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*Special Report on BC Ferries Restructuring (with commentary) - Patrick Brown*

## ***Full Speed Ahead, and Damn the Accountability!***

BC Ferries' new organizational structure is designed so that the provincial government can maintain control of the ferry service while avoiding responsibility for it.

The structure, described in the Year End Edition of *Island Tides*, would replace the present Crown Corporation with 'BC Ferries Services,' a private corporation owned by the provincial government, and whose voting shares would be held by a BC Ferries Authority (said to be patterned after the Vancouver Airport Authority). The provincial government would own the terminals directly, and lease them to BCFS.

BCFS would operate the ferry services and the terminals under a sixty-year contract with the provincial government, and would receive an annual 'service fee' (subsidy) from the provincial government. The contract would be supervised by an as yet undefined regulatory body, who would ensure that services were maintained, police the contract, and represent the public interest.

*The new organization, which starts on April Fool's Day, will seem logical only to people who understand the byzantine Tsawwassen-Gulf Islands fare structure. In contrast, the previous organization seems simply elegant.*

### **Debt Structure Lessons from Enron**

The major objective of establishing a private company appears to be shifting the burden of financing an anticipated \$2 billion in capital costs for new ships and terminal construction away from the provincial government. To quote the government, 'the Authority structure protects BC taxpayers from further financial risk and debt burden.'

*This structure bears a similarity to the one used by Enron to remove debt from its books. In the end, however, the government, like Enron, is responsible for the debt because it owns BCFS, is its financial backer, and appoints its Directors.*

But BCFS will no longer be able to rely on a formal government guarantee for its debt, and will thus pay an effective interest rate of at least one percent more than it would were its debt guaranteed—as it was under the previous Crown Corporation.

As a private company, however, BCFS might well have greater flexibility in developing innovative financing arrangements, including capital leases, financial partnerships,

and the full and fascinating range of debt and investment instruments (income trusts?) available to Canadian private companies—in fact anything but shares.

The existing assets of the Corporation, formerly owned by the Corporation, will be represented by the value of 75,000 preferred, non-voting shares, along with an unspecified amount of interest-bearing debt, all now owned by the government. (*Why 75,000 is not explained.*)

### **The Previous Financial Structure**

The government has made much of 'removing political interference' from the operations of BC Ferries. 'More than \$1 billion of taxpayers' money has been wasted in the past decade alone, including \$454 million for fast ferries,' they say. *The other half billion was, of course, subsidies for operations; ferry users might not have said it was wasted.*

For several years in the '90s, the government did not fund adequate subsidies, and so BC Ferries borrowed the difference each year. This is what led to the last financial crisis for BC Ferries. The previous financial restructuring was the result of extensive professional analysis by ferry stakeholder volunteers. It transferred the accumulated debt (including the fast ferry costs) to the government, and committed the government to a designated fixed percentage of the provincial motor fuel tax receipts as a continuing subsidy (currently about \$75 million per year).

This provided a fresh financial start to the Corporation, along with a guaranteed, and reasonably predictable, subsidy. The subsidy was justified by recognition that the ferries are an integral and essential part of the provincial highway system.

### **The Latest Financial Structure**

The new structure appears to have abandoned that commitment in favour of a quasi-private sector model: another kind of 'fresh financial start.'

The new company, BCFS, will be bound to carry out the terms of a 'Service Contract' with the government, under which the government will pay BCFS an 'annual service fee' or subsidy, which will be determined each year as part of the provincial budgeting process. No more designated percentage of the motor fuel tax; the subsidy will be set each year by cabinet at a level to

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'require productivity gains.' So much for independence from government.

So far, there is no financial plan. May we presume that there will be one before the legislation is passed this spring? Ferry users need to be assured that the government's plans are, in fact, realistic and that BCFS will have sufficient revenue to cover its expenses and carry its debt. (And, by the way, pay GST.)

### **Transparency: You Can See Right Through It**

Mind you, the public may never know. As a private corporation, BCFS has no requirements for disclosure. Despite being owned by the government and thus the public, it is also apparently out of reach of the provincial auditor.

New financial arrangements, subcontracts, etc could be made with minimal public disclosure. It seems likely that BCFS would not be subject to Access to Information legislation, and with no publicly held shares, there would be no awkward shareholder enquiries at annual general meetings.

*As a Crown Corporation, BC Ferries has never been exactly transparent, but it has published extensive financial and operating statements. The new structure, a closely held private company with no public voting shareholders, accomplishes a level of secrecy and obfuscation previously sought only by those with a deliberate intention to conceal.*

*This is a characteristic common to all privatizations of government operations. Transparency, and thus accountability, is sacrificed to 'commercial confidentiality.'*

### **Who is Accountable for What?**

Accountability for the service and financial performance of BCFS is assumed through the Service Contract with the government, the setting of the annual service fee, and the supervision of the contract by the 'independent Regulator.'

