup>

## 3. | Société des Traversiers du Québec (S.T.Q.)

S.T.Q. is a Crown Corporation which operates intra-provincial ferry services in Québec. It has a Board of **9** members

S.T.Q. operates 13 ferry routes, carrying 5.2 million passengers and 2.1 million vehicles. Four of its routes are contracted out. S.T.Q. has approximately 650 employees.<sup>12</sup>

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<sup>10</sup> Consolidated Financial Statements of British Columbia Ferry Services Inc. Years ended March 31, 2021 and 2020 posted to SEDAR at [www.sedar.com](http://www.sedar.com) and News Release of June 18, 2021 BC Ferries Releases Year-End Results

<sup>11</sup> <https://wsdot.wa.gov/ferries>

<sup>12</sup> <https://www.traversiers.com/en/about-stq>

## 4. | Marine Atlantic

Marine Atlantic is a federal Crown Corporation which provides ferry service on two routes between Nova Scotia and Newfoundland. It has a Board of 9 members, plus the C.E.O. who is ex-officio.

Board members have backgrounds in: human resources; finance; public, government and stakeholder relations; and transportation and marine industry.<sup>13</sup>

## 5. | Coast Mountain Bus Company

Coast Mountain Bus Company is an operating subsidiary of TransLink which operates the bus, SeaBus, and HandyDart systems in the Lower Mainland. It has a Board of 3 members appointed by TransLink.

Coast Mountain Bus directly operates 1,502 road buses and 3 SeaBus vessels. It contracts out service for another 558 buses, community shuttles and HandyDart vehicles. It has approximately 6,000 employees and provides approximately 5.5 million conventional transit service hours per year as well as 49,000 annual SeaBus ferry trips across Burrard Inlet.

The Board is responsible for general oversight of management, strategic planning, annual budgets, performance reporting, and hiring of the President and General Manager.<sup>14</sup>

## 6. | BC Transit

BC Transit is a provincial Crown Corporation which operates and contracts for bus service in B.C. communities outside of the Lower Mainland. It has a Board of 7 members. It operates a bus acquisition and comprehensive maintenance program as well.

B.C. Transit directly operates the bus service in the Victoria region and partners with local governments to operate bus service through 6 regional transit systems (i.e., Kelowna, Kamloops, Whistler, Nanaimo, Central Fraser Valley, and Prince George). As the Crown agency charged with coordinating the delivery of public transportation across the province outside of Metro

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<sup>13</sup> <https://www.marineatlantic.ca/about-us/corporate-information/our-team>

<sup>14</sup> <https://www.translink.ca/about-us/about-translink/operating-companies/coast-mountain-bus-company>

Vancouver, BC Transit is increasingly providing intercity and intercommunity services such as BC Bus North (on Highway 16), service between Penticton, Kelowna and Vernon, Victoria to Duncan etc.

It had an operations budget of approximately \$189 million in 2019/20 and has a fleet of over 1,000 vehicles.<sup>15</sup>

## 7. | TransLink

TransLink is the regional transportation authority for the Metro Vancouver region, responsible for coordinating public transit (conventional, rapid, and intercity) as well as a major road and bridge network. It has a Board of **11** members and is additionally supported by a Mayor's Council on Regional Transportation made up of 21 Mayors, the Chief of the Tsawwassen First Nation and the elected representative of Electoral Area "A".

TransLink is not directly comparable to an operating company like BC Ferries because it relies on its operating subsidiaries to actually operate its transportation services. Rather, TransLink is more of a policy and coordination body linking transportation systems to growth management decisions and the like.<sup>16</sup>

## 8. | British Columbia Rapid Transit Company (BCRTC)

BCRTC is the operating subsidiary of TransLink which maintains and operates Skytrain and West Coast Express. It has a Board of **2** members.

## 9. | BC Hydro

BC Hydro is a regulated commercial Crown Corporation responsible for operating, building, and maintaining the electrical system of the province. It generates, transmits, stores, acquires, builds, conserves, and generally manages the power system of B.C.

BC Hydro has a Board of **9** members. It has 4 committees – Audit and Finance, Capital Projects, Operations and Planning and Governance and Human Resources.

