

Auditors general and telecommunications

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Introduction

One of the ancient offices of state is for the inspection of the accounts of the branches and representatives of government. In advanced economies that role has been widened to include efficiency and non-financial indicators. It is sometimes, rather grandly, termed meta-regulation, though in more practical terms it is one answer to the question of whom it is that will regulate the regulators.¹

Audit is a function that complements judicial review, in which the individual decisions of ministers and regulators are scrutinized by the courts.

Auditors general are given wide-ranging powers to investigate accounts and compliance with the applicable statutes, including the right to initiate their own investigations and not merely to act on complaints or under direction. In some countries they support the work of the parliament and its committees, while in others they report to the head of state.

A specific area of concern is the efficiency of government, including its spending on information technology. For example, in the Republic of Ireland the Auditor General examined spending on the government telephone network.²

Sometimes auditors general are asked to look at matters of political controversy. One recent case concerned an alleged subsidy for a fibre optic cable between the island of Newfoundland and the Canadian mainland:³

The objectives of the review were to determine whether the Premier was involved in the Project, whether Government complied with legislation and other authorities, whether Government's commitment was based on a comprehensive review, whether Government will receive value for its planned investment and whether there were any other matters of significance.

The role of the Office of the Auditor General of Newfoundland and Labrador is not untypical of such bodies. It serves the House of Assembly – the unicameral provincial legislature – by providing independent examinations of government and its agencies:

- auditing financial statements and other accountability documents
- evaluating management practices and control systems
- determining compliance with legislative and other authorities

National auditors meet as the International Organisation of Supreme Audit Institutions (INTOSAI) to share their experiences and to develop best practice.⁴ The Intosai

¹ Ewan Sutherland (2006) "*Quis custodiet custodes*; in the digital society who will regulate the regulators?" Proceedings of the ITU Telecom Forum, Hong Kong SAR (Geneva: International Telecommunication Union).

² <http://www.audgen.gov.ie/viewdoc.asp?Userlang=GA&DocID=555&StartDate=01+January+2007>

³ <http://www.ag.gov.nl.ca/ag/special/2007FibreOptic/FibreOpticReport2007.pdf>

⁴ <http://www.intosai.org/>

Development Initiative (IDI) helps strengthen the capacities of audit institutions in developing countries.⁵ There is an Intosai working group to address the problems of investigating complex information technology projects.⁶ Intosai has also produced a guide to privatization, another recurring concern of auditors general.⁷

This short paper examines the roles of auditors general in Canada, the United States of America, Australia, Fiji, Hong Kong SAR, India, Sweden, France and Bosnia. The examples are biased towards the English language which may reflect a greater willingness in Anglophone parliaments to permit intrusive investigations into government departments and agencies. Finally, conclusions are drawn about best practice.

Canada

The current statute respecting the Office of the Auditor General (OAG) dates from 1985, but the office is much older.⁸ Its scope covers the work of the federal government, the governments of three territories and state-owned enterprises. While it may comment on the implementation, the OAG does not address the merits of policies.

In 1989, the Auditor General reviewed the efficiency of the use and management of telecommunications within the federal government.⁹ It then conducted a follow-up review in 1991 to confirm the improvements it had been promised.

Reports over recent years have been prepared on the performance of Industry Canada, the government department responsible industrial sectors, including telecommunications. These have covered a wide range of its work:¹⁰

- government on-line (2003)
- information technology security (2002)
- investing in innovation (1999)
- electronic commerce (1998)

Industry Canada also conducts its own internal audits. For example, in November 2005, it completed an audit of its spectrum policy and regulatory processes.¹¹ These were found to be appropriate.

