

**Financing Public Goods and Services through Taxation
or User Fees: A Matter of Public Choice?**

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Abstract

Through a case study methodology this research explores the decision-making process regarding financing services provided by the Canadian federal government to individual citizens. From a transparency and accountability perspective, for those services that benefit individuals versus society as whole, it is important to understand why some services are provided through general taxation while others are financed through user fees.

The study utilizes public choice theory as developed in *The Calculus of Consent: Logical Foundations of Constitutional Democracy* which is the initial attempt to illustrate how the tools of economics may be applied to political institutions using a rational choice approach with an emphasis on rules about how choices are made. Rather than focusing on ‘what’ government spends funds on, the study focuses on ‘how’ government generates funds by examining three major actors: government, citizen-voters and pressure groups.

This study furthers scientific knowledge as there has been prior research on distinguishing between public versus private goods, and deciding on how to publicly fund such goods, but there has been limited research undertaken on the actual decision-making process in financing public goods and services. From an academic perspective, this study is the first time that *The Calculus of Consent: Logical Foundations of Constitutional Democracy* model has been adapted and applied to the Canadian federal government.

The study concludes that it depends on what elected officials decide to do to appeal to citizen-voters in order to win votes: appear fiscally prudent thus charge user fees; advance its political agenda with decisions to sometimes charge user fees or other times not; or limit costs to private sector organizations by deciding to not charge user fees. While elected officials make the decisions whether or not to charge user fees, it is the bureaucracy that implements these decisions.

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Chapter 1

Introduction

1.0 Introduction of the research problem

This research study, through a case study methodology, focuses on specific public services provided by the Canadian federal government to individual citizens including passports, pardons, security clearances and social insurance numbers (SINs). The study explores the decisions made regarding financing these services through either general taxation or user fees. These services are provided on an individual basis, not to all citizens but available to all citizens thus the government can determine who is receiving the service but has decided to finance some of these services through general taxation while others are paid for through user fees. If government decides to provide individualized services, such as security clearances and SINs, to citizens through general taxation rather than user fees then why do they not provide other types of individualized services, such as passports and pardons financed by user fees, through general taxation?

This research problem is of interest to society because as the demands on government grow, elected officials in representing Canadians need to decide what government's role is in delivering goods and services to citizens as well as how to finance these services. There may be an inclination towards government providing more goods and services but society needs to be aware that this comes at a cost. Government can only provide a set amount of goods and services through revenues from tax collection and if citizens desire more services, then either there needs to be an increase in taxes collected, the charging of user fees or government may decide not to provide certain goods and services at all. However, taking away previously provided goods and services has costs, both political and societal, as does the charging of user fees, as does increasing taxes.

As mentioned, there are several options available to government when deciding on how to finance the provision of public goods and services. One option, once governments decide

which public goods and services to provide, is determining whether these goods and services are provided to all citizens and therefore might be financed through general taxation. If government can determine individual usage of goods and services, then another option government may consider is paying for the production of these goods and services through user fees. A third option is to consider a blended approach with part of the service covered by user fees and the rest of the service provided through general taxation.

The charging of user fees on public goods and services that are provided to individuals has an efficiency argument with fees seen as more directly linking services to beneficiaries, as well as a distributional argument as their incidence may have a greater impact on lower-income individuals (Bird 1976; Pal 1997; Norman 2004). In regards to citizens' ability-to-pay, if government decides to finance public goods and services through user fees rather than general taxation then lower-income households, who spend more of their income on the consumption of goods than higher-income households who can devote more of their income to personal savings, may have a heavier financial burden resulting in user fees being viewed as regressive (Mishan 1972, 976). The higher-income/lower-income dichotomy brings in the idea of not only fairness when charging user fees but also the idea of unduly burdening those that may have lower ability-to-pay fees for public services. Therefore we see another consideration in financing public goods and services provided to individual citizens through general taxation rather than user fees, even though government can determine individual usage, is not to unduly burden low-income households. A further consideration is the visibility of user fees which may have a positive or negative connotation by citizens. The visibility of user fees may be viewed as positive as government may be seen as being more effective with tax dollars in making decisions to charge user fees for services in which individuals are receiving benefits above and beyond what all

citizens receive. Alternatively, user fees may be viewed as negative by some individuals if the service was previously provided ‘free’ through general taxation since individuals may view user fees as a revenue grab.

A further consideration in deciding on how to finance public goods and services is that from an economist’s perspective there is generally an assumption that citizens as users have a choice about how much, where, and when, they choose to purchase an excludable public good such as a passport. An excludable public good being a good that people who have not paid for cannot use so people need to choose to purchase it (Malkin and Wildavsky 1991, 358). User choice means the right of an individual to choose from several service providers as is the case with education and healthcare (Blochliger 2008, 17). However, there is not always a user choice in purchasing a public good or service as many, such as passports, are only provided by one supplier – a level of government. Therefore, when governments are deciding to finance a public service through user fees they may want to be aware of whether or not citizens have a choice in purchasing these services. If there is only one provider and there is a legal requirement to obtain the public service as is the case for passports for traveling outside the country and SINs for employment purposes or receiving government benefits, then government may want to consider these requirements in their pricing model.

There have been many studies on the expenditure side of public finance (Samuelson 1954; Margolis 1955; Ford and Zussman 1997; Buchanan 1999a; Good 2003; Ambachtsheer 2008), but fewer on the revenue side (Musgrave, Musgrave, and Bird 1987; Bibbee 2008; Tellier 2009; Miller 2011), and fewer still hone in on the topic of user fees (Bird 1976; Sproule-Jones 1994; Chartrand 1997; Bird and Tsiopoulos 1997a). Why? One of the reasons may be that political leaders recognize that any form of taxation is viewed as a public ‘bad’ and the best thing

an elected official can do if they want to continue to govern is to keep tax decisions out of sight (Alt 1983).