It has also appointed a Site C Project Assurance Board.

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<sup>15</sup> <https://www.bctransit.com/about>

<sup>16</sup> <https://www.translink.ca/about-us/about-translink/governance-model>



It has 2 wholly owned subsidiaries – Powerex (which markets electricity outside the province) and Powertech Labs which operates 19 laboratories in support of the power utility and electrical equipment industries.

In fiscal 2019/20 BC Hydro had: total revenues of \$6.27 billion; total expenses of \$6.6 billion; net income of \$705 million (after movement of regulatory balances); and total capital expenditures of \$3.08 billion.

BC Hydro has approximately 6,100 employees.

All of which is to say it has operating and capital responsibilities which are an order of magnitude larger than BC Ferries.

For the fiscal year ended March 31, 2020 the Chair of the Board of BC Hydro (Ken Peterson) received total remuneration of \$93,375 plus expenses. Board members received remuneration ranging between \$30,000 and \$50,000, plus expenses.<sup>17</sup>

## 10. | Insurance Corporation of British Columbia (ICBC)

ICBC is a regulated Crown Corporation responsible for providing: basic and optional auto insurance coverage; claims management; enhanced care in event of an injury; driver licensing; vehicle registration; and road safety initiatives.

The Board of ICBC has **11** members.

In 2019/20, ICBC had total earned revenues of \$6.4 billion and total expenses of \$7.4 billion for a net loss after impairment of \$376 million. Excluding the impairment charge (due to investment losses following the pandemic) ICBC had a net loss of \$59 million.<sup>18</sup> Its continuing financial losses over the last several years have motivated the current government to implement “enhanced care” which is a form of no fault insurance which will improve the company’s financial prospects. Implementing this new system is one of the top priorities of ICBC at this time.

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<sup>17</sup> British Columbia Hydro and Power Authority and its subsidiary Powerex Corp. Schedule of Remuneration and Expenses Board of Directors Fiscal Year Ended March 31, 2020 <https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/accountability-reports/financial-reports/annual-reports/BCHydro-FIA-F20.pdf>

<sup>18</sup> Insurance Corporation of British Columbia 2019/20 Annual Service Plan Report <https://www.icbc.com/about-icbc/company-info/Documents/ar-20.pdf>

ICBC has approximately 5,200 employees.

For the fiscal year ended March 31, 2020, the Chair of the Board of ICBC (Joy MacPhail) received total remuneration of \$49,875 plus expenses. ICBC Board members received remuneration ranging between \$24,000 and \$33,000 plus expenses.<sup>19</sup>

## 11. | Summary on Board Size

In summary, the current number of directors for the companies and services examined are:

Company	Directors
BC Ferries	11
Washington State Ferries	0
Société des Traversiers du Québec	9
Marine Atlantic	9 (+ CEO)
Coast Mountain Bus Company	3
BC Transit	7
TransLink	11
British Columbia Rapid Transit Company	2
BC Hydro	9
ICBC	11

Of additional note are the Board of YVR (Vancouver Airport) with 13 members and Vancouver Port Corporation with 11. Although both facilitate transportation services, neither are transportation operating companies. They are also federal government agencies.

The provincial companies examined which are most comparable in scope and impact to BC Ferries are likely Coast Mountain Bus Company, BC Transit and BC Hydro.

However, any comparison to Coast Mountain Bus (with its 3 directors) needs to take account of that fact that CMB is a subsidiary company. The larger Board of TransLink makes many of the strategic and policy decisions that Coast Mountain Bus carries out. Still, there is some parallel in the sense that both

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<sup>19</sup> “Remuneration and expenses paid to the members of the board of directors for the year ended March 31, 2020” from Insurance Corporation of British Columbia Statements and Schedules of Financial Information Year Ended March 31, 2020 page 101. <https://www.icbc.com/about-icbc/company-info/Documents/financial-info-2020.pdf>

Coast Mountain Bus and BC Ferries are transportation operating companies providing essential services for the general public.

In terms of provincial economic impact, BC Hydro (with its 9 directors) is probably a better comparison. BC Hydro is provincewide, of course, whereas BC Ferries only serves the coast, but both are regulated commercial companies serving a public purpose.

