

THE ONTARIO CROWN AGENCY ACT

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I. INTRODUCTION

It may be important for a variety of purposes to determine whether a particular entity falls within the category of instrumentalities of the Crown known as Crown agents or agencies. Where the question is at issue the competing claim is usually that the entity is independent of government.

Agencies of the Crown, insofar as they are acting on behalf of Her Majesty, enjoy most of the special privileges and immunities that are enjoyed by the Crown, that are not personal to Her Majesty or exercisable only through her government. The traditional prerogatives are, however, often confirmed, modified or even eliminated by legislation. Such legislation may differentiate the position of Crown agents from that of the Crown, but nonetheless peculiarities may persist in the rights and liabilities of such entities. Other statutes, which do not purport to deal with common law prerogatives, may be applicable to "Crown agents," but not independent agencies.

In these situations, then, it will be important to determine whether particular bodies are indeed Crown agents and, therefore, subject to a particular statute or entitled to enjoy a particular Crown privilege or immunity. It is difficult to ascertain general principles applicable to this determination because of some tendency on the part of the courts to respond differently, depending upon the particular context in which the issue becomes crucial. But, generally speaking, the courts apply a single set of basic criteria so that a particular entity will be a Crown agent for each and every purpose for which that categorization is relevant, unless of course a statute specifically denies certain prerogatives to the agent in question.

This article examines the problem of identifying Crown agents with particular reference to the purpose, constitutional effect, judicial interpretation and potential impact of the Ontario Crown Agency Act.¹

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¹ ONT. REV. STAT. c. 100 (1970).

II. THE TRADITIONAL TESTS OF CROWN AGENCY REVIEWED

An entity may be an agent of the Crown, either under the terms of a contract with the Crown,² or as a result of the effect of statutory provisions. It is the latter class of Crown agent with which this article is concerned.

The judicially developed test of whether an entity is a Crown agent is basically one of control. However, a function test is often applied; that is whether the body exercises what may be regarded as governmental functions. If it does, this is taken as indicative of Crown agency status and, if not, a status independent of the Crown is suggested.³ Also, the test has been used on occasion by the courts at another level of inquiry, as a device for limiting the scope of particular Crown prerogatives so as not to be available to the Crown or a Crown agency operating in a commercial context.⁴ Just what matters fall within and without the province of government is, however, unclear except at the extremes and may vary significantly over time and with the political persuasion of the decision-maker. The test is not, therefore, particularly satisfactory.

The control test, on the other hand, calls for an exercise in statutory interpretation. It requires an examination of the total statutory framework within which an entity is created and must operate in order to determine its dependence or independence of government. The question, to date, has been that of *de jure* rather than *de facto* control.⁵ But, within that range of inquiry, there are a number of aspects of control, both operational and financial, that the courts tend to examine. However, the presence of any one factor usually will not be determinative of itself. Rather it is the cumulative

² *Montreal v. Montreal Locomotive Works Ltd.*, [1947] 1 D.L.R. 161 (P.C. 1946). *And compare*, *Northern Saskatchewan Flying Training School v. Buckland*, [1944] 1 D.L.R. 285 (Sask. 1943).

³ *See*, for example, *Tamlin v. Hannaford*, [1950] 1 K.B. 18, at 24-25 (C.A. 1949); *British Columbia Power Corp. v. Attorney-General of British Columbia*, 34 D.L.R.2d 25, at 32 (B.C. 1962); *Regina v. Ontario Lab. Rel. Bd.*, *ex parte Ontario Food Terminal Bd.*, 38 D.L.R.2d 530, at 534-35 (Ont. 1963); and *British Broadcasting Corp. v. Johns (Inspector of Taxes)*, [1965] Ch. 32, at 60-62 (C.A. 1964). *And see*, for a consideration of the early English decisions, Griffith, *Public Corporations as Crown Servants*, 9 U. TORONTO L.J. 169 (1952).

⁴ *See*, for example, *Robinson v. State of South Australia*, [1931] A.C. 704, at 714-15 (P.C.), *appl'd in Dufresne Const. Co. v. The King*, [1935] Can. Exch. 77, at 88-89, and *The Queen v. Workmen's Compensation Bd.*, 36 D.L.R.2d 166 (Alta. Sup. Ct. 1962), *rev'd on other grounds*, at 40 D.L.R.2d 243 (Alta. 1963) (commented on at 14 U.N.B.L.J. 45 (1964)). *But cf.* *Pfizer Corp. v. Ministry of Health*, [1965] A.C. 512 and *Formea Chemicals Ltd. v. Polymer Corp.*, [1968] Sup. Ct. 754.

⁵ However, in a certification application to the Ontario Labour Relations Board, that tribunal heard and considered *viva voce* evidence as to the actual manner in which the Ontario Housing Corporation, which it was claimed was a Crown agent, implemented its authority and was subjected to government supervision. But the Board concluded, notwithstanding this evidence on behalf of the Corporation, that the OHC was not a Crown agent: *Brotherhood of Painters, Decorators and Paperhangers of America v. Ontario Housing Corp.*, 70 C.L.L.C. § 16,017 (1970), a decision which was subsequently quashed on certiorari, without reference to the *viva voce* evidence, on the grounds that the finding that the OHC was a Crown agent constituted an error of law on the face of the record: *Regina v. Ontario Lab. Rel. Bd.*, *ex parte Ontario Housing Corp.*, 19 D.L.R.3d 47 (Ont. High Ct. 1971).

effect of a number of the specific criteria that is important. The principal questions that are asked include the following:⁶

Is a large degree of control and management conferred on the entity?

If the entity takes a corporate form do the directors have the usual discretionary powers of directors?

May important functions, such as borrowing and spending, be exercised without government approval?

Does the entity have contractual capacity apart from the Crown?

Are its employees outside the class of public or civil servants?

Does the entity own property in its own name and may it deal freely with the revenues therefrom?

Do surplus monies realized from the enterprise fall under the control of the entity as opposed to going into government revenue?

Negative answers to these questions would tend to indicate that an entity is a Crown agency and positive answers that it is not.

On the other hand, a number of factors which might otherwise be thought to suggest the degree of government control requisite for Crown agency have been dismissed by the courts as inconsequential. These include the following:⁷

A requirement of cabinet approval of regulations adopted by the entity in question.

Appointment by the government of the members or governing body of the entity.

Provision for a government audit of the entity's accounts and financial report to the government or Legislature.

