Preface

This work commenced as an attempt to explain why Canada has chosen public enterprise as a regulatory instrument more often than has the United States. It is related to earlier work done on the airline industry (Baldwin, 1975) where I was interested more in the behavioural similarities of a public enterprise and a regulatory agency. Here the reason for choosing one rather than the other as an instrument of government policy is examined. The previous work explained observed behaviour using a model that postulated both entities pursued a multifaceted objective function subject to certain constraints. This monograph adopts essentially the same format: that is, it attempts to explain why one regulatory instrument is chosen over another by examining the objectives of the state and the nature of constraints that restrain behaviour. The framework that is adopted is the burgeoning transactions-failure literature that has been used elsewhere to explain why certain arm’s-length transactions are internalized within firms. In this case, its taxonomy is employed to understand the reason that the original franchise contract was replaced with the more complex contract associated with a regulatory tribunal.

Earlier related work (Baldwin, 1984) emphasized the effect of the difference between Canadian and American judicial constraints on the choice of public enterprise rather than regulation. It noted that where judicial constraints are inoperative, the state may act opportunistically to confiscate property, and transactions failure leads to internalization of the regulatory transaction through the use of public enterprise. When the state proves unable to negotiate fairly, public enterprise is the concomitant result. The earlier paper concentrated on examples of opportunistic behaviour on the part of the Canadian state. This monograph extends the earlier study to examine more broadly the evolution of the regulation of Canadian utilities.

The extension serves to answer the question posed by Demsetz (1968): Why do we regulate when a contract between consumers and producers would do the job? By examining the reasons that the original franchise contract between the state and utilities was abandoned, this study provides an understanding of why we regulate today via independent tribunal.

In addition, this monograph fills a void in the field of law and economics. It describes how the legal environment affected the type of solution chosen to resolve contractual transactions failures. It is also an exercise in business history, since it demonstrates how business policy attenuated some of the institutional problems that existed.

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 Anyone working in the area of regulation in Canada quickly discovers the debt that is owed these two historians for their work in this area.

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