1.0.1 Canadian federal government

Since Confederation, the Canadian federal government has engaged in external charging by establishing user fees and collecting revenues for those services which provide an individual benefit above what taxpayers receive (Treasury Board of Canada Secretariat 2003a). The Canadian federal government generates approximately \$2 billion annually through user fees and cost recovery for goods and services (Office of the Auditor General, 2008). If the concept of user fees or cost recovery has been used for those public goods and services that have been determined to only benefit an individual citizen or group, we need to understand the rationale behind determining how this decision was made. Was it done using a cost-benefit analysis or was it a matter of a judgement of value? Why was it determined that user fees or cost recovery methods would be used rather than financing the good or service through general taxation? This leads us to the research question for this study, *“Why does the Canadian federal government decide to finance some public sector services through user fees, while others are financed through general taxation?”*

1.1 Research objectives

This study focuses on the Canadian federal government’s decision-making process to provide public services either by funding through general taxation or financing through user fees. For those services that benefit individuals versus society as whole, it is important to understand why some services are provided through general taxation while others are financed through user fees. In order to answer the research question posed, this study will pursue the following research objectives:

- To better understand decision-making related to public finance;
- To help to determine when it may be more appropriate to use one type of funding instrument over another;
- To understand how political decisions impact the management of the bureaucracy; and
- To understand how citizens may, or may not, influence political decisions.

1.2 Contribution to knowledge

This study furthers scientific knowledge as there has been prior research on distinguishing between public versus private goods (Malkin and Wildavsky 1991; Holcombe 1997; Buchanan 1999a), deciding on how to publicly fund such goods and whether or not funding through user fees is an efficient solution (Bird and Tsiopoulos 1997a; Chartrand 1997; OECD 1998), but there has been limited research undertaken on the actual decision making process in financing public goods and services (Bowlby, MacDonald, and Gilbert 2001). In this study, a deeper understanding of the decision making process is developed questioning the how, what, and why, of the Canadian federal government in deciding upon which basis public goods and services provided to individuals are financed through taxation or user fees.

Given current economic and fiscal restraints, governments today are being asked to do more with less. In Canada for example as announced in Budget 2011, the federal government conducted a strategic and operating review “aimed at improving efficiency and effectiveness of government operations and programs to ensure value for taxpayer money” (Finance Canada 2011, 167). Within this review, government searched for ways to “standardize, consolidate and re-engineer the way it does business” (Finance Canada 2011, 172). While the decision to charge user fees is not new to the federal government, the strategic and operating review appeared to be a fortuitous time to revisit the rationale behind the financing of public services provided to individuals to confirm that the most appropriate financing model is being used. This study will provide an analysis and background information that will be helpful in understanding the

decision to finance public services through either general taxation or user fees from an academic perspective that may then be applied to practical scenarios.

This research is of significance to society because the level of confidence that voters have in their government is important to build public trust (Ezekiel 2005, 6). When taxpayers pay a user fee if they cannot determine whether or not this cost is fair as there is a lack of transparency and understanding then confidence in government may be eroded. More research is required on the decision-making process regarding the decision to charge user fees or not, to determine the answers to the questions posited. Once this research study has been completed it can be replicated with other national and sub-national governments with similar public goods and services thus allowing for a comparative analysis.

From an academic perspective, this study is the first time that Buchanan and Tullock's *The Calculus of Consent* model has been adapted and applied to the Canadian federal government. A contribution to knowledge is the mapping of the evolution of user fees in the federal government.

1.3 Theoretical framework

This study is about why the Canadian federal government decides to finance some publicly provided services to individuals through general taxation and others through user fees. One of the methods to explore this research question is through public choice theory. Public choice applies the methodology of economics to political science in nonmarket decision-making areas (Ostrom and Ostrom 1971; Buchanan and Tullock 1974; Lane 1990; Tullock, Seldon, and Brady 2002; Frederickson and Smith 2003; Mueller 2003, 2004). As this study revolves around decision-making in government, public choice theory is an appropriate theoretical framework. While economic-inspired theories such as public choice can never tell the whole story, “the

theories continue to make an important contribution to a greater understanding of how government decides and operates” (Savoie 2013, 10).

Specifically, this study will use the public choice framework as developed in James Buchanan and Gordon Tullock’s book *The Calculus of Consent: Logical Foundations of Constitutional Democracy* first published in 1962. *The Calculus of Consent* is the initial attempt to illustrate how the tools of economics could be applied to political institutions using a rational choice approach with an emphasis on rules about how choices are made (Mueller 2012a; Rowley and Houser 2012; Rowley 2012; Congleton 2012). Buchanan and Tullock’s model applies an individual’s utility maximizing behaviour in a private market setting to political choices and conceptualizes politics-as-exchange to create an ‘economic’ model of collective choice (Buchanan 1987). Their framework focuses on how an individual as a part of collective choices in political settings are similar to how individuals pursue private choices as consumers in market settings. The Buchanan and Tullock model posits that an individual’s decisions and actions are driven by self-interest in which the individual expects to maximize his benefits while minimizing his costs whether purchasing a consumer good, voting, or deciding how to finance publicly provided services.

Using concepts as presented in *The Calculus of Consent* and further elaborated on in subsequent works by public choice scholars, this study will focus on the revenue side of fiscal policy as applied to the Canadian federal government. Rather than focusing on ‘what’ government spends funds on, it will focus on ‘how’ government generates the funds to spend. Public choice theory is based on the notion that individuals are rational, meaning rational individual decision-makers calculate the most reasonable way to attain their goals or benefits by

considering their means or costs (Downs 1957a). In other words, individuals do a cost-benefit analysis to maximize their utility when making decisions.

In our theoretical framework we develop three major actors: government comprised of elected officials and the bureaucracy, citizen-voters, and pressure groups and then apply these concepts to the Canadian federal government. The government, as the first major actor in our model, maximizes utility through re-election thus re-election becomes the primary objective of both the governing party and opposition parties (Downs 1957a). Our second major actor, citizen-voters maximizes utility by voting for the electoral candidate that they believe will provide them the most publicly provided benefits at the least cost (Downs 1957a; Coughlin, Mueller, and Murrell 1990; Felgenhauer 2012). Pressure groups, our third actor, maximize their utility by spending resources on political activities to secure the group members' preferences (Olson 1971; Becker 1983, 1985; Thorburn 1985; Mueller and Murrell 1986; Dunleavy 1991).

1.4 Methodology

This study applies Buchanan and Tullock's *The Calculus of Consent* model to the Canadian federal government context to explain why decisions are made to finance some publicly provided services through general taxation and others through user fees.