Government ownership of all the outstanding shares of an incorporated entity.

Dependence of the entity upon government funding.

⁶ See, for example, *Scott v. Governors of University of Toronto*, 10 D.L.R. 154 (Ont. Sup. Ct. 1913); *Metropolitan Meat Industry v. Sheedy*, [1927] A.C. 899; *Re Taxation of University of Manitoba Lands*, [1940] 1 D.L.R. 579 (Man.); *Governors of the University of Toronto v. Minister of National Revenue*, [1950] 2 D.L.R. 732 (Exch. Ct.); *Tamlin v. Hannaford*, [1950] 1 K.B. 18 (C.A. 1949); *British Columbia Power Corp. v. Attorney-General of British Columbia*, 34 D.L.R.2d 25 (B.C. 1962); and *Regina v. Ontario Lab. Rel. Bd., ex parte Ontario Food Terminal Bd.*, 38 D.L.R.2d 530 (Ont. 1963).

⁷ See, for example, *Halifax v. Halifax Harbour Commissioners*, [1935] Sup. Ct. 215; *Governors of the University of Toronto v. Minister of National Revenue*, [1950] 2 D.L.R. 732 (Exch. Ct.); *Tamlin v. Hannaford*, [1950] 1 K.B. 18 (C.A. 1949); *British Columbia Power Corp. v. Attorney-General of British Columbia*, 34 D.L.R.2d 25 (B.C. 1962) and *Regina v. Ontario Lab. Rel. Bd., ex parte Ontario Food Terminal Bd.*, 38 D.L.R.2d 530 (Ont. 1963).

The presence of any of these particular circumstances is not, then, to be taken as an indicator of Crown agency status.

The courts and administrative tribunals have categorized as Crown agents a number of entities constituted by Ontario legislation, viz., community colleges,⁸ the Niagara Parks Commission,⁹ the Ontario Housing Corporation,¹⁰ the Ontario Water Resources Commission,¹¹ the Temiskaming and Northern Ontario Railway Commission,¹² the Ontario-St. Lawrence Development Commission¹³ and the Workmen's Compensation Board.¹⁴ On the other hand, the Hydro-Electric Power Commission,¹⁵ the Lake of the Woods Control Board,¹⁶ the Ontario Food Terminal Board¹⁷ and the

⁸ CSAO v. Fanshawe College of Applied Arts & Technology, O.L.R.B. Monthly Report, Dec. 1967, 829 (OLRB File No. 13601-67-R); Local 796, International Union of Operating Engineers v. George Brown College of Applied Arts & Technology, O.L.R.B. Monthly Report, May 1968, 165 (OLRB File No. 14233-67-R); Canadian Union of Operating Engineers v. Centennial College of Applied Arts & Technology, O.L.R.B. Monthly Report, May 1968, 170 (OLRB File No. 14451-68-R); Local 796, International Union of Operating Engineers v. Board of Governors of Algonquin College of Applied Arts & Technology, O.L.R.B. Monthly Report, Sept. 1970, 639 (OLRB File No. 18320-70-R); Canadian Imperial Bank of Commerce v. Monette, [1972] 1 Ont. 407 (Small Claims Ct.).

⁹ International Ry. v. Niagara Parks Comm'n, [1941] A.C. 329 (P.C.); Summers v. Niagara Parks Comm'n, [1945] Ont. 802; CSAO v. Niagara Parks Comm'n, 2 C.L.S. 76-1150 (O.L.R.B. 1966).

¹⁰ Regina v. Ontario Lab. Rel. Bd., *ex parte* Ontario Housing Corp., 19 D.L.R.3d 47 (Ont. High Ct. 1971); Pounder v. Carl C. Shaum Constr. Ltd., [1972] 2 Ont. 616 (High Ct.).

¹¹ Ontario Water Resources Comm'n v. Ontario Lab. Rel. Bd., Ont. C.A., Sept. 28, 1965 (unreported). The Commission has since been dissolved, see *infra* note 27.

¹² Gillies Bros. v. Temiskaming and Northern Ontario Ry. Comm'n (No. 2), 10 Ont. W.R. 975 (Sup. Ct. 1907); Peccin v. Lonegan and Temiskaming and Northern Ontario Ry. Comm'n, [1934] 4 D.L.R. 776 (Ont.). The Ontario Northland Transportation Commission is the successor to this body; see the Ontario Northland Transportation Commission Act, ONT. REV. STAT. c. 326 (1970), esp. § 2(1).

¹³ C.U.P.E. v. Ontario-St. Lawrence Dev. Comm'n, O.L.R.B. Monthly Report, July 1964, 183 (OLRB File No. 7968-63-R). The Commission was re-named the St. Lawrence Parks Commission in 1964, see Ont. Stat. 1964, c. 84. The governing statute is now the St. Lawrence Parks Commission Act, ONT. REV. STAT. c. 447 (1970).

¹⁴ Nadeau v. Workmen's Compensation Bd., [1935] Ont. 472 (High Ct.); National Union of Public Employees v. Workmen's Compensation Bd., O.L.R.B. Monthly Report, March 1960, 419 (OLRB File No. 18,965-59); National Union of Public Employees v. Workmen's Compensation Bd., O.L.R.B. Monthly Report, July 1960, 154 (OLRB File No. 20,022-60); Local 101, Canadian Union of Operating Engineers v. Workmen's Compensation Bd. Ontario Hospital & Rehabilitation Centre, O.L.R.B. Monthly Report, Nov. 1965, 524 (OLRB File No. 11082-65-R). See also, *In re* Sid B. Smith Lumber Co., [1917] 3 W.W.R. 844 (B.C. Sup. Ct.), Standard Silver Lead Mining Co. v. Workmen's Compensation Bd., 51 D.L.R. 470 (B.C. 1920); Zucco v. Workmen's Compensation Bd., 6 D.L.R.2d 350 (B.C. Sup. Ct. 1956); *Re* Workmen's Compensation Bd. v. Western Wood Prod. Corp., 38 W.W.R. (n.s.) 552 (B.C. County Ct. 1962), *but compare* The Queen v. Workmen's Compensation Bd., 36 D.L.R.2d 166 (Alta. Sup. Ct. 1962).

¹⁵ St. Catharines v. Hydro-Electric Power Comm'n, [1930] 1 D.L.R. 409 (P.C.).

