



# **The Privatization Experience in Canada**

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# Purpose

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- Outline highlights of a contribution to Project 7: Transformation of ownership relationship
- Focus on the Canadian experience, notably at the federal level
  - Power sharing within Canada's federal state
  - The special nature of land
  - The (short) history of state-ownership and privatization
  - Some examples



# Ownership and the Canadian Federal State

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- Ownership confers a regulated right to exploit property and to appropriate its fruits.



# Federal-Provincial Responsibilities

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- The British North American (BNA) Act of 1867 allocated to Provinces:
  - Responsibility for civil and property rights within the province and their administration
  - Exclusive jurisdiction over the development of natural resources
  - The law and judicial processes are under provincial control



# Federal-Provincial Responsibilities

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- Banking, transportation, and criminal law were reserved for the federal government
- BNA Act also gave the federal government the power to regulate “trade and commerce” (not explicitly allocated to the provinces)
  - Interprovincial trade
  - International trade
- Canadian constitution grants residual powers to the federal government
  - e.g., telecommunications, air travel



# Federal Jurisdiction

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- Canada Business Corporations Act (CBCA):
  - Regulates take-over bids, proxy solicitations, and insider trading
- Federally-regulated industries:
  - Banks, insurance companies
  - Railroads and airlines
  - Telecommunications, broadcasting
  - Energy exports; pipelines and transmission lines between provinces and to the U.S.
  - Nuclear energy (considered to be of national significance)



# Judicial System

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- Canadian provincial and federal statutes implemented the English law and precedent
  - Court decisions in one jurisdiction adopted in others
  - Supreme Court has final say
- Growing use of third party arbitration in contract disputes
  - Quicker and less costly than using court system
  - Non-appealable
  - Often use retired judges



# Securities Law

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- The Canadian Securities Administrators (CSA)
  - National Securities Commission implemented through cooperative action among the provinces
  - All rules have a consumer or investor protection basis to ensure confidence in the capital markets





# Financial Institutions

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- Federal financial institutions are concerned with the banking system whereas provincial regulators concentrate on the conduct and market performance of individuals and firms
- Federal instruments
  - Office of the Supervisor of Financial Institutions (OSFI)
  - The Bank of Canada



# Federal Intervention

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- Using suasion rather than legal force in cases of provincial restrictions over free inter-provincial trade
- Transfer payments contingent on good behavior standards
  - e.g., support for Medicare



# The Peculiar Problem of Land

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- Unlike marketable securities, land is relatively illiquid
- Need for deep financial intermediation for people of modest means acquiring expensive fixed assets
- Land values tend to be “sticky”
  - Once they rise, tend to deflate slowly
  - One consequence is that farmers in market economies have apparently more “wealth” than income



# Short History of Privatization in Canada

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- 1935-1980: Public sector favoured to counter the effects of the Great Depression and World War II
- 1962: Nationalization of health care
- 1955 & 1963: Nationalization of power utilities in British Columbia and Quebec
- 1973: 1st world oil crisis, which incited the creation of Petro Canada



# 1974: Foreign Investment Review Act (FIRA)

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- Designed to protect the interests of Canada's organizations from foreign investors
  - Targeted take-overs of Canadian companies and establishment of new businesses by foreign-owned and controlled interests
  - Similar ownership concepts adopted during National Energy Program (NEP) in early 1980s
- Imposed performance targets as conditions of approvals:
  - e.g., employment, research and development investment, and exports
- Replaced by Investment Canada, with much narrower focus (e.g., cultural industries, financial services, transportation services, uranium mining)



# Examples of Canadian Privatization

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- BCRIC
- The Mulroney Years
- Bombardier
- Air Canada
- The Chrétien Years
- NavCan
- Others



# B.C. Resources Investment Corporation (BCRIC)

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- People's capitalism: 4 Major Failures
  - Method of cash distribution produced no income for either party
  - Failure in management by the authorities
  - Small cash amounts produced: a) high transaction expenses, and b) the absence of a dominant stakeholder to counter management
  - The privatization occurred prior to a serious recession
- In the end, BCRIC failed and parts were purchased by private companies at fire-sale prices