1.4.1 Working propositions

We explain our theoretical framework through six working propositions (WP) related to our three major actors: government, citizen-voters and pressure groups. The WPs focus on the relationship between elected officials, citizen-voters and pressure groups (WP1, WP2 and WP3); the legislative environment that elected officials and the bureaucracy operate in (WP4); and the relationship between elected officials and the bureaucracy (WP5 and WP6). The WPs consist of:

WP1: *It is in elected officials' self-interest to not support the decision to finance services that are provided to individuals through user fees as it is not popular with citizen-voters. However, this*

decision may be altered depending upon the economic situation at the time and whether or not elected officials want to be viewed by citizen-voters as being fiscally prudent.

WP2: *It is in citizen-voters' self-interest to demand more publicly provided services and tax expenditures from elected officials who form government even if it increases others' costs (e.g. higher taxes) as citizen-voters are unlikely to be aware of the financial cost implications of additional public services and tax expenditures as the tax system is complex.*

WP3: *It is in pressure groups' self-interest to seek from elected officials, incentives or tax breaks for their citizen-voter members without considering the impact on other members of society.*

WP4: *It is a complex legislative environment for government organizations to operate in as defined areas within the management of a government organization are not about implementation of a single public policy that provides clear direction, but rather a single area of management within a government organization can be impacted by numerous public policies.*

WP5: *It is not in deputy heads' self-interest, while being responsible for sound financial management within their departments, to change methods of financing the provision of goods and services unless there is a reduction in their budget. It is not in deputy heads' self-interest as changing methods to finance public goods and services requires going through a rigorous process. Government has put in place a complex set of rules which must be followed in order to implement user fees. Unless operating budgets are decreased, deputy heads are unlikely to commit additional resources (people and financial) to implement a new costing structure.*

Working proposition six (WP6): *It is not in a deputy head's self-interest, even though the deputy head has legal authority over the financial management of the organization, to alter the financing method of providing goods and services as he requires approval by the elected official to whom he reports. Given WP1, WP2 and WP3, it is unlikely that the elected official will support the implementation of user fees for public services that were previously provided through general taxation unless elected officials have the desire to be seen as being fiscally prudent as it is not in government's self-interest.*

1.4.2 Research design

The aim of the study is to use Buchanan and Tullock's model as developed in the theoretical framework to interpret, analyze and understand the research issues. The study examines the application of government's policies and regulations related to user fees by scrutinizing the overall environment in the provision of public services provided by the federal government.

The four cases that will be used in this research study are passports, pardons, security clearances, and SINs. All cases directly target individuals such as traveling outside of Canada, obtaining gainful employment, contracting with government, and working in Canada or

receiving government benefits. All cases ‘indirectly’ target businesses including employees traveling, employees being security cleared to contract with government, the hiring of employees, and reporting employees’ payment of taxes to government and contributions to benefit programs.

The four cases are selected based on their variety of attributes for the provision of services and their feasibility of analysis. It will be desirable to compare the cases to establish whether or not there is an attribute that is a contributor as to why some public services have a user fee while others do not. We examine the following attributes relative to the variety of cases:

- Are user fees charged for the public service provided to individuals?
- Are user fees the only source for funding the service?
- Is the organization a separate entity or part of a larger government entity?
- What is the visibility of the service? Are the majority of Canadians aware of it?

We also examine the feasibility of analysis as we are trying to determine whether or not there is a particular attribute(s) which provides a rationale for choosing to finance publicly provided services through user fees. We examine the following attributes relative to the feasibility of analysis:

- Does the organization provide a single service or multiple services?
- What is the enabling legislation?
- What oversight bodies monitor and/or are responsible for the government organization providing the service?

Upon examining the selected case studies, the results should provide results that can be used to link the theoretical framework to practical applications resulting in a contribution of knowledge as to the understanding of the decision-making process in financing public goods and services.

1.4.3 Sources of information

An explanatory method has been chosen for this study as the four cases focus on contemporary, real behavioural events that can be observed through a multiplicity of

methodologies including public records, access-to-information requests and interviews with people who are or were involved with, or privy to, the decision-making process as to why some public services utilize user fees while others do not.

The majority of public documentation is found on the Internet. However, one must look at different government sources for interpretations of the same information as all are presenting the information from the viewpoint of their mandate. Hence, it is important to have an understanding from all actors. For example, the Office of the Auditor General (OAG) has an oversight role versus parliamentary committees whose members are comprised of elected officials from various political parties versus departmental organizations whose members consist of the bureaucracy. Given varied roles each may have a slightly different message that they convey using the same information. Access-to-information requests provide documents from the inner workings of government including emails, meetings, and internal reports thus providing documentation that reveals the how and why of decision-making.

Using multiple sources of information allows us to triangulate evidence and converge on facts as public documentation and access-to-information requests will provide a method of cross-checking and corroborating information gathered from the interviews (Yin 2003; Stake 2005). Conversely, interviews will help to clarify the written word found in public documentation and access-to-information requests and perhaps provide context for gaps in documentation. However, even with the well-meaning intent of corroborating evidence, in reality, data sources such as public records may be limited and/or participants may not necessarily be completely informed, or participants may provide different views of the same event, but by examining as many sources of information as feasible we will further our understanding of the research problem (Wolcott 1990).

1.4.4 Strengths and limitations

We apply the Buchan and Tullock model to six working propositions through four case studies to interpret, analyze and understand what is happening in government in regards to the financing of services through user fees. It is difficult to draw extensive conclusions on political decision-making processes regarding the research question posed from a small sample of case studies but we can describe the area of concern and attempt to explain what is happening. What guides the research is to follow the working propositions, which are derived from the Buchanan and Tullock model, systematically through each case. Overall, what is gained from in-depth analysis by exploring cases is lost in generality (King, Keohane, and Verba 1994).

A cross-sectional analysis of multiple cases is used with the primary focus being the decision-making process involved in deciding whether to finance publicly provided services delivered to individual citizens either through general taxation or user fees in the federal government. Through the use of inferences relating to our area of focus we will be able to analyze and interpret our working propositions by using observations from data collection (King, Keohane, and Verba 1994).