¹⁶ Brodie v. The King, [1946] 4 D.L.R. 160 (Exch. Ct.) (The Lake of the Woods Control Bd. is established by provincial and federal legislation).

¹⁷ Regina v. Ontario Lab. Rel. Bd., *ex parte* Ontario Food Terminal Bd., 38 D.L.R.2d 230 (Ont. 1963)

University of Toronto¹⁸ have been held not to be Crown agents.

The Ontario Crown Agency Act, which contains a definition of Crown agency, will now be examined against the background of the traditional or "common law" tests of Crown agency status.

III. THE CROWN AGENCY ACT AND ITS JUDICIAL INTERPRETATION

The Crown Agency Act,¹⁹ passed by the Ontario Legislature in 1959, contains but three sections and will be reproduced here for convenience of reference:

1. In this Act, "Crown agency" means a board, commission, railway, public utility, university, manufactory, company or agency owned, controlled or operated by Her Majesty in right of Ontario, or by the Government of Ontario or under the authority of the Legislature or the Lieutenant Governor in Council.
2. A Crown agency is for all purposes an agent of Her Majesty and its powers may be exercised only as an agent of Her Majesty.
3. This Act does not affect The Hydro-Electric Power Commission of Ontario.

The provisions of the Act have been considered in a number of Ontario cases. Most often reference to the Act has been prompted by the need to determine whether a particular entity is subject as an employer to the terms of the Labour Relations Act.²⁰ As that Act does not purport to bind the Crown it follows that a finding that a particular entity is an agent of the Crown will result in it being unaffected by the statute, just as the Crown itself would be, Her Majesty not being specifically named therein.²¹

¹⁸ *Scott v. Governors of University of Toronto*, 10 D.L.R. 154 (Ont. Sup. Ct. 1913); *the University of Toronto v. Minister of National Revenue*, [1950] 2 D.L.R. 732 (Exch. Ct.) See also *Powlett v. University of Alberta*, [1934] 2 W.W.R. 209 (Alta.); *Re Taxation of University of Manitoba Lands*, [1940] 1 D.L.R. 579 (Man.); *Local 1368, C.U.P.E. v. Students Union, University of Alberta*, 71 C.L.L.C. § 16.037 (Alta. Bd. of Indus. Rel. 1971); *but compare*, *Regina v. British Columbia Lab. Rel. Bd., ex parte Simon Fraser University*, 58 D.L.R.2d 571 (B.C. Sup. Ct. 1966), *distinguishing* *Local 862, National Union of Public Employees v. Board of Indus. Rel. & Governors of the University of Alberta*, 42 W.W.R. (n.s.) 560 (Alta. Sup. Ct. 1963)

¹⁹ Ont. Stat. 1959, c. 22, now ONT. REV. STAT. c. 100 (1970)

²⁰ ONT. REV. STAT. c. 232 (1970).

²¹ For this rule of construction, which is based on one of the prerogatives of the Crown, see § 11 of the Interpretation Act, ONT. REV. STAT. c. 225 (1970), which reads as follows: "No Act affects the rights of Her Majesty, Her heirs or successors unless it is expressly stated therein that Her Majesty is bound thereby."

Employees working under the direction of Crown agents are remitted to the much more restricted collective bargaining system provided under the Public Service Act, ONT. REV. STAT. c. 386 (1970), with some exceptions in relation to a limited number of agencies, see for example, the Ontario Educational Communications Authority Act, ONT. REV. STAT. c. 311, § 6(3) (1970), and see § 1(c) of the Public Service Act. For a description of the informal public sector collective bargaining process in Ontario, see H. ARTHURS, *COLLECTIVE BARGAINING BY PUBLIC EMPLOYEES IN CANADA: FIVE MODELS* c. 5 (1971). *But see* the Crown Employees Collective Bargaining Act, Ont. Stat. 1972, c. 76, which now considerably formalizes collective bargaining procedures for Crown employees.

In *Regina v. Ontario Labour Relations Board, ex parte Ontario Food Terminal Bd.*²² the court had to decide whether the Ontario Food Terminal Board was subject to the Labour Relations Act. The Court of Appeal, in a judgment of Mr. Justice Laidlaw, held that the Board was not a Crown agent. Though the appellant argued that the Board was a Crown agency both within the meaning of the Crown Agency Act and within the traditional concept of the expression, the court considered only the common law tests. In the court below Mr. Justice Schatz had examined the constitution of the Board as against the terms of section 1 of the Crown Agency Act²³ and had no trouble concluding that the Board was not "owned" or "operated" by the Crown within the meaning of that section.²⁴ However, the real question, he said, was whether the Board was "controlled" by the Crown in the sense of the section, a question which he answered in the negative after considering the common law tests of whether an entity is a Crown agent.²⁵

An appeal arising in a comparable situation was disposed of summarily, but with the opposite result, in *Ontario Water Resources Commission v. Ontario Labour Relations Board.*²⁶ The Court of Appeal there held that the governing statute of the Ontario Water Resources Commission was very different from that considered in the *Ontario Food Terminal* case. The "explicit terms" of the Ontario Water Resources Commission Act²⁷ indicated

²² 38 D.L.R.2d 530. This decision is reviewed in a Note by T.H. Wilson, 22 U. TORONTO FAC. L. REV. 126 (1964) and is criticized in a Note by B. Laskin, 41 CAN. B. REV. 446 (1963) in an aspect of the case not pertinent to the present discussion—the conclusion that the Ontario Labour Relations Board cannot determine a pure question of law, such as whether the Ontario Food Terminal Board is a Crown agency, consistent with § 96 of the B.N.A. Act. This criticism is adopted by Mr. Justice Haines in *Re Armstrong Transport*, [1964] 1 Ont. 358 (High Ct.).

²³ [1962] Ont. 981 (High Ct.). The Crown Agency Act was also considered in some detail by the Labour Relations Board in the original decision in this matter; see *Teamsters Local 419 v. Ontario Food Terminal Bd.*, 2 C.L.S. 76-759 (1961).

²⁴ [1962] Ont. 981, at 982-83.