Although it has a smaller budget and staff complement, BC Transit (with its 7 directors) is also reasonably comparable to BC Ferries inasmuch as both serve the general public of BC, both are transportation operating companies that also manage capital programs, both have significant ridership declines as a result of the pandemic, and both have been recipients of crucial Safe Restart funding.

There is no particular science to determining Board size. Determining board size is a judgement call, though the number of BC Ferries directors is on the high side at the present time.

Considerations to weigh about this include that a higher number of directors provides more opportunities for diverse representation and a diversity of views, a broader range of skill sets, a better sharing of workloads and increased options with regard to succession planning. A larger number of directors may mean more debate about issues which, in some instances, may result in better decisions.

On the other hand, too many directors may be inefficient, can contribute to conflict, increase Board costs, increase the duration of Board meetings, diffuse the important management challenge function and make it more difficult to reach consensus.

Weighing all those factors and comparators, a Board size of 7 directors seems appropriate for BC Ferries.

## D. Diversity

The BCFA Director Appointment Process of November 2020 puts a strong emphasis on diversity. Amongst other things, it states: *“The Authority Board holds the view that a diverse board makes prudent business sense and makes for better corporate governance.”* Also: *“ A principal objective of the process for appointing BCFS Directors is to maintain a composition of talented and dedicated Directors with a diverse mix of expertise, experience, skills and backgrounds that is reflective of the nature of the business environment in which*

*the company operates, and the people and the communities it serves. For purposes of Board composition, diversity of people and communities includes, but is not limited to, gender, gender identity or expression and sexual orientation (LGBTQ2S+), ethnicity, Indigenous status, persons with disabilities, age and geographic location.”*

Recent literature on this issue confirms the view that a diverse board makes for better corporate governance. Diversity of backgrounds contributes to a diversity of perspectives which (in a study reported in the Harvard Business Review) activist investor Jared L. Landaw has dubbed “cognitive diversity”.

*“Engaged, cognitively diverse ‘outsiders’ helped other directors feel more comfortable asking questions, suggesting alternatives, and expressing dissent. In turn, this helps Boards more effectively oversee management and improve decision-making.” Further: “To improve both cognitive and demographic diversity in the boardroom, we recommend that boards recruit racially, ethnically, and gender diverse directors who enhance diversity on two additional levels: first, by adding professional backgrounds, skills and experiences in areas that are needed to meet the company’s strategic and operating needs; and second, by introducing new views, perspectives, and approaches to problem solving.” A Board director interviewed for this study said: “The new directors (on our board) brought not just a diversity of opinions and perspectives, but a diversity of behaviour – a willingness to openly challenge management and other directors, which was missing from the boardroom. By having more open debate, it created an environment where others saw it was good and healthy to have frank discussions regarding important decisions. When members of the board began challenging each other – and listening to each other’s viewpoints – it led to positive outcomes. Good healthy disagreement led to good decision-making.”<sup>20</sup>*

This perspective was reinforced in 2019 congressional testimony by Chelsea Gurkin of the U.S. Government Accountability Office:

*“...academic and business research has shown that the broader range of perspectives represented in diverse groups require individuals to work harder to come to a consensus, which can lead to better discussions.”<sup>21</sup>*

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<sup>20</sup> “How Diverse is Your Board, Really?” by Jared L. Landaw. Harvard Business Review June 11, 2020. <https://hbr.org/2020/06/how-diverse-is-your-board-really>

<sup>21</sup> “Strategies to Increase Representation of Women and Minorities – Testimony Before the Committee on Financial Services, House of Representatives” by Chelsea Gurkin, U.S. Government Accountability Office. Posted to the Harvard Law School Forum on Corporate Governance on June 27, 2019. <https://corpgovlaw.law.harvard.edu>

In terms of how best to recruit new BCFS directors who both come from diverse backgrounds and increase cognitive diversity, some suggestions are:

- Consider hiring a search firm which specializes in Board diversity.
- Request that prospective Board directors voluntarily self-identify the extent to which they come from diverse backgrounds. Search firms can assist with confidential surveys for this.
- Ideally, search for directors with diverse identities and backgrounds who also have enough governance or business experience to ask excellent questions and hold management accountable.
- Strive to create a culture that embraces diverse insights and ensures they are incorporated in decisions.
- Strive to reach out beyond existing networks, which are often male dominated.
- Consider how best to incorporate “Gender-based Analysis Plus (GBA+)” into the work of both the Authority and the Board of BCFS. GBA+ is an analytical tool to assess how groups of women, men, and gender-diverse people may experience policies and programs differently.<sup>22</sup> In 2018, the Government of B.C. committed to using the tool in all its policy, budget and program decisions so this tool will be helpful for analysis of ferry related decisions as well.
- Make diversity of age a priority in order to recruit younger BCFS directors who may bring new experience and perspectives in areas such as innovation, digital technology, social media, transport electrification and data management.
- Establish a system for mentoring prospective Board candidates.
- Search for, and potentially reach out to, professional networks of under-represented groups (e.g., the WEB Alliance of Women’s Business Networks, the Black Business Association of B.C., LOUD Business, Indigenous Business and Investment Council etc.).
- Avoid tokenism.
- Encourage a formal Board director evaluation process (more on this later).
- Consider neglected skill sets which may in turn help lead to new diverse candidates.

Five of the eleven current BCFS Directors are women. Only one is Indigenous and one other is Asian-Canadian. Most are older. As noted earlier, the majority

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<sup>22</sup> see, for example, page 9 of Policy Approaches Playbook: Considerations for Policy Development Government of B.C.

[https://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/regulatory-reform/pdfs/policy\\_approaches\\_playbook.pdf](https://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/regulatory-reform/pdfs/policy_approaches_playbook.pdf)

come from private sector business backgrounds. More can be done to increase the diversity of the BC Ferries Board.

## E. Indigenous Director(s)

Especially given the coastal communities that BC Ferries serves, and particularly at a time of reconciliation, it is essential that the BCFS Board have at least one, and preferably more than one, Indigenous director.

While reconciliation in the provincial government context primarily concerns government to government relationships and BC Ferries is not an agent of the Crown, it is also important to note that: *“Reconciliation and related agreements focus on closing socio-economic gaps that separate Indigenous peoples from other British Columbians, and building a province where all citizens can participate in a prosperous economy”*.<sup>23</sup> It is because of the economic, social and mobility impact of BC Ferries for coastal Indigenous communities that participation on the BC Ferries Board by Indigenous directors adds value to the company.

One option for seeking additional or replacement Indigenous directors would be for the BC Ferry Authority to directly request suggestions from provincewide Indigenous political organizations like the Union of BC Indian Chiefs or the British Columbia Assembly of First Nations. This is not recommended. Neither BC Ferries nor the BC Ferry Authority are agents of the Crown and BCFS is not a Crown company. Board directors are not representatives of any organizations but rather bring their own individual skills and backgrounds to the group table. Also, it would become fraught for BCFA if recommendations are sought from provincewide political organizations, particularly if those recommendations or nominations are not accepted. The process of choosing new directors should not be political.

All that said, there is important value in ensuring that voices from coastal Indigenous communities are heard at the BCFS table. The Authority and its search firm should regularly seek out qualified prospective directors from nations which are directly reliant on, and impacted by, BC Ferries services such as those on the north coast, central coast, northern Vancouver Island etc.

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<sup>23</sup> [Reconciliation and related agreements](https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/reconciliation-other-agreements), Government of British Columbia webpage. <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/reconciliation-other-agreements>

## F. Understanding the Effectiveness of the BCFS Board

The Terms of Reference for this report ask for advice on how the BC Ferry Authority Board can best understand the effectiveness of the Services Board when making decisions on appointments.

As the beneficial shareholder - and the entity now responsible under the Coastal Ferry Act for strategic oversight - the BCFA should have a good broad understanding of the work of the Services Board while at the same time taking care to not get involved in operational details or micro-managing in any way. It needs to have this kind of understanding in order to effectively make decisions on appointments and re-appointments.

