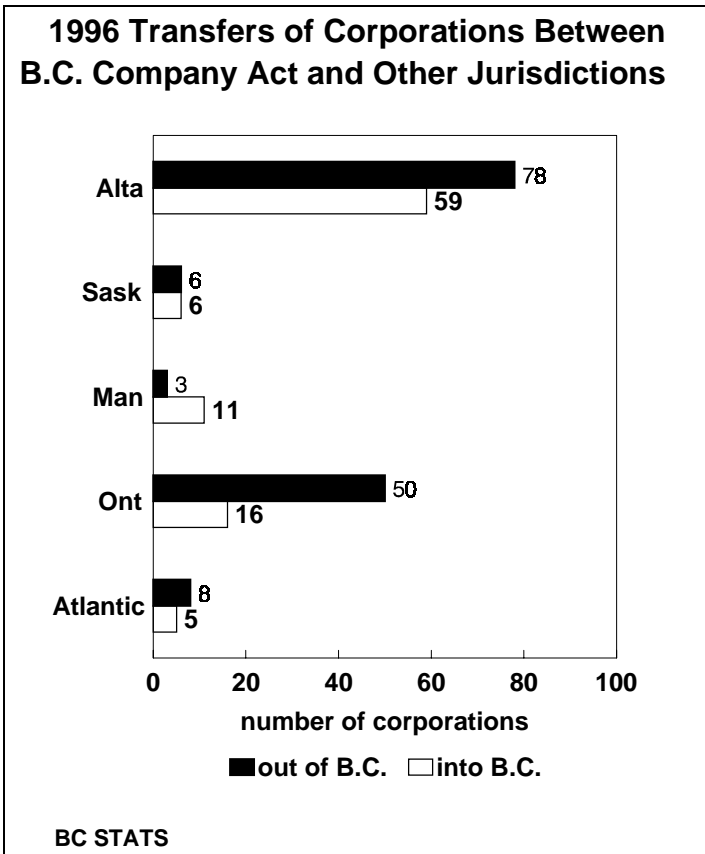


## Feature: More British Columbia Companies Shift Corporate Charters to Alberta and Ontario



### Transferring Corporate Charters

Incorporated companies have the option to establish and maintain their corporate charter under any one of many different legal jurisdictions. This could be the jurisdiction of a province, the federal government, a U.S. state, or another country. Once established under a particular jurisdiction, corporate charters do not necessarily have to remain there. They can be transferred from one jurisdiction to another in a process known in legal terms as 'continuing out' or 'continuing in'. Corporations 'continue out' when they leave a jurisdiction and 'continue in' when they are transferred into it.

Companies incorporated under British Columbia's jurisdiction maintain their charters under the British Columbia Company Act. The transfer of any single corporate charter from the British Columbia Company Act to the equivalent legislation of another province does not necessarily signify the transfer of corporate assets, jobs or even head office out of the province. However, when there is a distinct net outflow of corporate charters, as there was in 1996, it may reflect some change in business climate and some shifting of business activity.

*Between 1990 and 1996 the number of corporations transferring their corporate charters to British Columbia from the legal jurisdictions of other provinces fell off, while the number transferring out to other provinces increased steadily. As a result, net inflows of corporations from other provinces averaging 45 per year between 1990 and 1994 dropped to zero in 1995, and reversed to a net outflow of 49 in 1996. The change reflects the combined effects of economic swings in British Columbia, Alberta and Ontario.*

The 96 corporations transferring their charters into British Columbia from other provinces in 1996, and the 145 transferring out were very few in relation to the 247,000 companies on the British Columbia Registry or the more than 20,000 new British Columbia corporations created in that year.