²⁵ *Id.* at 983 *et seq.*

²⁶ *Ontario Water Resources Comm'n v. Ontario Lab. Rel. Bd.*, Ont. C.A. Sept. 28, 1965 (unreported). The case was argued on Sept. 28, 1965 and the judgment was delivered at the conclusion of argument by Mr. Justice Laskin, Chief Justice Porter and Mr. Justice McKay concurring. This decision is reviewed in a Note by D.T. Stockwood in 22 U. TORONTO FAC. L. REV. 162 (1966). The full text of the opinion is as follows:

In this appeal by The Ontario Water Resources Commission from the judgment of Mr. Justice Haines, quashing on certiorari the ruling of the Ontario Labour Relations Board that the Commission is an agent of the Crown and therefore is not subject to the Ontario Labour Relations Act we are all of the opinion that the case before us differs from that which was before the Court in the *Ontario Food Terminal* case. The governing statutes are strikingly different. The explicit terms of The Ontario Water Resources Commission Act are not adversely controlled or limited by the terms of the Crown Agency Act.

The appeal is accordingly allowed and the order of Mr. Justice Haines is set aside and the ruling of The Ontario Labour Relations Board is restored.

The decision of the Labour Relations Board in this matter is reported in O.L.R.B. Monthly Report, June 1965, 205, *sub. nom.* I.B.E.W., *Local 804 v. Ontario Water Resources Comm'n* (OLRB File No. 10141-64-R).

²⁷ ONT. REV. STAT. c. 281 (1960). The Commission has since been dissolved and its functions integrated into the Ministry of the Environment, see Part X of the Government Reorganization Act, 1972, Ont. Stat. 1972, c. 1.

it was a Crown agency and these terms were "not adversely controlled or limited by the terms of the Crown Agency Act." If one examines the Commission's governing statute it become clear that the "explicit terms" which the Court had in mind were those referring to the Commission as, "constituted a corporation without share capital on behalf of Her Majesty in right of Ontario."²⁸

The most recent consideration of a Crown agency issue, in the course of judicial review of a decision of the Ontario Labour Relations Board, occurred in *Regina v. Ontario Labour Relations Board, ex parte Ontario Housing Corp.*²⁹ Mr. Justice Grant concluded in that case that the Ontario Housing Corporation was a Crown agent at common law and within the meaning of the Crown Agency Act. But despite the two-pronged conclusion the reasons are confined to an examination and application of the traditional control test, without reference to the 1959 statute. Indeed, at one point, the question at issue is stated, in exclusive terms, as whether the corporation is a Crown agent "at common law."³⁰

Finally, in a reported Small Claims Court matter, the Board of Governors of Algonquin College of Applied Arts and Technology was found, without elaboration, and in reliance upon a number of decisions of the Ontario Labour Relations Board, to be a Crown agent at common law and under the Crown Agency Act.³¹

The Crown Agency Act has received but slight attention from the Ontario Labour Relations Board as well. Where Crown agency has been an issue, the common law tests have generally dominated the reasoning of that administrative tribunal.³²

Taken together these decisions indicate that the Crown Agency Act has been viewed as not restricting the common law tests of Crown agency and as not enlarging on the common law tests, at least where the question is that of control rather than ownership or operation. These last two alternative criteria, which are mentioned in the Act but have never been considered as crucial in any of the cases, could well be viewed as extending considerably the common law meaning of Crown agency, if the plain and ordinary meaning is to be attributed to the relevant phrases in the Act. For instance, a corporate entity might be taken to be owned by the Crown, in the sense of the Act, in a case where all or a majority of its outstanding shares are held by the Crown. This is a clear departure from the established principle that share ownership by the Crown is insufficient to constitute the corporation

²⁸ *Id.* at § 3(1). *And see also* § 51.

²⁹ *Regina v. Ont. Lab. Rel. Bd., ex parte Ontario Housing Corp.*, 19 D.L.R.3d 47, *followed in* *Pounder v. Carl C. Shaum Constr. Ltd.*, [1972] 2 Ont. 616.

³⁰ *Regina v. Ont. Lab. Rel. Bd., ex parte Ontario Housing Corp.*, 19 D.L.R.3d 47, at 49.

³¹ *Canadian Imperial Bank of Commerce v. Monette*, [1972] 1 Ont. 407.

³² *See, for example, CSAO v. Niagara Parks Comm'n*, 2 C.L.S. 76-1150 (O.L.R.B. 1966)

its agent,³³ a proposition that accords with the general company law notion that a company is not the agent of its shareholders.³⁴

No doubt it could also be said that universities, school boards, local public utility commissions and a host of other public and quasi-public bodies are "operated under the authority of the Legislature" in the normal sense of these words. Indeed, in a sense, even private corporations are so operated. But these extensions are so far reaching that a court would, in all probability, reject any such propositions on the ground that the Legislature could not have intended to increase the scope of Crown agency status, with all its attendant privileges and immunities, so far. Such a drastic change would, of course, be at the expense, in many instances, of the subject's rights and would entail the over-ruling of many long standing decisions, factors which provide reinforcement for a restricted interpretation in the absence of a more explicit intention by the Legislature to act in such a "revolutionary" fashion. In any event, operation under the authority of the Legislature was not viewed as turning the Ontario Food Terminal Board, which did not meet the common law test of Crown agency, into a Crown agent, though as indicated earlier such an argument was not explored by the Court of Appeal in the *Food Terminal Board* case.³⁵

The inclusion of the phrase "under the authority of the Legislature," as read with section 2 of the Act, may be viewed as having the limited purpose of attempting to remove any liability of a Crown agent, in the traditional sense, to mandamus which, while not available against the Crown, was granted at common law against a Crown servant or agent who was directed to act as a servant of the Legislature to do a particular act (for example to pay money out of a particular fund) or, against a servant or agent charged, in essence, with a statutory duty to be benefit of the Crown's subjects.³⁶ This possible rationale, however, cannot explain the inclusion of operation under the authority of the Lieutenant Governor in Council as a criterion of Crown agency and this too is a description which has potentially far reaching scope.

The kinds of considerations explored above are no doubt the sort that might engage a court in construing the potentially expansive provisions of the Crown Agency Act. However, if resort is had to legislative history, an unlikely event in a judicial proceeding,³⁷ it will become apparent that the

and *CSAO v. Fanshawe College of Applied Arts & Technology*, O.L.R.B. Monthly Report, Dec. 1967, 829 (OLRB File No. 13601-67-R).

³³ See *British Columbia Power Corp. v. Attorney-General of British Columbia*, 34 D.L.R.2d 25 (B.C. 1962). And cf. *Tamlin v. Hannaford*, [1951] 1 K.B. 18 (C.A.).

³⁴ *Salomon v. Salomon & Co.*, [1897] A.C. 22.