Some options in this regard include:

- The BC Ferry Authority Board interviewing individual Services Board directors to get feedback on overall effectiveness of BCFS Board governance in the public interest. A reasonable time for such discussions might be mid-term. The BCFA Board could supplement such interviews with a regular survey of BCFS directors. Taking these steps may necessitate the allocation of additional financial resources but the necessary funding should be provided as per section 20 of the Act.
- Asking the Services Board to share minutes of its meetings. If there are confidentiality concerns, those can be managed administratively, but it is reasonable for the Authority Board to receive minutes in order to be apprised of the ongoing work of the BCFS Board. The minutes are not currently provided and, as things stand now, more detail on the work of the BCFS Board is provided to securities regulators through SEDAR postings than is provided regularly to the Authority. This step would be consistent with section 21.01 (2) of the Act.
- Reviewing the extent to which high level performance metrics are in place. The Services Board sets performance metrics for BC Ferries management. The test for the Authority Board should be whether or not such metrics exist, whether they seem reasonable from a strategic point of view and whether or not there is evidence management is being held to them.
- The Authority Board establishing its own set of strategic benchmarks for BCFS Board governance. Those might include the attendance record of directors, participation in committees, evidence of the extent to which fiduciary responsibilities are being honoured,

whether directors have undertaken additional Board related training and the extent to which the governance manual of BCFS is being observed.

- Ascertaining the extent to which the BCFS Board is involved in regular processes of self-evaluation, whether through anonymized surveys, regular discussions between individual directors and the BCFS Board Chair, and/or group discussions at annual intervals about how Board effectiveness can be improved.
- Considering the extent to which resources developed by the Crown Agencies and Board Resourcing Office (CABRO) may provide helpful templates for assessments of the work of the BCFS Board.<sup>24</sup>
- Seeking feedback from the Ministry of Transportation and Infrastructure on its perceptions about the governance work of the BCFS Board.
- Assessing the extent to which information on the work of the BCFS Board is being provided to the general public and providing feedback to the BCFS Board on public information gaps that the Authority Board perceives.
- Similarly, with regard to strategic oversight, the Authority Board providing feedback to the Services Board on strategic gaps that it perceives.
- Finally, the BCFS Board Chair could be requested to provide regular feedback to the Authority Chair on Services Board effectiveness and governance. Good ongoing communication between the Chairs of the Authority and the Services Board is essential.

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<sup>24</sup> One example is CABRO's "Principles of Citizen-Centred Governance" which are: 1. Put the interests of citizens at the centre of decision making; 2. Behave with integrity, demonstrate strong commitment to ethical values and respect the rule of law; 3. Ensure openness and respectful engagement with all citizens; 4. Strive for outcomes that support healthy communities in British Columbia, including social, economic and environmental well-being; 5. Implement actions to achieve the organization's mandate.



## G. General Comments

Some summary observations about the current structure and governance in the public interest:

- BC Ferries is an essential transportation service and a natural monopoly. It is not an exclusively commercial enterprise. Its governance should reflect that reality.
- The current Board composition is somewhat over-weighted towards members with private sector business backgrounds. While some directors with a business background are important for an enterprise like BC Ferries, some rebalancing seems warranted through appointment of additional directors with coastal community perspectives and strong governance experience with regulated utilities, Crown corporation boards, and/or the public service.
- The smaller the size of the BCFS Board the more challenging it will be for the Authority to meet its equity, expertise, and experience objectives.
- Public interest considerations are particularly crucial for ferry users from smaller and northern coastal communities who depend upon the service for necessary day to day connections. That reality needs to be balanced with the fact that the majority of fare revenue comes from the major routes.
- BC Ferries is very dependent on government funding. Nearly a quarter of its regular revenue came from provincial and federal contributions in fiscal 2020 and when Safe Restart funding is combined with regular contractual funds and subsidies from government the total is some half a billion dollars (though not all of that will be recognized in a single fiscal for accounting purposes). The company is reporting a profit even though, without Safe Restart funding, the net loss for fiscal 2021 would have been \$165 million.
- BC Ferries was not permitted to access the federal wage subsidy programs set up in response to the COVID-19 pandemic because it is considered to be publicly owned for tax purposes. Though BCFS does pay G.S.T. it does not pay corporate income taxes. BC Ferries also enjoys a special waiver on the 25% federal duty it would otherwise have to pay on the ships that it builds overseas. These special tax breaks emphasize the fact that BC Ferries is not a private company, though it is independently managed.