The research design will utilize Mill's Method of Agreement and Method of Difference as by combining these two comparative logics we will have a mechanism to examine the similarities and differences across the four cases (Skocpol 1979; Ragin 1987; Little 1991). Mill's Method of Agreement examines all instances of a phenomenon then through elimination looks for patterns of invariance to identify an attribute which is constant (Ragin 1987). With Mill's Method of Difference the outcome is not the same for all cases and for it we examine all possible attributes that may influence the outcome to search for a pattern in which all but one of the attributes does not systematically vary along with the outcome (Liebersohn 1992). The Method of Difference is utilized through a three phase approach as described by Ragin (1987). Phase One

and Two include applying Mill's Method of Agreement in which we cross-tabulate attributes with the outcome searching for an attribute which is constant. Phase Three is the rejection of competing single explanation attributes through paired comparisons.

In order to increase the reliability of the study, there is a compilation of a case study database so that this researcher, or other researchers, can review the evidence that comprises the case study report in the event that this study is duplicated. The case study database includes: case study notes from interviews, observations and document analysis, a bibliography of case study documents and narratives documenting connections between specific pieces of evidence and pertinent issues in the case study in order to build the case study report (Yin 2003).

By creating a case study database, a chain of evidence will be formed with explicit links between the model and working propositions, data collected, and the conclusions drawn in the resulting case study report (Yin 2003; Rudestam and Newton 2007). A solid chain of evidence will help to increase validity as one will be able to trace research steps from the beginning to the end or from the end to the beginning (Yin 2003).

1.5 Outline of study

The outline for this study includes a literature review, theoretical framework, methodology, overview of user fees, case study descriptions, plus findings and analyses. The literature review in Chapter 2 examines the three main concepts used in this study: public goods and services, public finance and decision-making. We determine that the definition of public goods is it depends on what government chooses to produce or not to produce hence more of a public sector output than a definitive description of a public good. As we conclude that government will produce or provide whatever goods and services it deems appropriate,

government then needs to decide how to finance public goods and services. Financing methods may include general taxation or user fees.

In Chapter 3, we examine the concepts of public goods and services, public finance, and decision-making through the lens of public choice theory to develop the theoretical framework for this study. In Chapter 4, we build our model utilizing Buchanan and Tullock's *The Calculus of Consent* model to develop three actors: government comprised of elected officials and the bureaucracy, citizen-voters and pressure groups. The Buchanan and Tullock model posits that an individual's decisions and actions are driven by self-interest in which the individual expects to maximize his benefits while minimizing his costs whether purchasing a consumer good, voting, or deciding how to finance publicly provided services. In Chapter 5 we apply Buchanan and Tullock's model to the Canadian federal government. Rather than focusing on 'what' government spends funds on, the study focuses on 'how' government generates the revenues to spend.

In Chapter 6, we apply our theoretical framework by developing working propositions related to our three actors: government, citizen-voters and pressure groups. Chapter 7 gives context as we examine the evolution of user fees within the federal government. Chapter 8 provides a description of each case by looking at the various attributes: type of institutional form, financial authority, high visibility by citizens which are related to case variety and single service by organization, enabling legislation, and oversight bodies which are related to feasibility of analysis. In Chapters 7, 8, and 9 we explore the relationships of our actors utilizing the information related to the attributes from our cases outlined in Chapter 8. Chapters 9 and 11 examine the relationships between our three actors. Specifically, we examine the relationship between elected officials, citizen-voters and pressure groups as well as the relationship between

elected officials and the bureaucracy in order to analyze whether or not the relationship between actors is a relevant factor in deciding whether or not to implement user fees for some public services. Chapter 10 examines the legislative environment in which user fees operate in as the environment is complex with numerous pieces of legislation and ensuing policies introduced in government. In Chapter 12, we outline a summary of our results by reviewing what we expected to find with what we actually found to determine if government decides to implement user fees as per the model that we developed in our theoretical framework.

Chapter 2

Literature review

2.0 Introduction

This research study applies Buchanan and Tullock's model to six working propositions. The working propositions revolve around relationships between three actors – government, citizen-voters and pressure groups. How these relationships interface may impact decision-making in regards to how certain public services are financed. Before exploring these ideas in subsequent chapters, it is helpful that we situate the main concepts that are used. The main concepts for this study are defining public goods, the role of public finance, and the abstract concept of decision-making.

It is generally agreed upon that one of the roles of government is to provide public goods and services to citizens; however, there is a debate in the literature as to what constitutes a public good or service. Further there is discussion by scholars that while government may decide what public goods and services are to be provided to citizens, government does not necessarily need to deliver these services as services may be contracted to other service providers. Additionally, one of the primary considerations for government in determining which public goods and services to provide is how these services will be financed. For example, when government provides public services to individual citizens, government may decide that these services should be financed through funding instruments such as user fees rather than through general tax expenditures.

The literature provides that there are three viewpoints in considering public goods and services: an economic view, the publicness of a public good and public goods from a social constructionist viewpoint. Through examining these three viewpoints related to public goods, we determine that for this study we define public goods and services as it depends on what government chooses to provide or not, thus more of a public sector output than a definitive description of public goods and services.

The second concept we examine is public finance. Government's public finance role may be viewed as providing macroeconomic stabilization. In stabilizing the economy, as elected officials who form government control the flow of money, elected officials may use public funds to position themselves favorably with citizens by providing funding or tax incentives through either broad fiscal policies or targeted fiscal policies. In implementing fiscal policies, government has a variety of policy instruments that they may leverage including user fees. Depending on the political statement that government is making, they may decide that rather than financing a public service through general taxation that a user fee may be appropriate.

Our third concept decision-making, is an abstract concept as decision-making is about making choices between options by weighing the pros and cons, resulting in it being difficult to ascertain whether or not government has made the 'right' decision in choosing which public services to provide and how to finance them as the 'rightness' depends how others view the decision. We discuss these three concepts in greater detail in the following sections.

2.1 Public goods

Samuelson (1954) developed a two-fold approach for classifying goods: private consumption goods and collective consumption goods. He defined private goods as those goods that can be divided between individuals in which there is less for one person if another person gets more. Public goods, or what Samuelson called collective consumption goods, can be used by everyone with no one person's usage affecting another person's usage. While Samuelson's definition is known as a standard textbook description (Olson 1971; Loehr and Sandler 1978; Hudson and Jones 2005) that has been used for decades (Holcombe and Sobel 1995), it does have its limitations (Margolis 1955; Tiebout 1956). For example, Margolis (1955) challenges as to how one finds a pure public good such as the often provided example of national defence which when used to defend a certain area of a country's border, means that national defence is

not available, or may be delayed, in attending to other requests for border protection as there is a limited supply of national defence services available. Hence, one person's consumption does indeed impact another person's consumption thus limiting Samuelson's definition; yet national defence is still generally described as a pure public good. There are others (Malkin and Wildavsky 1991; Holcombe 2000) who argue that national defence is not a public good at all but rather more readily defined as the protection of a nation's sovereignty. Hence, we see a debate in the literature on the definition of pure public goods.