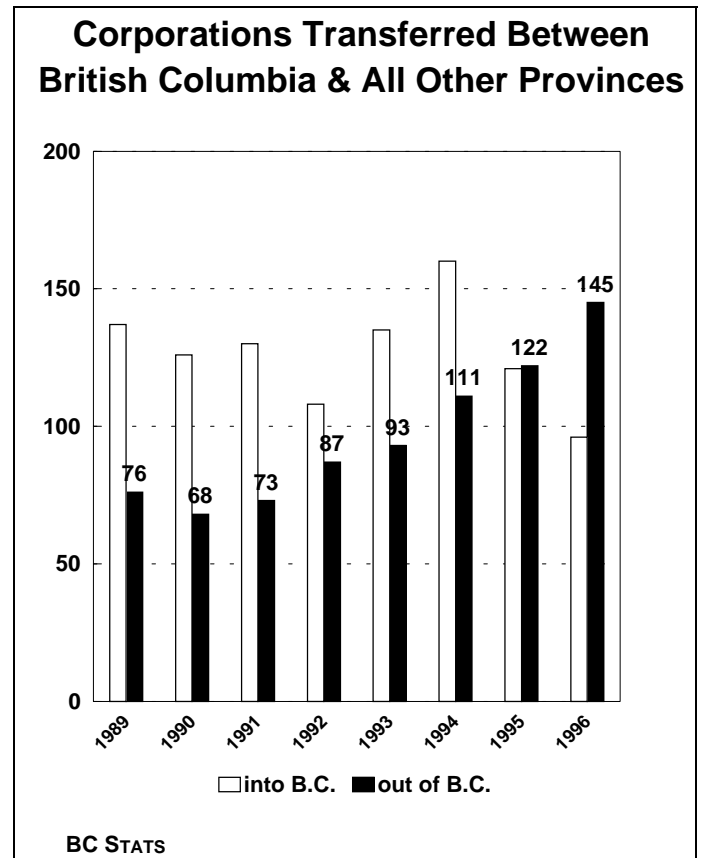
Nevertheless, the numbers are significant, particularly as they represent businesses that were large enough to be worth the effort and expense of transferring. They are useful for what they imply about the movement of companies back and forth between provinces in response to changing economic conditions. Used cautiously they can be interpreted as indicators of business investment trends.

Most movements of corporate charters into or out of British Columbia are either transfers from or to other provinces, or else transfers from the B.C. Company Act to the Canada Business Corporation Act. As might be expected, the largest exchanges with other provinces have been with Alberta, the only neighbouring province, or with Ontario, the province with the largest economy in Canada.

Corporate charters are also occasionally transferred between the British Columbia Company Act and the equivalent incorporating legislation of other countries.