- BC Ferries appears to have made only minor changes to its capital plan and executive compensation arrangements despite the huge declines in ridership and revenue that resulted from the global pandemic and public health restrictions. Its initial response to declining ridership in the spring of 2020 was to attempt to layoff large numbers of staff and reduce service capacity by about half, initially moving to cut sailings on 11 routes. The negative response from the public and provincial government brought public interest considerations to the fore and service levels were restored, particularly in light of Safe Restart funding.
- It is interesting to contrast the relatively minor changes made at BC Ferries in response to the pandemic with more drastic changes to transportation entities made elsewhere. For example, in the U.K. rail franchise agreements were suspended and train companies were nationalized.<sup>25</sup> The national government has called this “...the biggest shake-up of the network in a quarter of a century...”.

In commenting on the nationalization of ScotRail in particular, the Scottish Transport Secretary Michel Matheson said passengers would get better value for money under the new set up “because it will effectively cut out the company” which has been running the system. This includes the company’s “considerable” management costs, he said.<sup>26</sup>

The Office of National Statistics in the U.K. (responsible for national accounts) contributed to this decision by a ruling that the previously private rail companies had become “public non-financial corporations” due to the government assuming their revenue and cost risk after the COVID pandemic. “The train operating companies’ debt is to be included in public borrowing figures and their employees to be counted as public sector employees.”<sup>27</sup>

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<sup>25</sup> “UK ends rail franchising as COVID measures extended” The Guardian September 21, 2020. <https://www.theguardian.com/business/2020/sep/21/uk-covid-19-rail-rescue-measures-dft-franchising>

<sup>26</sup> “Scotland’s train operator ScotRail to be nationalized” BBC News, March 18, 2021 <https://www.bbc.com/news/uk-scotland-scotland-politics-56432919>

<sup>27</sup> “The O.N.S. classifies train operating agreements now running under emergency measures agreements” Office of National Statistics, July 31, 2020 <https://www.ons.gov.uk/news/news/theonsclassifiestrainoperatingcompaniesnowrunningunderemergencyagreements>

- BC Ferries has taken a long time to achieve the technology and data management goals its Board set several years ago. “Saver” and prepaid fares were finally implemented in March of 2021. The Saver fare system allows travellers to book a more affordable fare on less busy sailings which, if taken up well by the public, should make for more affordable utilization of the fleet and decrease wait times. However, it is unclear the extent to which BC Ferries is using modern data management tools to get a detailed sense of where its passengers (and prospective passengers) are travelling and why. Deloitte posted a report in 2020 summarizing some recent international trends in this area which encourages transportation organizations to move toward “integrated frictionless travel” and “mobility hubs”.<sup>28</sup> As the Authority searches for new directors for BCFS, it would do well to find appointees who are familiar with the international use of technology and data management to attract new passengers, better serve current passengers and improve multi-modal transportation mobility.
- BC Ferries has been very focused on the construction of new ships for many years. The need for free cash flow to support its expensive capital program then drives many of its other decisions, especially with regard to fare increases. However, it is not apparent that BC Ferries is intensively managing data and monitoring traffic to inform the future needs of the fleet as an alternative to simply building new vessels to replace existing ones. The most effective BCFS directors will be those who ask challenging questions about what capital is actually required in the years ahead.
- One of the key roles of the provincial government with regard to coastal ferry service is to define public policy. The effort to articulate details of a long term, integrated, multi-modal “vision” for coastal ferry service and coastal transportation, which began in 2019, appears to have slowed. In September of 2020, then Minister Trevena released a report on phase 2 of the Province’s public engagement and said: “*Our vision is that travel by coastal ferries is seamless, equitable and compatible with the needs of coastal communities and our natural environment.*” Key themes from the public engagement were that coastal ferry services should: support efficient end-to-end travel of people and goods; be equitable and accessible; mitigate and be