According to Tiebout (1956), consumption of a public good goes beyond Samuelson's definition as there are external economies or externalities to consider, such as the benefits that citizens not consuming the public good receive. An illustration of this idea is public housing where not only do the citizens that reside in the units receive a benefit by consuming the public good but also those that live around the building receive a benefit. Depending on circumstances such as whether government is replacing older, run-down units or if the units are being built in an established neighbourhood that has not previously had public housing, this could be seen as a positive or negative 'benefit' depending on whether the neighbourhood is seen as better off with public housing or not. Evans (1970) associates public goods to the publicness of the good by describing it through the degree of externality, or the amount of benefit those receive who did not pay for the good.

The 'benefit received' idea links to the notion of overall social benefit whereas if a greater net social benefit is realized by government production of a good then the good should be categorized as a public good (Peck 1925). Net social benefit relates to Tiebout's (1956, 417) definition of a public good as "one which should be produced, but for which there is no feasible method of charging the consumers." The phrase 'should be produced' begs the question of how

does government know what public goods ‘should be produced.’ Tiebout (1956) puts forth the argument that to understand what goods ‘should be produced’ requires citizens to voice their preferences but he says, this is not rational as most citizens will understate their preferences in order to benefit from the good without contributing to it through taxes. The ‘should be produced’ argument is furthered by Musgrave (1959) with his description of public goods as satisfying public wants thus requiring public production. However, he goes on to say that not all public wants are necessarily satisfied by the production of public goods but can also be satisfied by government purchasing private sector goods to fill these needs. In both cases, he argues, these mixed service goods “can be made available to the consumer free of charge but paid for by taxes” (Musgrave 1959, 43).

Musgrave (1959) argues, that the nonexclusion principle of a good is based on the demand for the goods, not the supply. As noted by Loehr and Sandler (1978, 12), a public good once produced, “is either impossible or prohibitively costly to exclude any member or group of members in the community from consuming it. For instance, a community member can consume a pure public good despite the fact that the member has not contributed to its cost of production.” According to Buchanan (1999a) a public good is about the degree of indivisibility or the non-exclusion in consumption.

In considering these arguments, we see that the definition of public goods is unclear and has several considerations whether it is from an economists view, the publicness of a public good, or public goods from a social constructionist viewpoint.

2.1.1 Economic view of public goods

While there has been debate in the literature about how to define public goods, over the decades a consensus has developed among economists (Peston 1972; Hudson and Jones 2005) as to how public and private goods are classified and defined:

- Pure public goods - non-rivalrous and non-excludable,
- Common goods or common pool resources – rivalrous and non-excludable,
- Club goods - non-rivalrous and excludable, and
- Private goods - rivalrous and excludable.

Before going further we need to understand what do these terms generally mean. A non-rivalrous consumption good, similarly known as a collective consumption good or jointness in consumption good, is defined by economists as one person's consumption of the good does not affect the quantity available for others resulting in there being enough of the good for everyone who wishes to benefit from it (Olson 1971; Holcombe 2000; Hudson and Jones 2005). A rivalrous consumption good, on the other hand, is defined as the consumption of the good benefits only the person that consumed it (Malkin and Wildavsky 1991). An example of a non-rivalrous good is a radio broadcast, while an example of a rivalrous good is a loaf of bread. In the first example, one person can listen to a radio broadcast without impacting someone else's listening consumption, while in the second example, only the person that consumes the loaf of bread benefits from it.

Non-excludable, or non-price exclusive, means that once the good is produced, people can consume the good whether they paid for it or not (Malkin and Wildavsky 1991; Hudson and Jones 2005). A consequence of a good being non-excludable, is that since people can consume the good without paying for it, it creates an externality (Bird and Tsiopoulos 1997a; Holcombe 2000). An externality is also known as a free-rider problem, neighborhood effect, external effect, social effect, or a spillover effect (Peston 1972; Loehr and Sandler 1978; Fuest and Kolmar 2007). An example of an externality is public roads in which one level of government as in the Government of Ontario may fund the building of the roads but those from other jurisdictions can use the roads without cost, such as people who reside in Manitoba and cross the provincial border. An externality can be positive such as the road example, or negative such as the pollution

created from the production of a good. Conversely, the term excludable means that people who have not paid for the good cannot use it and are denied access to it (Malkin and Wildavsky 1991).

Even with the above definitions to classify goods, a good does not necessarily clearly fall into one classification or the other but rather it can depend on the circumstances at a particular place and time that the good is found in plus the perception of the analyst doing the classification (Peston 1972; Hudson and Jones 2005). For example, as a road with free access becomes congested, it can be categorized as rivalrous and non-excludable thus a common good but when it is uncongested it may be categorized as non-rivalrous and excludable hence a club good (Peston 1972). Thus, we have the same road but categorized differently depending on circumstances. Of course, one may also categorize a road as rivalrous and excludable which would be a private good if one were to charge a fee for using the road.

Some scholars (Margolis 1955; Malkin and Wildavsky 1991; Holcombe 2000; Hudson and Jones 2005) make nuances about whether or not there are truly pure public goods with the argument that no goods are non-rivalrous and non-excludable as the congestion factor alters the concept of goods. Whether it is public schools, hospitals, or the justice system, all generally defined as non-rivalrous and non-excludable goods, there is only a finite amount of the good available. Initially there may be enough of the good for all to access, but if the population increases, which increases the demand for the good, a situation may arise that there is no longer enough of the good available for all. Conversely, if the population decreases, the government may find that it has too much of the good available making it an inefficient use of tax dollars. While one could argue, and rightly so, that government can increase or decrease the amount of the good available by building more schools or closing them as the situation may warrant, this

takes time with the result being that the good is not available to all in a timely manner thus not a pure public good. The other nuance is that if government increases and decreases the availability of goods depending upon demand, this moves the argument away from being a pure public good along the continuum towards more of a private good with a supply and demand function. This argument of schools, hospitals, and law protection services being similar to a private good is hardly a stretch of the imagination as one can easily find private schools, private medical facilities, and private law protection services with users paying for these services.