³⁵ 38 D.L.R.2d 530 (Ont. 1963).

³⁶ See *Minister of Finance of British Columbia v. The King*, [1935] 3 D.L.R. 316, at 322-23 (Sup. Ct.); *The King ex rel. Lee v. Workmen's Compensation Bd.*, [1942] 2 D.L.R. 665 (B.C.) and *British Columbia Power Corp. v. Attorney-General of British Columbia*, 34 D.L.R.2d 25 (B.C. 1962) (see the judgment of Chief Justice Des-Brisay, at 29, but compare, Mr. Justice Wilson, at 37-38).

³⁷ Consider, for example, *Gosselin v. The King*, 33 Sup. Ct. 255 (1903) (*per Taschereau*, C.J.).

language of the statute was borrowed outright from a federal enactment³⁸ and that, therefore, it is unrealistic to attribute much by way of design to any particular words or phrases of the enactment apart from the fact that they were taken from elsewhere. Indeed, without formal pursuit of the legislative history, which leads us clearly to the origin of section 1 of the Crown Agency Act, the duplication in the Ontario Act of the language of the earlier federal statute is itself compelling evidence of the draftsman's source. In fact, as will be seen, the comparable federal provisions, the language of which has been adopted in the Ontario Act, were designed for a quite different purpose, that is to establish a liability rather than to create or extend an immunity.

IV. THE LEGISLATIVE PURPOSE OF THE CROWN AGENCY ACT

In introducing the legislation the Attorney-General, the Honourable A. Kelso Roberts, explained its purpose in the following statement to the House:

Mr. Speaker, there are a number of Crown agents in effect, though not specifically so named by statute, in the province and they are at the present time suffering from disability in this respect, that the federal authorities enact or extract taxes, and in 1950, as a result of an appeal case before the court of appeal in England, it was held that if a Legislature intended such an entity to be an agent of the Crown, it must expressly so state.

The effect of this bill is to so state, and that should mean that the various commissions and boards that are covered by it will be able to take advantage as does the Crown now in the departments of the Crown, of exemption from excise tax with respect to their purchases. It should mean a saving to the province of between \$350,000 and \$400,000 a year.³⁹

When questioned as to the extent of application of the Act the Minister specified fourteen then existing boards, commissions and corporations which he felt would be affected.⁴⁰

The 1950 English Court of Appeal decision to which the Minister referred very generally in his speech to the House is unquestionably that in *Tamlin v. Hannaford*.⁴¹ In that case the court had to determine whether the British Transport Commission, established under the 1947 Transport

³⁸ See *infra* Part III.

³⁹ ONT. LEG. DEB., 1959 (5th Sess., 25th Leg.), vol. 1, 805-06. The explanatory note which accompanied the Bill summarizes the purpose as follows: "...to clarify the status of Ontario Crown Agencies in order to ensure that they are not under any liability to pay any federal tax." (Bill 89, 5th Sess., 25th Leg.)

⁴⁰ The Liquor Control Bd., Industry and Labour Bd., Milk Control Bd., Workmen's Compensation Bd., Ontario Parks Integration Bd., Labour Relations Bd., Ontario Highway Transport Bd., Niagara Parks Comm'n, Ontario Racing Comm'n, Ontario Water Resources Comm'n, Teachers Superannuation Comm'n, Soldiers' Aid Comm'n, Ontario Northland Ry. *Id.* at 806.

⁴¹ [1950] 1 K.B. 18 (C.A.)

Act⁴² as part of the Labour government's scheme of railway nationalization, was a Crown agent. It concluded that it was not. Upon examining the *Tamlin* decision one finds a passage in the judgment of Lord Justice Denning, which might be understood as indicating that the necessity of considering the common law tests of Crown agency is obviated when legislation states explicitly that certain entities are to act as Crown agents; in other words, that a specific statutory declaration that certain entities are Crown agents is more or less conclusive of that status. It was probably on such an interpretation that the Ontario Crown Agency Act was based.⁴³ The particular passage of the judgment of Denning on which reliance was seemingly placed reads as follows:

When Parliament intends that a new corporation should act on behalf of the Crown, it as a rule says so expressly as it did in the case of the Central Land Board by the Town and Country Planning Act, 1947, which was passed on the very same day as the Transport Act, 1947. In the absence of any such express provision, the proper inference, in the case, at any rate, of a commercial corporation, is that it acts on its own behalf even though it is controlled by a government department.⁴⁴

The better view of this statement, however, is that a specific declaration that the relationship of agency exists is but one matter to be taken into account in determining whether sufficient control is exercisable over an entity to constitute it an agent of the Crown for all, and if not, for particular purposes. Indeed this was the approach that was taken by the British Columbia Court of Appeal in *British Columbia Power Corp. v. Attorney-General of British Columbia*⁴⁵ holding that the British Columbia Power Corporation was not entitled to rely on Crown immunity from the obligation to make discovery in the course of legal proceedings notwithstanding that the Power Development Act, 1961,⁴⁶ expressly declared that the corporation was an agent of Her Majesty the Queen in right of the province. In any event, Denning attributes significance to the absence of a specific declaration of Crown agency status, and then only with some assurance in the case of a commercial corporation, but not to the presence of a specific declaration. And in the law, as in logic, the converse of a proposition is not always true. Also, the type of declaration in the Crown Agency Act does not seem to be of the kind contemplated by Denning due consideration being given to the character of the example he gives, that of the Central Land Board. The Ontario Act is not nearly as precise, in its effect, as the Central Land Board's constitutive statute, which provides that the functions of *that* particular board shall be exercised on behalf of the Crown.⁴⁷ No particular entities are mentioned in the provincial statute but rather we are given a generalized

⁴² 10 & 11 Geo. 6, c. 49.

⁴³ See Laird, *The Ontario Crown Agency Act, 1959*, 13 U. TORONTO L.J. 281, at 283-84 (1960).

⁴⁴ *Supra* note 41, at 25.

⁴⁵ 34 D.L.R.2d 25, at 28-29, and 31 (*but compare* Mr. Justice Wilson, at 36-37).

⁴⁶ B.C. Stat. 1961 (2nd Sess.), c. 4, § 6(1).

⁴⁷ Town and Country Planning Act, 1947, 10 & 11 Geo. 6, c. 51, § 3(3).

description of what are to be considered Crown agents. And, as has been seen, this description has been largely viewed as a reflection of the common law considerations, at least to the extent that it embodies a control test.