The Canadian Radio-television and Telecommunications Commission (CRTC) oversees a wide range of services. The OAG undertook a review of the support it provided to cultural industries.¹² It found a lack of data on the effectiveness of the policies and while Canadian content had been created it was difficult to determine its effect. The OAG pressed the CRTC to develop appropriate indicators. There was a general review of the performance of CRTC in 1981 – now overdue for a further systematic report.¹³

In 1988, the Auditor General reviewed the performance of the International Development Research Center (IDRC).¹⁴ It is a body that supports policy activities in developing countries – recently this has included funding for Research ICT Africa

⁵ <http://www.idi.no/>

⁶ http://www.intosaiitaudit.org/index_to_intoit.htm

⁷ <http://www.nao.org.uk/intosai/wgap/guide/index.htm>

⁸ Auditor General Act, R.S.C. 1985, c. A-17 (as amended). <http://www.canlii.org/ca/sta/a-17/whole.html>

⁹ http://www.oag-bvg.gc.ca/internet/English/aud_ch_oag_1989_7_e_4256.html

¹⁰ http://www.oag-bvg.gc.ca/internet/English/aud_fs_e_1196.html

¹¹ <http://www.ic.gc.ca/epic/site/ic1.nsf/en/00701e.html>

¹² http://www.oag-bvg.gc.ca/internet/English/aud_ch_oag_2005_5_e_14943.html

¹³ http://www.oag-bvg.gc.ca/internet/English/aud_ch_oag_1981_6_e_3287.html

¹⁴ http://www.oag-bvg.gc.ca/internet/English/aud_ch_oag_1988_4_e_4231.html

(RIA!).¹⁵ The outcome was a positive evaluation, indicating good value for the Canadian taxpayer in the achievement of the objectives set for IDRC.

Reports from the Auditor General are sent to the Standing Committee on Public Accounts of the Canadian Parliament. They are discussed in public hearings before that committee and before any relevant subject committee. Additionally, an annual report is made to parliament, together with its request for funding.

In 2003, a team from the United Kingdom's National Audit Office, conducted a peer review of its Canadian counterpart, identifying several areas where it could improve its performance.¹⁶

The overall system of telecommunications policy and regulation, including both Industry Canada and the CRTC, was the subject of a peer review within the OECD in 2002.¹⁷ It was given a high rating.

United States of America

The Government Accountability Office (GAO), formerly the Government Audit Office, is colloquially known as "the investigative arm of Congress" or "the Congressional watchdog".¹⁸ More formally, it supports the United States Congress in meeting its constitutional responsibilities and helps to improve the performance and accountability of the federal government.

The GAO has conducted a number of investigations and given testimony before committees of the U.S. Congress on a range of topics related to telecommunications:

- Characteristics and choices of Internet users (GAO-01-345)
- Technological and regulatory factors affecting consumer choice of Internet providers (GAO-01-93)
- Federal and state universal service programs and challenges to funding (GAO-02-187)
- Additional federal efforts could help advance digital television transition (GAO-03-7)
- Comprehensive review of U.S. spectrum management with broad stakeholder involvement is needed (GAO-03-277)
- Issues related to competition and subscriber rates in the cable television industry (GAO-04-8)
- Challenges to assessing and improving telecommunications for native Americans on tribal lands (GAO-06-189)
- States' collection and use of funds for wireless enhanced 911 services (GAO-06-338)
- Broadband deployment is extensive throughout the United States, but it is difficult to assess the extent of deployment gaps in rural areas (GAO-06-426)
- FCC needs to improve its ability to monitor and determine the extent of competition in dedicated access services (GAO-07-80)

¹⁵ <http://www.researchictarica.net/>

¹⁶ <http://www.oag-bvg.gc.ca/internet/docs/200402peerbkgd.pdf>

¹⁷ <http://www.oecd.org/dataoecd/48/28/1960562.pdf>

¹⁸ <http://www.gao.gov/>

- FCC should take steps to ensure equal access to rulemaking information (GAO-07-1046)

These reflect the frequent debates in the U.S. Congress over telecommunications and Internet policy issues and the search for evidence to support specific measures.

The Congressional Budget Office (CBO) was created by the Congressional Budget and Impoundment Control Act of 1974. Its role is to provide the U.S. Congress with objective, timely and non-partisan analyses in order to assist in economic and budgetary decisions.

It has looked at the performance of the funding arrangements for universal service, warning about the inability of the funding mechanism to meet rising demand for subsidies.¹⁹ Its director gave testimony in 2006 before the House Sub-Committee on Telecommunications concerning the risks of further increases in spending.

In 2007, for example, the CBO estimated the costs of implementing a bill to outlaw the transmission of false or misleading caller identification and also for a bill that would improve the accuracy of the data collected about the adoption and use of broadband.