# The Mulroney Years: 1984-93

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- Sustained attempts at privatization at the federal level to control annual deficits and the national debt
  - The establishment of a Cabinet Committee and group of officials to review the government's commercial and industrial holdings
  - Concerted attempt to reduce number of state enterprises





# The Rise of Bombardier

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- 1980s: Bombardier acquired Canadair after failure by the government to manage the company
- Later, Bombardier also purchased the Toronto-based de Havilland in conjunction with the Ontario government after failures by the federal government and Boeing
- Bombardier is now a Canadian success stories in highly-competitive aerospace industry



# Air Canada

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- Disposition method: public offering of shares
- Air Canada Participation Act
  - Included requirement to keep corporate headquarters in Montreal and to have majority of board of directors as resident Canadians
- The absence of a controlling shareholder or shareholder group insulated management from investors' pressures
- Privatization was financially successful but failed on the management level
- Subsequently, Air Canada took over Canadian International, then Canada's 2nd largest private airline
  - Concern that Air Canada is now dominating marketplace in Canada



# The Liberal Governments of Jean Chrétien: 1993-Present

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- February 1995: Slashed budget expenditures to counter the debt and deficit situation
- Reconsideration of the proper role of government
  - “Does government need to undertake this function any longer, or could it be done better by another level of government or the private sector?”
- More oriented towards business agenda
- Revised/updated major framework legislation
  - Bankruptcy and Insolvency Act (1996), the Privacy and E-Commerce Act (1998), the Canada Business Corporations Act (2000) and the Bank Act (2001).



# NavCanada

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- 1996: Privatization of Canada's Air Navigation System (air traffic control)
  - Formerly operated by Transport Canada, using Parliamentary appropriations and public servants
- NavCanada: A Regulated Monopoly
  - Non-profit
  - Non-share-capital
  - Cost-recovery
- Paralleled transfer of major airports from federal government to local airport authorities

# Other Examples of Privatization in Canada



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# Public Offerings

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- Canada Development Corporation (1986)
- Fishery Products International (62.6%) (1987)
- Air Canada (1988)
- PetroCanada (1991)
- Co-enerco Resources Ltd. (1992)
- Canadian National Railways (1995)



# Qualified Auctions

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- Nanisivik Mines (18% holding) to Mineral Resources International (1986)
- Teleglobe Canada to Memotec Data (1987)
- Northwest Tel Inc. to BCE Inc. (1988)
- Nordion International to MDS Health Group Ltd. (1991)
- Telesat Canada (3,200,00 shares) to Alouette Telecommunications (1992)
- Syncrude (interest) to Syncrude Canada Ltd. (1993)
- Canarctic Shipping Co. Ltd. To Fednav Inc. (1997)



# Negotiated Sales

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- Canadian Forestry Service's wood product labs to Forintek (1979)
- Northern Transport Co. Ltd. to Inuvialuit Regional Corp. (1985)
- Pecheries Canada to Cooperative Agroalimentaire (1986)
- Northern Canada Power to Yukon Power (1987) and to NWT government (1988)
- Terra Nova Telecom to BCE Inc. (1988)





# Negotiated Sales...

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- CN assets
  - CN Route (trucking) to Route Canada Holdings (1986)
  - CN Hotels to Canadian Pacific Ltd. (1988)
  - CNCP Telecommunications (50% holding) to CP (1988)



# Observations

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- In many cases, former state-owned ventures (or Crown interests) sold (through auction or negotiated sale) to a larger, going concern
  - Some included protections for transferred workers
- Public offerings tend to be reserved for larger, high-profile ventures
  - Ventures “prepared” to operate in private sector
  - Shares typically issued in tranches, as equity market conditions were appropriate
- Most recently, a return to mixed public/private partnerships