The Parliament of Canada has also enacted legislation declaring the status of certain federally constituted entities as Crown agents.⁴⁸ In contrast, however, to the Ontario approach, the typical federal statute designates a certain entity, or an easily determined class of entities, by name, to be considered to have Crown agency status for all purposes of the act.⁴⁹ Moreover, in several federal statutes dealing with particular aspects of the operation of Crown agencies, entities to which the legislation applies are scheduled by name, though this may not be to the exclusion of others.⁵⁰ This particularized approach would seem to be more in keeping than that of the Ontario Act with the *Tamlin* opinion, to the extent that that case may be viewed as attributing significance to an express declaration of Crown agency status. The federal legislation of course has the advantage of indicating with relative certainty the agencies that are intended to be covered while the Ontario Act, insofar as it may be relevant, invites the further inquiry as to whether an entity is "owned, controlled or operated by Her Majesty,...." There is a danger of specification, however, in that failure to declare Crown agency status for an entity, for all or particular purposes, which may occur through legislative inadvertance, may be wrongly taken as indicative of an intention to create an independent agency.⁵¹

The language of section 1 of the Crown Agency Act is taken directly from sections 43(b)(ii) and 44(2)(b) of the federal Excise Tax Act.⁵² The taxes imposed by the latter act are made expressly applicable, by virtue of these provisions, to goods imported by Her Majesty in right of any province for the purpose of use by, "any board, commission, railway, public utility, university, manufactory, company or agency owned, controlled or operated by the government of the province or under the authority of the legislature or the Lieutenant Governor in Council." The definition of "Crown agency" in section 1 of the Ontario Act includes this exact language, with

⁴⁸ See, for example, the Government Companies Operation Act, CAN. REV. STAT. c. G-7, § 3 (1970), and the National Capital Commission Act, CAN. REV. STAT. c. N-3, § 4 (1970).

⁴⁹ Except that usually by express provision these agencies may be sued in respect of rights and obligations incurred on behalf of Her Majesty. Such "sue and be sued" clauses have been interpreted in *Yeats v. Central Mortgage and Housing Corp.*, [1950] Sup. Ct. 513, and *Langlois v. Canadian Commercial Corp.*, [1950] Sup. Ct. 954. Other variations upon Crown privileges may be explicit or implicit in other provisions of the relevant federal legislation; see *Re Mar-Lise Industries Ltd.*, 5 D.L.R.3d 487 (Ont. 1968).

⁵⁰ See, for example, the Crown Corporations (Provincial Taxes and Fees) Act, CAN. REV. STAT. c. C-37 (1970); the Financial Administration Act, CAN. REV. STAT. c. F-10 (1970); the Public Service Staff Relations Act, CAN. REV. STAT. c. P-35 (1970); and the Public Service Superannuation Act, CAN. REV. STAT. c. P-36 (1970).

⁵¹ Following the kind of reasoning adopted by Lord Justice Denning in the passage quoted from the *Tamlin* decision.

⁵² CAN. REV. STAT. c. E-13 (1970). See also § 2(1) of the Act and Memorandum ET 404 (April 1, 1971) of the Customs and Excise Division of the Department of National Revenue, reprinted in C.C.H. SALES TAX GUIDE--CANADA, 1971-72, at 807-10.

one inconsequential additional phrase.⁵³ Therefore, the agencies that fall within section 1 (subject to section 3, excepting the Hydro-Electric Power Commission) are necessarily liable to pay federal excise taxes provided the federal Act is constitutionally valid in so extending its scope.⁵⁴ Whether it is constitutional will be considered in detail below. For the moment, suffice it to say that the purpose of the Ontario Crown Agency Act, as expressed by the Attorney-General, to create exemptions from excise tax has, as a matter of practice, been completely frustrated. The Department of National Revenue treats the government agencies described generally in section 43(b)(ii) and 44(2)(b) of the Excise Tax Act as not entitled to tax exemption on goods they purchase unless, of course, exemption is provided elsewhere in the Act for the goods in question.⁵⁵ On the other hand, provincial government departments which purchase and import goods for their own use in a non-commercial fashion and not for re-sale are afforded an exemption from tax (or any tax paid is refunded by the terms of section 44(2)).⁵⁶

V. LEGISLATIVE THEORIES BEHIND THE CROWN AGENCY ACT

In order that the Crown Agency Act might achieve the desired end of effectively removing the liability to excise tax on the part of agencies within its scope it must have been anticipated that the Act would have the effect of conferring a status on the agencies covered that would result in a constitutional immunity from the federal taxes in question.

There are two possible arguments that might be advanced to establish that the Excise Tax Act cannot constitutionally impose its obligations on provincial Crown agencies. Firstly, there is some basis in the British North America Act for an argument that Parliament is not competent to impose

⁵³ That is "by Her Majesty in right of Ontario" which appears after the words "owned, controlled or operated." However, with respect to the statutory forms through which state ownership, control or operation of different agencies may occur, it is normally the executive or the government of the province rather than Her Majesty in right of the province, the formal head of that government, that will be the source of the continuing state involvement in the affairs of the agency if it is not the Legislature itself. Therefore, the extra phrase in the Ontario Act does not appreciably extend the description in the federal Act.

⁵⁴ Unless the purchase or import of goods by a Crown agency may be distinguished from purchase or import by the Crown for use by its agency. In fact a Crown agent, in the former situation, will be acting on behalf of Her Majesty so that the activities in question may properly be treated as those of the Crown, particularly if the agent has no legal personality of its own. In any event the Excise Tax Act specifically binds the provincial Crown, and a special position is accorded only in relation to goods imported by government departments, so that Crown agents, even if acting in their own name without reference to Her Majesty, would be unable to claim exemption from tax since mention of Her Majesty in the Act would seem to be sufficient to bind Crown agents as well (consider the dissenting judgment of Mr. Justice Taschereau in *C.B.C. v. Attorney-General for Ont.*, [1959] Sup. Ct. 188).

⁵⁵ See the Departmental list of Ontario provincial government departments and institutions, accompanied by their excise tax status, "exempt" or "taxable", which is reproduced in the C.C.H. SALES TAX GUIDE, *supra* note 52, at 565-68.

⁵⁶ See §§ 43 and 45 of the Act.

a direct liability on the Crown in the right of the province, which this legislation in effect purports to do. Secondly, it might be argued that the excise tax as extended to provincial Crown agencies is a tax on property belonging to a province within the meaning of section 125 of the B.N.A. Act and is therefore not permitted. These arguments, which are both ultimately rejected, are considered in turn below.