Within each government department and agency there is an Inspector General (IG), created by the Inspector General Act of 1978.²⁰ These officials conduct independent and objective audits, investigations and evaluations, in order to promote economy, efficiency and effectiveness and to prevent and detect fraud, waste, and abuse. Their reports inform both the head of the agency or department and the U.S. Congress.

Within the Federal Communications Commission the Office of the Inspector General (OIG) was created in 1989.²¹ It publishes the reports which it submits to the FCC Chairman and to the U.S. Congress. The OIG has both a strategic plan and annual audit plans.

There was some controversy concerning the alleged suppression of two internal FCC reports relating to the concentration of ownership of broadcasting. The IG investigated the matter and cleared senior management from having suppressed the reports.²² The documents were separately released as the result of a request under the Freedom of Information Act (FOIA).

The IG also investigated the failure of a particular corporation to bid in the process to assign the d-block of the 700 MHz spectrum.²³ In this case only one bid had been received and that had been substantially below the reserve price. Potential bidders had indicated that the uncertainties, including necessary negotiations and the possibility of a default payment, and the costs of the network construction and its subsequent operations together deterred them.

In July 2007, the OIG received a clean bill of health for its work, following a peer review conducted by IGs in other U.S. government agencies.²⁴

Australia

The Australian National Audit Office (ANAO) was created in 1997.²⁵ The Office dates back to 1902, created by the fourth statute passed by the Commonwealth Parliament.

¹⁹ <http://www.cbo.gov/ftpdocs/61xx/doc6191/03-28-Telephone.pdf>

²⁰ http://www4.law.cornell.edu/uscode/html/uscode05a/usc_sup_05_5_10_sq2.html

²¹ <http://www.fcc.gov/oig/>

²² http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-277152A2.pdf

²³ http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-281791A1.pdf

²⁴ http://www.fcc.gov/oig/Peer_Review_Report_071907.pdf

In June 2008, the ANAO published its review of T-3 – the sale of the third and final tranche of shares in Telstra, the former state-owned incumbent operator. The sale raised AU\$ 15.4 billions with transaction costs of 1.3 per cent. However, 66 per cent of the shares were transferred to the Future Fund, rather than being sold. The audit primarily concerned the preparation of the sale, the associated costs and the price obtained. It gave suggested some limits on future “roadshow” costs.

Previous studies by ANAO have looked at:²⁶

- management of selected Telstra Social Bonus 2 and Telecommunications Service Inquiry Response Programmes (2006)
- administration of grants (2003)
- regional telecommunications infrastructure fund (1999)
- management of telecommunications (1997)

The Productivity Commission was created in 1998 to help government formulate better policies.²⁷ It was the result of a merger of the Industry Commission (formerly the Bureau of Industry Economics) and the Economic Planning Advisory Commission. Its roles include conducting inquiries, providing advice and reports to the Minister on matters relating to industry, industry development and productivity that might be referred to it or undertaken on its own initiative.

The Productivity Commission has examined:

- telecommunications competition regulation (2001)²⁸
- international telecommunications market regulation (1999)²⁹
- international benchmarking of telecommunications services (1999)³⁰

Republic of the Fiji Islands

In Fiji, the present Office of the Auditor General was created by section 148 of the constitution of 1998.³¹ There is an earlier Audit Act of 1970 and an Audit Amending Act of 2006, plus specific legislation relating to the audit of state owned enterprises.

The Department of Communication is responsible for the collection of revenue from spectrum fees and telecommunications licenses (e.g., satellite earth stations, television & FM radio station and aeronautical stations). The number of stations, as of 31 March 2006, was over eight thousand with licence fees expected to amount to FJ\$ 597,103.

The Auditor General noted that the Department lacked the resources and the personnel to carry out the tasks of inspecting stations and ensuring the payment of fees, resulting in the loss of a substantial sum of revenue to the government and outstanding payments.³² The arrears were FJ\$ 610,802 in 2004 and FJ\$ 477,348 in 2005. It also found that the Department had failed to document and to formalise its own internal control procedures.

²⁵ http://www.austlii.edu.au/au/legis/cth/consol_act/aa1997157/

²⁶ http://www.anao.gov.au/search.cfm?cat_id=0&arg=telecommunications

²⁷ Productivity Commission Act, No. 14 of 1998, as amended [Australia].