In 1996, for example, seven companies shifted their charters from the British Columbia Company Act to jurisdictions outside Canada. Only one non-Canadian corporation transferred into British Columbia.

Of those corporations transferring to foreign jurisdictions, one went to Malaysia, two went to the United States and four left for various tropical tax havens. Caribbean islands such as Bermuda, the Bahamas, Anguilla or the British Virgin Islands attract a relatively small number of corporations seeking undemanding disclosure requirements, low tax rates or, in some cases, sunny weather.



## The Shift to Alberta

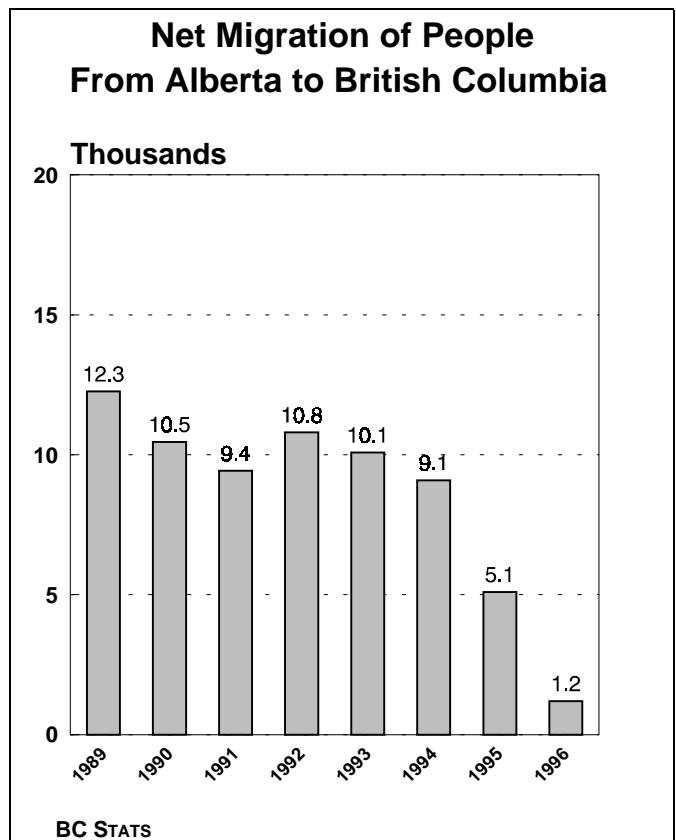
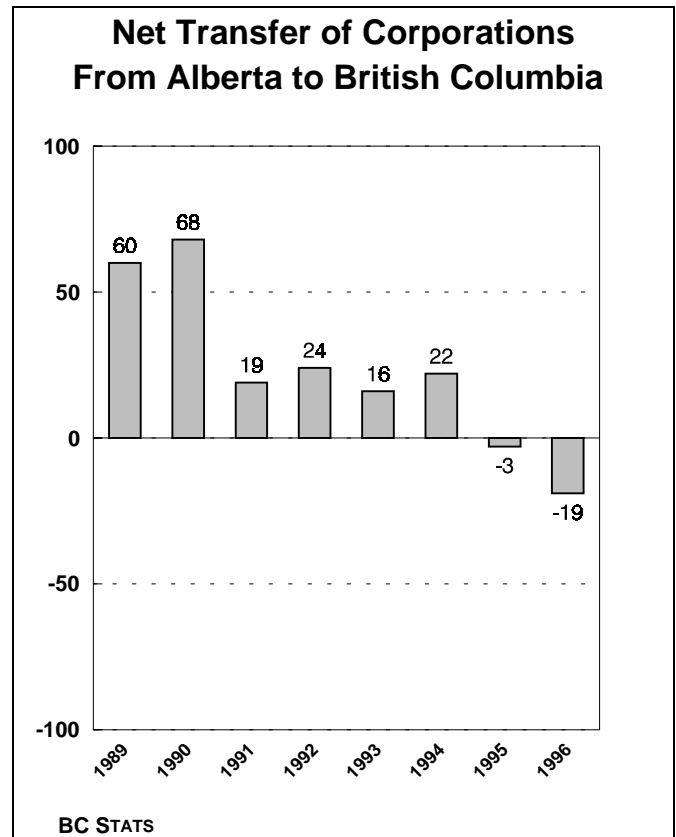
Climate was less likely to have motivated the decisions of the 78 companies shifting their corporate charters from British Columbia to Alberta in 1996. This movement was only partially balanced by 59 Alberta corporations choosing to make British Columbia their new corporate jurisdiction, leaving a net loss of 19 corporations going from British Columbia to Alberta.