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<sup>28</sup> “Transportation trends 2020. What are the most transformational trends in mobility today?” by Tiffany Fishman, Avi Schwartz, Mahesh Kelkar and Rana Sen. [Deloitte Insights](https://www2.deloitte.com/za/en/insights/industry/public-sector/transportation-trends.html) April 13, 2020. <https://www2.deloitte.com/za/en/insights/industry/public-sector/transportation-trends.html>

responsive to climate change; and reflect the values of coastal communities.<sup>29</sup> While these are good vision statements they are probably not sufficiently detailed to provide the kind of planning guidance that BCFS, the Ferry Commissioner, and the Authority all asked for during the 2018 Coastal Ferry Services Review. Timing of last fall's provincial election and appointment of a new Minister are no doubt factors, but if the Authority agrees that a more detailed vision or plan would be helpful to its governance deliberations then it may wish to raise this with the Province.

## **H. Summary of Recommendations**

### **1. Skill Sets**

BCFS Board skill set gaps that should be filled in the next year or so include: public sector, regulated utility, or Crown corporation governance experience; capital project management experience; marine transportation experience; information technology and data management experience (particularly in the context of transportation mobility); experience in promoting innovation; and certification in corporate directorship. To facilitate this, the list in the current Skills and Experience Profile should be amended to include: public sector governance experience; innovation promotion expertise; and mobility data management experience.

### **2. Training**

Ongoing professional development for corporate directors is important to the vitality of a Board. As shareholder, the Authority will have useful perspectives on skills gaps and skills development for the directors it has interviewed and appointed so the Authority and BCFS should collaborate on the training and professional development program for BCFS directors.

### **3. Initial Appointment Term**

The Authority should consider implementing an initial appointment term of 1 year and should collaborate with the Chair of BCFS on a director evaluation process that informs any potential reappointments.

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<sup>29</sup> "Province announces coastal ferries vision for the future" News release, Ministry of Transportation and Infrastructure. September 17, 2020 <https://news.gov.bc.ca/releases/2020TRAN0148-001777>

## **4. Director with a Trade Union Background**

Given that BC Ferries is a very unionized environment and given the nature of industry along the coast (much of which is served by BC Ferries), the Authority should consider appointing a director who has a trade union background. This is not unprecedented. The late Gordon R. Larkin (former representative with the Canadian Labour Congress) served on the BC Ferries Board from 2007 to 2016. Prior to Mr. Larkin, the late Ray Whitehead (former B.C. Regional Director with the Canadian Union of Public Employees) served on the BC Ferries Board from 1998 (when it was still a Crown Corporation) until 2007. There has been no trade unionist on the Board since 2016. BC Crown Corporations and other transportation entities which have directors with a trade union background currently include BC Hydro, ICBC, and TransLink amongst others. The voice of someone from a trade union background would add diversity of perspective to the BCFS Board and potentially help ground BCFS deliberations in the lived experience of working people who depend upon the service.

## **5. Financial Literacy**

Financial literacy is an important requirement for directors of a company of the complexity of BC Ferries, however that does not necessarily mean that directors need to have come from the financial sector or have a financial background. If necessary, training in understanding complex financial statements should be made available to all directors.

## **6. Board Size**

Weighing the various factors discussed in section B of this report, a Board size of 7 members seems appropriate.

## **7. Diversity**

In order to encourage cognitive diversity, a range of perspectives, and to meet its goals for a diversity of identities on the BCFS Board, the Authority should consider implementing the 12 steps set out in Section D of this report.

## **8. Indigenous Director(s)**

The Authority should ensure there are one or more Indigenous director(s) on the BCFS Board. The Authority should ask its search firm consultants to regularly help identify qualified Indigenous candidates from nations which depend on the ferry service for day to day connections such as those on the north coast, central coast, northern Vancouver Island etc.

## **9. Understanding the effectiveness of the BCFS Board**

In order to improve its understanding of the effectiveness of the BCFS Board, the Authority should consider implementing the 10 steps set out in Section F of this report.

## **10. Provincial Policy Vision**

A more comprehensive and detailed provincial public policy vision for future multi-modal coastal transportation would assist the BC Ferries Board, the BC Ferry Commissioner, and the BC Ferry Authority to better govern, deliver, and regulate the coastal ferry service in the public interest. If the Authority agrees, it may wish to discuss this with the Province.