A. Whether Parliament Competent to Impose Direct Liability on the Crown in Right of the Province.

It has been established that the distribution of executive authority under the B.N.A. Act substantially follows the grant of legislative powers under the Act.⁵⁷ This is subject to certain express provisions of the Act and the commissions of the Governor General and Lieutenant Governors restricting the exercise of the prerogative.⁵⁸ It might be argued then that those prerogative powers which are accordingly vested in the provincial executive may not be removed, confined or restricted by federal legislation. This position, however, ignores the dependence of the executive distribution on the allocation of legislative powers. And, tested in the light of the division of legislative competence, the leading feature or an aspect of, federal legislation affecting the prerogative as enjoyed by the Crown in the right of the province may bring the legislation within a head of federal competence, in which case the fact that the prerogative is affected is merely incidental in the context of the constitutional determination, given the primacy of federal legislative powers.⁵⁹

A narrower but perhaps more compelling argument may be raised to establish that federal taxing legislation such as the Excise Tax Act may not impose its burdens on the agents of the provincial Crown, on the basis of section 126 of the B.N.A. Act.⁶⁰ This provision reserves the duties and revenues of each confederating province to, "One Consolidated Revenue Fund to be appropriated for the Public Service of the Province." The only helpful authority, however, is an opinion of the Supreme Court of Canada in the 1930 *Reference re Troops in Cape Breton*.⁶¹ In that case the Court had to answer the question of whether the province of Nova Scotia was liable to pay to the Dominion the costs of sending troops into Cape Breton to maintain civil order at the request, and with an undertaking to pay the costs, of the Attorney-General of Nova Scotia made in accordance with the provisions of the federal Militia Act.⁶² The majority of the Court, in

⁵⁷ *Bonanza Creek Gold Mining Co. v. The King*, [1916] 1 A.C. 566 (P.C.)

⁵⁸ *Id.*

⁵⁹ Consider, for example, *In re Silver Bros.*, [1932] A.C. 514, at 520-21 (P.C.); *Board of Trustees of Lethbridge Northern Irrigation District v. Independent Order of Foresters*, [1940] A.C. 513, at 535 (P.C.) (adopting *obiter* the trial judgment in this case of Mr. Justice Shepherd, [1939] 2 D.L.R. 53, at 55-56); *Industrial Development Bank v. Valley Dairy Ltd.*, [1953] 1 D.L.R. 788, at 791 (Ont. High Ct.); and *Re Clemenshaw*, 33 D.L.R.2d 524 (B.C. Sup. Ct. 1962).

⁶⁰ See Mundell, *Remedies Against the Crown*, SPECIAL LECTURES OF THE LAW SOCIETY OF UPPER CANADA, 149, at 155-56 (1961) and G. LaForest, *THE ALLOCATION OF TAXING POWER UNDER THE CANADIAN CONSTITUTION* at 43-44, 153-54 (1967).

⁶¹ [1930] Sup. Ct. 554. An argument based on § 126 was unsuccessful in *R. v. Bell Telephone Co. of Can.*, 59 Que. B.R. 205 (1935).

⁶² CAN. REV. STAT. c. 41 (1906). See now the National Defence Act, CAN. REV. STAT. c. N-4, Part XI (1970).

a decision given by Mr. Justice Duff, was of the view that the Dominion statute did not envisage a contract between a province and the Dominion. But it was observed further that, absent such a consensual arrangement, the Dominion could not impose an obligation on a province to make payment as this would interfere with a province's right to appropriate its revenues for its own use exclusively.⁶³ However, it must be remembered that the liability of the provincial Crown to a federal tax was not in question in that case and it was argued by the Dominion only that the province could be called to account on the basis of a contractual duty.

Any general proposition that the federal authority cannot interfere in any way with provincial revenues seems to be inconsistent with a number of decisions. In *Attorney-General of British Columbia v. Attorney-General of Canada*,⁶⁴ for example, the Privy Council held that the Province of British Columbia was liable to pay federal customs duties and taxes on alcoholic liquors it imported from abroad.⁶⁵ Provincial Crown lands were traditionally an important source of provincial revenues.⁶⁶ And it has been established in a series of cases that Parliament, in the exercise of its legislative powers, may authorize the expropriation of provincial Crown lands, interfering thereby with the beneficial interest of the Crown in the right of the province.⁶⁷

It is concluded, therefore, that there is no constitutional impediment (at least apart from section 125 of the B.N.A. Act which remains to be considered) to the federal authority imposing a direct financial liability on the provincial Crown and hence a provincial Crown agent, which can be in no better position.

B. Whether a Federal Excise Tax May be Levied Against a Province in the Light of Section 125 of the B.N.A. Act.

Section 125 of the B.N.A. Act provides that: "No Lands or Property belonging to Canada or any Province shall be liable to Taxation."

In the first place it should be observed that personal taxes do not fall within the ambit of this provision.⁶⁸ Accordingly, it would seem that by careful drafting the burden of many taxes could be so imposed as not to run afoul of section 125. Indeed, it might be argued that the taxes imposed under the Excise Tax Act, or at any event some of them, are of a personal rather than a property nature.⁶⁹

⁶³ [1930] Sup. Ct. 554, at 562.

⁶⁴ [1924] A.C. 222 (P.C.).

⁶⁵ However, the only real argument advanced against such a liability was based on § 125 of the B.N.A. Act, § 126 not being mentioned.

⁶⁶ In fact, lands and revenues are treated together in Part VIII of the B.N.A. Act, see especially the heading of Part VIII and the terms of § 109.

⁶⁷ See *Attorney-General for British Columbia v. C.P.R.*, [1906] A.C. 204 (P.C.); *Attorney-General for British Columbia v. Nipissing Central Ry. Co.*, [1926] A.C. 715 (P.C.); and *Reference re Waters & Water Powers*, [1929] Sup. Ct. 200, at 213-14.

⁶⁸ See *Phillips & Taylor v. City of Sault Ste. Marie*, [1954] Sup. Ct. 404.

⁶⁹ See, for example, the judgment of Mr. Justice Mignault in *Attorney-General of British Columbia v. Attorney-General of Canada*, 64 Sup. Ct. 377 (1922), *aff'd* [1924] A.C.