In each of the first five years of the decade there were more Alberta corporations transferred into British Columbia than British Columbia corporations transferred to Alberta. Then in 1995 the inflow was reversed. A small net outflow of three corporations to Alberta in that year was followed by a net outflow of 19 in 1996.

This reversal of flow is consistent with changes in capital spending patterns over the same period.

In 1994, capital spending amounted to \$20.4 billion in British Columbia, slightly more than the \$20.0 billion for Alberta. In 1995 it was \$19.2 billion for British Columbia and \$19.9 billion for Alberta. In 1996 the British Columbia figure dropped to \$18.6 billion, while the Alberta figure was little changed at \$19.7 billion.

As Alberta has been attracting more investment and corporation transfers, fewer Albertans have been pulling up stakes to move to British Columbia. There was still a net inflow of people moving from Alberta to British Columbia in 1996, but the number shrank well below what it has been a few years earlier. Net migration from Alberta fell from ten thousand in 1993 to nine thousand in 1994, to five thousand in 1995, and then to a mere 1,200 in 1996.

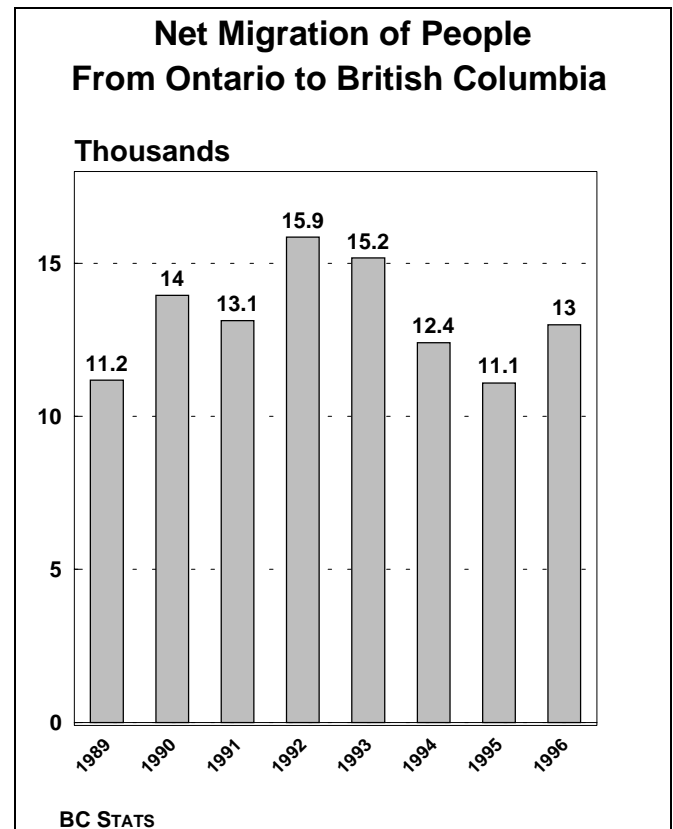
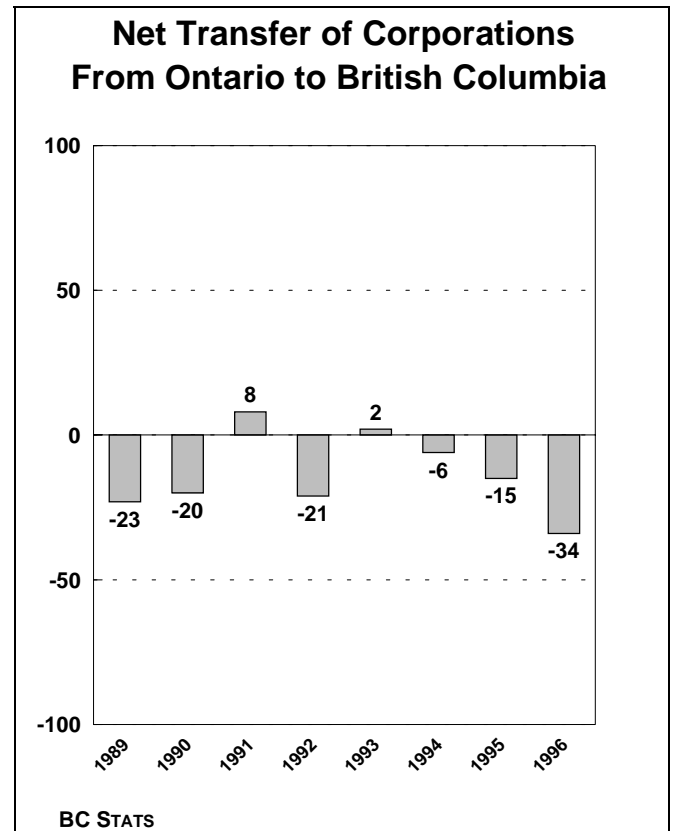


## The Shift to Ontario

Ontario has also been attracting more corporate charters from British Columbia than British Columbia has been attracting from Ontario. 1993 was the last year that British Columbia experienced a net inflow of corporations from Ontario. In 1994, there was a net outflow to Ontario of six corporations. This grew to 15 in 1995, and then to 34 in 1996.

Rising capital expenditures in Ontario between 1994 and 1996 were consistent with the steady growth in net transfers of corporations from British Columbia in those years. As British Columbia capital spending declined between 1994 and 1996, Ontario capital spending rose from \$45.6 billion in 1994, to \$45.8 billion in 1995, and then jumped to \$48.9 billion in 1996.

Between 1993 and 1995, the net migration of people from Ontario to British Columbia was falling off as the net movement of corporations shifted in Ontario's favour. Net migration of people from Ontario sank from 15 thousand people in 1993, to 12 thousand in 1994, to 11 thousand in 1995. In 1996 it rose again to 13 thousand, likely because unemployment rose in Ontario that year, as it fell in British Columbia.



## **Other Reasons for Companies to Chose One Corporate Jurisdiction Over Another**

Companies may sometimes shift their charters to another legal jurisdiction because they prefer the features of one province's corporate law over another's. Provinces, U.S. states, or countries sometimes tailor their legislation to lure as many companies as possible from other jurisdictions.

Ms. Roberta Lowdon of the British Columbia Corporate Registry notes for example that Delaware and Arizona go as far as to actively solicit companies to transfer to their jurisdictions.

The British Columbia Corporate Registry is concerned that its own legislation is out of date at present, and may be making the process of incorporating in British Columbia more difficult than it should be. The British Columbia Company Act was enacted in

1973, and has since been revised only once, in 1976.

A Discussion Paper circulated by the Ministry of Finance in 1991 proposed a number of changes including:

- simplifying incorporation procedures
- modernising rights and responsibilities of company directors
- updating the financial and share structure of companies
- reducing the number of documents which a company is required to file at the Corporate Registry
- development of computer service to allow incorporation and most filings to be carried out from anywhere in Canada

A new Discussion Paper containing these and other proposals is presently being prepared, along with a the draft of a revised Act. Both are expected to be released later this year.