Additionally there is a question of whether or not there are pure private goods which are generally defined as rivalrous and excludable. Private goods are not necessarily purely rivalrous as one person consuming a good may bring happiness to another person ensuing in an externality or spillover effect of the good's consumption resulting in private and public goods both having characteristics of rivalrous and non-rivalrous (Malkin and Wildavsky 1991). Also a private good may be non-excludable such as when government decides to build a pool so that everyone can enjoy swimming versus the private production of the pool which is considered excludable when admission is charged (Malkin and Wildavsky 1991). Hence we see that public goods such as television broadcasting can be provided by private markets and private goods such as education, water, hydro, postal services can be provided by a level of government which means that there is nothing technical about these goods which makes them strictly public or private (Malkin and Wildavsky 1991; Hirshleifer and Sproul 1988).

Using the system described above for the classification of public goods as developed by economists brings forth the realization that there is no objective way to discern between a public good and a private good with most goods falling somewhere between a pure public good and a pure private good (Loehr and Sandler 1978; Malkin and Wildavsky 1991).

2.1.2 Publicness of public goods

The argument over public goods is not simply the term but rather the solidity and weight that the usage is afforded when referring to public goods as if there are markings on a good that makes it distinctly public or private (Malkin and Wildavsky 1991). Economists' classifications of public goods rely on the technical properties of goods whereas in reality these properties are ambiguous (Margolis 1955; Malkin and Wildavsky 1991). Publicness defined as the "quantification of the extent to which provision of a good has public good attributes" (Wyckoff 1983, 331) such as non-rivalness and non-excludability, may mean that a good has a high level of publicness but it does not mean that the good should necessarily be provided by a government organization. Hence public goods theory, as developed by economists, does not mean public sector production as many goods and services produced by the public sector are not classified as public goods; plus the private sector has been successful in producing public goods (Malkin and Wildavsky 1991; Holcombe 2000).

The amount of public or private activity in the production of goods and services cannot be computed mathematically, but rather it depends upon decisions made within the political, social and economic environment (Peck 1925). While the economic classification is limited in defining public goods, economists' empirical analysis does provide a mechanism to neutrally interpret the choices governments make in providing public goods. Without necessarily providing the appropriate amount of public or private activity, empirical analysis is one tool used to aid policy makers in decisions affecting the involvement of government in the production of goods and services hence supporting political leaders in their development of legislation (Samuelson 1955; Wyckoff 1983).

Political leaders, as elected officials, are interested in voters' perceptions of public goods versus private goods. If political candidates are elected to serve the needs of their constituents,

then they might want to ensure that voters' wants and needs are heard and perhaps, acted on. Looking again at the economic concept of externalities, where those who have not paid for a public good can benefit from a public good, and the concept that voters are self-interested individuals, voters are more likely to voice public interest for proposing that a public good be provided by government that voters have a self-interest in consuming (Hudson and Jones 2005). The reason for suggesting the provision of the public good is that individuals are expecting to contribute less in costs in consuming the good than if the good was provided as a private good, as individuals may be able to benefit from the externality effect (Hudson and Jones 2005; Ellingsen and Paltseva 2012). Therefore, from a political perspective, it is important that political candidates understand that what appears to be voters' public interest in public goods may actually be related to voters' self-interest, and for government to provide or not to provide said good may impact electoral results.

The relevance of understanding voters' preferences from a public interest versus self-interest perspective may become clearer by looking at empirical analysis done by Holcombe and Sobel (1995). These scholars determined the publicness of legislation by modeling that if legislation benefits the entire population it is a public good but if legislation only benefits special interest groups it is a private good. The rationale behind using this approach, they say, is that the public goods model is used extensively for rationalizing government production of a particular good; in this case legislation. They concluded that legislation does not constitute a public good as most legislation revolves around special interests or self-interest. Their study is interesting as a primary function of political leaders is to create legislation to 'serve the people' and while politicians may construe that legislation is in the public interest, Holcombe and Sobel (1995) make the case that legislation may actually be serving the self-interest of certain groups, hence a

private good. Thus from a political perspective, we see that economic modeling has a role to play in the understanding of providing public goods versus private goods but again, does not help define what should be considered a public good versus a private good.

From a public administration perspective, delivering goods that have been deemed public by statute does not mean the government must deliver the good. An alternative method includes subsidizing the production of the good to encourage private production thus satisfying the political decision to provide the good without drawing on public sector resources (Peston 1972). Another delivery method is to deem the purchase of the good compulsory hence creating a set demand for the good causing government being able to determine an efficient resourcing model to deliver the public good (Peston 1972). A further method of providing public goods might see private markets produce the good but have government regulate the delivery. While economists' definition of public goods is limited, economists' empirical analysis related to public goods can be used to model each of these methods to provide public administrators with data to make informed decisions regarding public sector output versus the provision of public goods by other means (Holcombe 2000).

Once policy decisions have been made to decide which goods and services government should provide, how does one know how much is required? How does one attempt to ensure some sort of efficiency in production? If one of government's objectives is to provide public goods that citizens want then there should be a way of calculating and adapting citizens preferences into a supply and demand model (Tiebout 1956). Beyond the idea that citizens may attempt to free-ride by under declaring their preferences, one would also need to consider that citizens are mobile and may travel between cities, provinces, or countries thus can relocate either to an area that has a mixture of goods and services that are more aligned with their preferences so

are willing to pay for or move away from an area when they deem to no longer consider the cost of the goods and services worthy to satisfy their preferences (Tiebout 1956).

The notion that citizens ‘vote with their feet’ has attracted considerable attention with criticisms that citizens are not perfectly mobile nor are they able to gather complete information on public service benefits/tax packages for other jurisdictions to understand how the packages compare to their current residence (Teske et al. 1993). There is also a high probability that even if this information was available that this is not necessarily a motivating factor in considering whether or not to relocate, with changes in employment or life circumstances having more of an impact on area of residence than the mixture of public goods and services available (Teske et al. 1993). Tullock (1971) argues that an individual’s impact on a community has an additional consideration beyond his private concern of what goods and services he will partake of, and that is the impact that his vote will have on political decision-makers’ power to increase or decrease goods and services. Hence, governments can use this type of political vote-getting to strategically determine services to be provided and the appropriate funding model (Teske et al. 1993).