²⁸ <http://www.pc.gov.au/inquiry/telecommunications/docs/finalreport>

²⁹ <http://www.pc.gov.au/inquiry/intelmkt/docs/finalreport>

³⁰ <http://www.pc.gov.au/research/benchmark/telecoms>

³¹ <http://www.oag.gov.fj/>

³² http://www.oag.gov.fj/reports_2005/Volume%202%20Part%20II/27%20Information%20&%20National%20Archives.pdf

Hong Kong SAR

The Audit Commission of Hong Kong, China, was created in 1997.³³ It replaced the Audit Department, one of the oldest functions of the former colonial administration, with the first Director of Audit having been appointed in 1844. The Audit Commission was established under Article 58 of the Basic Law.

Audit Commission reports are published and sent to the Public Accounts Committee of the Legislative Council for consideration and action.

In 2002 the Audit Commission reported on the work of Office of the Telecommunications Authority (OFTA), in particular the liberalization of the fixed telecommunication market.³⁴ It was able to suggest several changes:

- to improve measurement of the progress of competition
- to monitor closely the availability of consumer choice
- to reduce the time taken for interconnection negotiations
- to speed up the process of determination
- to monitor closely compliance with the 1998 Framework Agreement

This work was supported by a report prepared by two academic advisors, with international experience in telecommunications regulation.

India

In an effort to stamp out corruption, the government of India created the Central Vigilance Commission (CVC).³⁵ The original recommendation was made in 1964 by the Committee on Prevention of Corruption. Its current legal powers arise from the Central Vigilance Commission Act 2003.³⁶ Its function is to inquire or to cause inquiries to be conducted into offences under the Prevention of Corruption Act.

The CVC is the “apex” vigilance institution, independent from any executive authority, monitoring all vigilance activity within government and advising the various arms of central government in the planning, execution and reform of their work on vigilance. The CVC has argued for the appointment of a Chief Vigilance Officer (CVO) in government departments. Additionally, there are vigilance arrangements within the various states.

The power to grant licences for telecommunications was given to the government by Article 4 of the Indian Telegraph Act of 1885, a piece of British colonial legislation.³⁷ It is an unusually wide power, giving the discretion to grant licences, without reference to specific objectives or processes. The Department of Telecommunications (DOT) has, amongst others, issued spectrum licences for GSM and CDMA services to operators, leading to controversial disputes in the courts.³⁸ The issues are complicated by the DOT also being the owner of two fixed incumbent operators, MTNL and BSNL, that offer CDMA services.

³³ <http://www.aud.gov.hk/>

³⁴ http://www.aud.gov.hk/eng/pubpr_arpt/aud_OffTel.htm

³⁵ <http://cvc.nic.in/>

³⁶ http://www.commonlii.org/in/legis/num_act/cvca2003279/

³⁷ <http://www.dot.gov.in/Acts/telegraphact.htm>

³⁸ See, for example, Cellular Operators Association of India & others v. Union of India and others [2002] INSC 552 (17 December 2002).

The CVC has questioned the refusal of the DOT to auction spectrum which, it considered, would ensure the highest value for the Indian tax payer and would also ensure assignment to the operators with the greatest need.³⁹ The timing of this intervention appeared to be intended to influence the DOT in its plans for the assignment of 3G spectrum.

For 2006, the CVC reported a catalogue of complaints, administrative actions and successful prosecutions against officials in both DOT and BSNL.⁴⁰ It also reported a pattern of significant delays in acting on CVC advice, again by both the Department of Telecommunications and by BSNL.

There is a corresponding series of annual reports by the Comptroller and Auditor General on posts and telecommunications which gives a similar testimony of systemic failure and a lack of responsiveness to advice and criticism.⁴¹

Sweden

The *Riksrevisionen* was created in 2002 following reviews of the audit of public administration.⁴² It took over the work of *Riksdagens Revisorer* (the parliamentary auditor) and the *Riksrevisionsöverlet* (the Swedish National Audit Office), undertaking both financial and performance audits.⁴³ It also engages in development work, supporting national auditors in Eastern Europe and in Africa.