This terminology suggests that the Regulator is similar to the BC Utilities Commission, that on-again, off-again body which is supposed to regulate utility rates, taking into account the consumers and a 'reasonable' rate of return for the company.

The ferries Regulator has not been defined as to authority, responsibility, or membership. But it, too, is a creature of the provincial government.

*Under the new structure, it is most difficult to see who exactly is responsible for what. BCFS is clearly accountable to the government, but how will it be accountable to its users? Under the previous stakeholder representation structure, there was at least a provision for regular contact and discussion on service levels, schedules, and fares. Under the new structure, will these items have to be the subject of legal interventions in formal hearings of the Regulator?*

### **Fares Fixed, But May Vary**

As a Crown Corporation, accountability for BC Ferries' performance in the past obviously belonged, ultimately, to the provincial government. For many years, this meant that all major decisions (and many minor ones) on fares, routes, capital

projects, etc. were cabinet decisions. While this reportedly resulted in lengthy cabinet meetings, it did at least provide a court of last resort for ferry services—one with political accountability.

Well, no more cabinet wrangles, except, of course, for determining the annual 'service fee.' The government has already set caps on ferry fare increases for the next five years, and presumably will continue to do so. It has also set different increase levels for the main routes as opposed to all the others. This is, says the minister, 'aimed at phasing out the historical problem of cross-subsidization.'

*We would remind the minister that her 'historical problem' is the basic financial principle of an integrated service. The reason that increases on the main routes have to be limited is just plain old customer resistance to higher fares. On the minor routes, the customers don't have the choice.*

Note that the caps are on the 'average' fare. This would presumably allow BCFS itself to set the actual fares to be charged for overheights, peaks, weekends, low season, commercial, non-commercial, and commuter fares, provided that the 'average' increase meets the targets set by the government.

Finance Minister Collins said in December that fare increases 'will benefit commercial users.' Of course, if fares for commercial users rise at less than the average, fares for non-commercial users may rise at more than the average. (By the way, will we have to pay GST on fares?)

The government has also assured ferry users of the continuation of the present level of service for a five year period. The Contract may be reopened, however, if demand falls too low, if the service fee or the fares increase too much, or if 'alternative access is provided' (bridges? other ferries? swimming lessons?).

### **Sort of Privatization**

The Board of the Authority will consist of four Directors representing coastal communities, two representing the government, one representing unionized BCFS workers, and two appointed by the Authority itself from the 'community at large.' It would appear to be accountable to no one, until one considers who will appoint the Directors. It looks as if the Board of the Authority will also act as the Board of BCFS (who will, of course, be accountable to the Board of the Authority), and will presumably appoint the executives of BCFS (the latest CEO of BC Ferries, Bob Lingwood, departed recently, and no replacement is in sight).

Technically, the Authority holds all 100 of the common voting shares of BCFS. The provincial government's 75,000 shares are not votable, but current BCFC Board chair David Emerson indicated in December that they become votable if the Board is considering an offer to purchase BCFS.

At present, however, this seems unlikely. What is more likely is that other private corporations may attempt to compete with

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BCFS on its more profitable routes. The provincial government has retained ownership of the ferry terminals, and will lease them to BC Ferries. This would presumably make it possible for private competitors to contract to use the terminals.

The provincial government says that the new regime 'will allow new service providers to offer competitive services, where appropriate and approved by BCFS.'

*Huh? If BCFS was already providing an adequate service, why would it approve the entry of a competitor? Would a competitor also get a Service Contract (subsidy) from the government? How would BCFS charge a competitor for use of a terminal?*

### **Terminals for Shopaholics**

*Speaking of terminals, it is here that the government sees new opportunities for making money. But Transportation Minister Judith Reid seems to have overlooked the fact that the expansion of the Vancouver Airport into a deluxe shopping centre was financed by a 'temporary'*

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*\$10 tax on each passenger. Does she envision a similar charge for ferry passengers?*

*After you've paid the fare for vehicle, father, mother, and two kids to travel from Swartz Bay to Tsawwassen, are you really going to spend enough money while you are waiting for the ferry to justify a merchant staffing a store or restaurant for two complete shifts year round?*

*In fact, the terminals are empty for half the time. It's more likely that terminals will only attract fast food, seasonal crafts, and similar operations—as they do now. Of course, if you are going to sell booze or run a casino, that's another thing.*

### **Understanding it All**

*It's difficult to interpret the language used by the government to describe these new arrangements. There are few details. This may represent their inability to communicate simple concepts, an intention to hide structures that might attract public criticism, or simply confusion and indecision as to how this will all work.*

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