A further consideration in producing public goods to fulfill citizens’ preferences is that some citizens will become more informed about what their actual needs are but the average citizen will not as this takes time and the government may be producing the good anyways (Teske et al. 1993). The outcome may be that government overproduces the good in order to satisfy an anticipated demand which then becomes an inefficient use of resources and taxpayers’ dollars. Conversely, if the private market was to produce the public good, citizens would be forced to reveal their preferences in order for the private market to produce enough of the good to satisfy demands thus providing for a more efficient use of resources (Holcombe 1997).

Public goods theory is touted as being a theory about public expenditure but it is found lacking as the failure of the private sector market to meet the test of resource allocation does not mean that the government could provide the good any more efficiently than the private sector (Buchanan 1975) therefore market failure is not a reason for government to produce public goods, though it may be a reason for government to regulate. Public goods theory does not suggest that government production is required or desirable as what most governments produce are not considered public goods as defined by economists. Head and Shoup (1969) argue that in regards to market efficiency, if a good or service can be provided in either private markets or the public sector, the good is a public good if it can be more efficiently delivered as understood in welfare terms by the public sector. The public goods theory viewpoint is favourable to people who have a perspective that all citizens should have access to the same benefits, and with the same view that economists provide with certain goods ‘naturally’ being public, the goods inarguably become public (Malkin and Wildavsky 1991).

2.1.3 Public goods from a social constructionist viewpoint

As previously mentioned, some scholars (Samuelson 1954; Boadway and Keen 1993; Metcalf and Park 2007; Dollery and Wallis 2008) use economic analysis to differentiate between public and private goods. Others (Malkin and Wildavsky 1991; Holcombe 1997) argue that governments do not produce public goods and services that meet economists’ view of public goods but rather that decisions are made to produce such goods and services that are socially constructed by considering the values of society. According to Malkin and Wildavsky (1991), if we remove the assumption that there are criteria to differentiate between public and private goods as an economic view, we can then turn to the notion that society can draw the boundaries around which goods government might provide hence a social constructionist viewpoint.

The idea of social constructionism, as developed by Berger and Luckmann (1967), was created from the realization that persons, as part of a group, contrive an understanding of one another's mental representations of actions that eventually form, through habitation, part of the comprehension of roles. They found that the understanding of roles becomes institutionalized thus embedding meaning into the reality of society hence developing into what is termed as being socially constructed. In order to comprehend the mental representations of individuals' actions, language is used to conceptualize how the meanings of everyday life makes sense to each individual (Berger and Luckmann 1967). To achieve harmony in society, individuals need to not only be aware of their preferences derived from their own interests (Wildavsky 1987), but be cognizant of the preferences of others too (Rorty 1991). Harmony can be achieved through language during social interactions with shared meanings of events, resulting in shared values that form cultures (Wildavsky 1987, 5). When social interactions and shared values are acknowledged and understood by other members of society or other cultures through repeated interactions (Wildavsky 1993), they become institutionalized (Feldman 1998). Social interactions of preferences, or what can be described as a social value system, are then integrated forming a dominate pattern that directionally points to where society is heading or society's preferences (Parsons 2003).

However, in a large society there can be an overall value system for what society believes in as a whole, and also secondary value systems of different collectives at different levels which can create conflicting preferences (Parsons 2003). According to Wildavsky (1987), these conflicting preferences are a part of what forms a culture's identity and in order to achieve harmony in society, cultural identity conflicts need to be moderated. Cultural identity conflicts, they argue, brings forth the idea of a power struggle among non-aligned cultures that work

towards creating a society that is socially constructed towards their preferences or cultural identity. Additionally, given the complexity of individuals may mean that each person can have more than one cultural identity, such as religious and political, and it is these different cultural identities that can make it challenging to determine how we fit together as a society (Wildavsky 1987). Thus establishing harmony in society becomes a balancing act, not only between groups of people who make up different cultural groups and overall society, but individuals, who must determine their own order of preferences to achieve an unproblematic society that is socially constructed.

Hence through a social constructionist lens, we may be able to determine what is a private good and a public good by considering society's preferences but it does not mean that we can make a distinction that will alter the market economy (Malkin and Wildavsky 1991). Determining the distinction between public and private goods simply means that society can make a choice about what goods should be provided publicly, which economic theory is unable to do though economic theory can determine the efficiency of the societal choice (Malkin and Wildavsky 1991).

While the idea of deciding which goods government should produce based on voters' preferences sounds like a straightforward solution, it is not. Samuelson (1954, 387) in his initial assumptions in developing his theory on public goods, stated that "each individual has a consistent set of ordinal preferences with respect to his consumption of all goods (collective plus private)." He goes on to say that if society wants to make ethical judgements about the redistribution of wealth that this is not a "scientific task of the economist to deduce the form of this function; (as) this can have as many forms as there are possible ethical views" (Samuelson 1954, 387). Not only did Samuelson realize that individuals' preferences may not be consistent,

as he states that in constructing his model he assumes consistency, thus difficult to predict for economic modeling purposes, but that the notion of redistribution can have altering effects to ‘simple’ economic equations. In other words, preferences and redistribution are both wild cards that do not remain constant making it difficult for government to make decisions that meet citizens’ needs and preferences. Malkin and Wildavsky (1991) contribute that the notion of societal values versus technical, economic concepts is a part of what contrives social decision-making in which distinctions are socially defined; distinctions are stable for periods of time but not forever, altering what is considered public and private. Accordingly, governments must use interpretations or intuition to make sense of the different, constructed realities from the imperfect, changing information at hand to make decisions regarding which public goods to provide resulting in policy making by trial and error (Linder and Peters 1984; Miller 2011).

Public goods, with its technical properties and definitional limitations plus the impossibility of deciding which goods should be financed by government without considering values, leaves us with “it depends on what society decides to do” (Malkin and Wildavsky 1991, 372). Whichever propositions and recommendations are decided upon, “welfare economists must draw on the ethics of the society for which they are intended. Once it is conceded that welfare economics is founded on ethics, not utility, simplifications follow as a matter of course” (Mishan 1972, 976) and provides a somewhat easier answer for deciding on what public goods and services government will provide.