What then is the reach of section 125? It has been viewed on occasion as stating the rule that land and property belonging to the federal Crown shall not be taxed by a province and that land and property belonging to the provincial Crown shall not be taxed by the Dominion.⁷⁰ Even this does not appear to be an absolute rule as it is admitted that either the federal authority or a province may validly waive its immunity either expressly or by necessary implication.⁷¹ If this is the case, section 125 simply states the common law rule of construction that the Crown is exempt from taxation, limited however to taxation in respect of lands or property, unless rendered liable expressly or impliedly by statute, with this adaptation to a federal scheme that the necessary statute will not be that of the taxing legislature but that of the level of government that is to bear the tax.

These propositions, however, must be qualified by the 1923 Privy Council decision in *Attorney-General of British Columbia v. Attorney-General of Canada*,⁷² which dealt with excise or sales taxes, as well as customs duties, that were sought to be imposed by the Dominion on liquor imported by a province. The federal levies were held to be applicable in the circumstances, notwithstanding section 125. The judgment of the Judicial Committee notes that the federal legislation in this case could be supported, in part at least, under the trade and commerce power (section 91(2)) of the B.N.A. Act, as well as the taxing power (section 91(3)). As a result of this decision, it has been suggested that section 125 is relegated to the position of constituting a limitation upon taxing powers alone but not other heads of legislative authority in the constitution.⁷³ It may be, however, that the rationale of the decision is, rather, that section 125 is subordinate generally to section 91, though perhaps not to section 92,⁷⁴ due to the scheme of the B.N.A. Act, particularly the *non obstante* clause ("Notwithstanding anything in this Act....") in the initial paragraph of section 91.⁷⁵ In any

222 (P.C.). Some of the taxes imposed under the Excise Tax Act are described, somewhat loosely no doubt, as consumption taxes (see Part V) and such taxes have been held to be personal rather than commodity taxes; see *Atlantic Smoke Shops v. Conlon*, [1943] A.C. 550 (P.C.).

⁷⁰ *British Columbia Power Comm'n v. Victoria*, [1951] 2 D.L.R. 480, at 481 (B.C.); and *Re Taxation of University of Manitoba Lands*, [1940] 1 D.L.R. 579, at 587 (per Trueman, J.A., dissenting in part). Such a limitation explains the necessity for legislation such as the *Municipal Grants Act*, CAN. REV. STAT. c. M-15 (1970), which provides for payments by the federal Crown, in respect of its land, in lieu of municipal taxes.

It is notable that the courts have also given a very restricted interpretation to § 121, which appears in the same part of the B.N.A. Act as § 125, and on the face of it would seem to place a substantial limitation on federal and provincial legislative powers especially in relation to taxation; see, for example, *Gold Seal Ltd. v. Attorney-General of Alberta*, 62 Sup. Ct. 424 (1921).

⁷¹ *The Queen v. Breton*, 65 D.L.R.2d 76, at 81 (Sup. Ct. 1967).

⁷² *Supra* note 65.

⁷³ See G. LAFOREST, *THE ALLOCATION OF TAXING POWER UNDER THE CANADIAN CONSTITUTION* at 151 (1967).

⁷⁴ A statement of Mr. Justice O'Halloran in *British Columbia Power Comm'n v. Victoria*, [1951] 2 D.L.R. 480, at 482, suggests that § 125 is subordinate to both §§ 91 and 92.

⁷⁵ Arguing against this interpretation, one could point to observations in some of the judgments in *Gold Seal Ltd. v. Attorney-General of Alberta*, 62 Sup. Ct. 424 (1921), and in *Murphy v. C.P.R.*, [1958] Sup. Ct. 626, as to the reach of § 121, which like § 125 is worded in the form of an absolute limitation, which might be taken to presuppose the relevance of § 121 in determining the constitutionality of a federal statute. But in both those cases the prohibition of § 121 was interpreted in such a way as not to preclude any of the provisions of the federal acts in question so that it was not technically necessary to determine whether § 121 could operate, in any event, against an exercise of federal legislative authority.

event the decision, concerning as it did excise taxes in part, would seem to be authority enough for the proposition that section 125 is no impediment to the inclusion of provincial Crown agencies as taxable entities under the current Excise Tax Act.

It must be concluded that there is nothing in the B.N.A. Act which prohibits the federal authority from imposing the burdens of the Excise Tax Act on provincial Crown agents. This being the position at the constitutional level it is not alterable by provincial legislation such as the Crown Agency Act.

VI. CONCLUSION

The Crown Agency Act ought to be repealed. It is quite clear that the original purpose of the Act, to bring agencies within its scope outside the reach of the Excise Tax Act, has been completely frustrated. Indeed, the attainment of that purpose depends upon a constitutional premise which cannot be sustained.

However, despite its single, relatively narrow, object the Act does purport to give directions for the determination of Crown agency status generally so that, though ineffectual to alter liability to federal excise taxes, it may be relevant to a variety of other contexts. In fact, when the Act has been referred to by counsel in argument, its effect has been neutral in terms of the outcome of the case. This circumstance facilitates repeal, at this point in time, as no justifiable expectations have been created by the existing jurisprudence under the Act.

While the decisions to date give no cause for alarm the Act may not prove to be innocuous in the long run. The language of the Act may be viewed as sufficiently specific to assist the courts in resolving claims of Crown agency status, in which case certain of the criteria, *viz.*, ownership or operation by or under the authority of the Crown, *etc.*, could significantly extend the range of entities entitled to share in the enjoyment of the privileges and immunities of the Crown. And the special position of the Crown is increasingly anomalous given the expanded body of functions now exercised by government. Confinement, rather than expansion, of the range of those entitled to enjoy a special position within the legal system would seem to be in order.

This is not to say that the common law tests of Crown agency, to which we would be relegated exclusively in the absence of the statute, are particularly satisfactory. They do not provide a very explicit guide as to what is and what is not a Crown agent. But the Ontario Crown Agency Act does not improve that situation significantly. And a more appropriate solution would be for the Legislature to specify in each statute constituting a commission, board, tribunal or other agency that it is to act as an agent of the Crown, if that is indeed intended. While such a declaration would not be

definitive it would provide a very strong indication of Crown agency. And it may often be desirable to particularize in what respects the entity is to enjoy, or is not to enjoy, a special status either in the constitutive statutes or in legislation dealing with designated rights and liabilities of Crown agents and naming those affected. But, in the meantime, the Crown Agency Act should be repealed.