In 2006, the *Riksrevisionen* criticized the weakness of measures to ensure that governmental officials were not involved in receiving bribes.⁴⁴

In June 2008, it criticised the government for selling 8 per cent of the stock of Telia at 8.7 per cent below the market price.⁴⁵ It argued that in future, when selling the remaining 37.3 per cent of the stock, it should work with the banks to ensure that a higher price was paid.

France

In 2007, the *Cour des Comptes* celebrated its bi-centenary, having been created or at least substantially reformulated by the Emperor Napoléon.⁴⁶ However, the first mention of an audit commission in France dates back to 1256, during the reign of King Louis IX.

The *Cour des Comptes* investigated the operation of the Minitel system in the 1980s and 1990s. In particular, it looked at the use of the 36.15 access number, used for premium or adult services, the so-called *messagerie rose*. The conclusion was that the state, through what is today known as France Telecom, was operating a *débauche* by providing access to and subsidising services of a sexual nature.

³⁹ *Times of India*. 21 April 2008. Finance ministry writes to DoT on spectrum pricing.
<http://timesofindia.indiatimes.com/articleshow/2966603.cms>

⁴⁰ <http://cvc.nic.in/ar2006.pdf>

⁴¹ <http://www.cag.gov.in/reports/post/index.htm>

⁴² Auditing of State Activities etc. Act (2002:1022) [Sweden].

⁴³ <http://www.riksrevisionen.se/>

⁴⁴ Protection against corruption in government. 2006.

<http://www.riksrevisionen.se/upload/1526/korrupt.pdf>

⁴⁵ <http://www.ft.com/cms/s/0/fd88ab5e-3c59-11dd-b958-0000779fd2ac.html>

⁴⁶ <http://www.ccomptes.fr/>

Bosnia & Herzegovina

The Office for Auditing of the Financial Operations of the Institutions of Bosnia and Herzegovina (BiH) was established in 1999.⁴⁷ The legislation was largely based on those of other European countries.

In reviewing the 2000 accounts of the Telecommunications Regulatory Authority the Office for Auditing expressed concern that they did not represent a true and fair view of the financial operations.⁴⁸ It identified weaknesses in the systems of control that it suggested could be improved. The following year it gave a much improved view of the accounts of the successor, the Communications Regulatory Authority.⁴⁹

Conclusion

There is no overwhelming uniformity in the institutions of auditors general, rather they reflect national traditions and experiences. Yet, they have played very useful roles in ensuring the efficiency and effectiveness of both ministries and regulators. In particular their work has been informed by practices in and reviews of other sectors and other countries. They have exposed inefficiencies, shortcomings and, sometimes, corruption, even in well established institutions.

While auditors general no longer literally hold an auditee's feet to the fire, as they might have done in mediæval times, they bring activities under detailed scrutiny on behalf of the public. The mere possibility of such scrutiny serves to improve institutional performance.

Regulators have been challenged to measure competition more precisely, one of the most fundamental indicators of liberalisation. Ministries have been challenged to maximize the returns on the sale of shares in telecommunications operators.

Auditors general have implemented amongst themselves systems of peer review. They have allowed themselves to be examined in a spirit of self-criticism and a willingness to learn lessons – they aspire to global best practice. It is an approach that could be taken up by telecommunications regulators to their advantage.

There appears to be a strong case for the more extensive use of national auditors to oversee telecommunications policy. With almost two hundred NRAs the question of their oversight, or the regulation of regulators, is now a very general concern. The processes auditors general use can and do improve the overall system and the workings of both ministries and regulators.

However, in addition to a willingness of institutions to learn lessons, it requires a well resourced national auditor, perhaps aided by external experts. It then requires a parliamentary system that will ensure that recommendations are discussed in public and are actively followed up. Many countries lack one or more of these elements and are thus likely to fail to hold those in charge of their regulatory system fully to account.

For members of parliament who generally have limited experience of telecommunications and who may be the subject of substantial lobbying, the auditor general can provide a valuable and more coldly analytical assessment of the work of officials and regulators.

⁴⁷ Law on Auditing of Financial Operations of Institutions of BiH, October 1999.

⁴⁸ <http://www.revizija.gov.ba/en/audit-rep/tra.asp>

⁴⁹ <http://www.revizija.gov.ba/en/audit-rep/cra01.asp>