The definition of public goods for this study is it depends on what government chooses to produce or not to produce, hence more of a public sector output than a definitive description of a public good. The term ‘government chooses to produce’ does not necessarily mean government will fully produce the good, as government may also use alternative service delivery models

including subsidizing or regulating the production of a ‘public good.’ Thus, as we have determined that government will produce or provide whatever goods and services it deems appropriate, we now turn to how government chooses to finance public goods and services.

2.2 Public Finance

Many countries today live in a mixed economic system with private firms producing much of a nation’s output and consumers and investors purchasing the output (Musgrave 1959). Government’s involvement includes purchasing private production outputs to satisfy public wants, investing in private production which may include tax subsidies, creating fiscal policies that impact the market economy, levying various taxes, and regulation; all of which affect private production of outputs (Musgrave 1959) resulting in a modern ‘capitalist’ economy or mixed economy with the private sector and public sector being entwined (Musgrave, Musgrave, and Bird 1987). Governments’ roles in the economy are primarily achieved, not including regulation, through public finance which is the balancing of public revenues and expenditures in three areas: macroeconomic stabilization, the efficient allocation of resources to satisfy public wants, and the redistribution of wealth within a nation (Musgrave 1959; Oates 1994; Schick 2001; Good 2008; Stanford 2013).

Public finance can be viewed from an economic, political, and public administration perspective. From an economic perspective, government’s public finance role in macroeconomic stabilization can help to reduce the economic burden of taxation in times of fiscal surplus (Bibbee 2008), in addition to propping up the economy in times of fiscal instability, such as recessions, by injecting funding into the economy. Macroeconomic stabilization becomes a balancing act in a free market society as businesses seek to operate without government involvement. However, in a weakened global economy such as we saw beginning in the fall of

2008, at times government needs to implement measures to promote economic growth (OECD 2010) so that the market economy can move to once again, operate with limited government involvement. While governments may inject monies as required to stimulate the economy and get the economy functioning relatively freely, the aftermath is that government must again adjust its fiscal policies to deal with fiscal deficits that may have been incurred during recessionary times; dealing with fiscal deficits may require spending restraints or tax increases (OECD 2010). The point being made is that there is a delicate balance between the market economy and government's role, and government needs to be cognizant of how much (and when) intervention is required to only 'tweak' the economy by adapting public policy to guide, correct, and supplement the market economy as required (Musgrave, Musgrave, and Bird 1987). Government involvement in this sense is as a 'financial supporter' of the private sector in difficult times. Government also has other roles in the market economy such as a purchaser of private goods which is done on an as-required basis to address public sector needs.

From a political perspective, as elected officials control the inflow and outflow of monies contained in the public purse through various fiscal policies, elected officials thrive on the power that is provided them as members of the governing party (Tellier 2009). Hence prior to an election, one may see a decrease in public revenues as politicians begin to develop their platform by providing incentives, such as lower tax rates which benefits most citizens, in order to woo voters to cast their vote for the current governing party (Tellier 2009). Referring back to the previous section on public goods and understanding voters' preferences from a public interest versus self-interest perspective, it was stated that broad fiscal policies that benefit all voters is a public good while targeted fiscal policies that benefit only a segment of the population is a private good (Holcombe and Sobel 1995). Thus, in order to have the most impact from an

electoral perspective, elected officials may want to implement broad fiscal policies such as lower tax rates in order to reach the majority of voters and hopefully, win their vote so that the governing party can once again have the power to control the public purse.

From a public administration perspective, while the private sector is responsible for a single bottom-line, the public sector is responsible for a multiple bottom-line as government must manage funds within budget constraints in addition to achieving policy outcomes resulting in a complex environment with competing pressures (Graham 2007). Add into this environment the demand for accountability and transparency from various stakeholders such as citizens, special interest groups, and government oversight bodies, and one sees that the public sector may be a more complicated setting to operate in than the private sector (Miller 2011). Additionally, public administrators must keep in mind that they do not own any of the resources they have authority over, those that pay taxes ‘own’ these resources, resulting in the need for public administrators to be transparent and accountable for these resources (Graham 2007).

Accordingly, we see that public finance has implications from an economic, political, and public administration perspective with the balancing of public revenues and expenditures to support a vibrant economy and providing for public wants.

2.2.1 Allocation of resources

In understanding public finance, the term ‘balancing of public revenues and expenditures’ is applied loosely as government has the ability to incur debt in the event that they choose to spend more than is received in revenues through the budgeting process (Buchanan 1989; Graham 2007). The notion of budgeting is to balance between revenues and expenditures through some type of decision-making process (Rubin 2014, 2). If government decides to balance the budget with revenues equaling expenditures then they may look at ways to increase revenues such as increasing taxes or fees for services in order to expand their capacity to satisfy more public wants

from public spending (Buchanan 1989; Graham 2007). As there is rarely a shortage of public wants, it is the role of government to determine the ‘right’ public wants to carry out based on voters’ preferences (Musgrave 1959; Stanford 2013). While this appears straight forward, it is not. Rarely are governments able to satisfy all public wants as there is an unlimited list of what voters’ desire from government for instance public healthcare, public daycare, and public transportation. Government may attempt to shorten the list by understanding voters’ preferences for services but this too is challenging as voters may fail to show their true preferences in order to benefit from a good or service that they have not paid for making it difficult to align public expenditures with voters’ preferences (Musgrave 1959; Loehr and Sandler 1978; Musgrave, Musgrave, and Bird 1987).

As one of government’s objectives is to efficiently allocate resources to satisfy public wants, understanding voters’ preferences for public goods and services is important (Tiebout 1956; Musgrave, Musgrave, and Bird 1987). Voters, on the other hand, are assumed to estimate the amount of goods or services (benefits) that they receive from their share of taxes (costs) and will vote positively for any electoral promise where the benefits outweigh the costs (Martinez-Vazquez 1981). Thus, we see that it is not necessarily in voters’ best interest to make their true preferences known as government is apt to tax them accordingly. Hence we have voters not making their true preferences known to government and government trying to implement an appropriate tax structure to meet voters’ preferences operating independently of one another and only being randomly connected (Cohen, March, and Olsen 1972).

Moving away from using voters’ preferences for determining revenues and expenditures for the allocation of resources, government may want to look at voters’ perception of the publicness of a public good to aid in allocation of resources (Hudson and Jones 2005). Hudson

and Jones (2005) determined that for pure public goods, citizens' preference for government provision is the same for both a public interest perception and a self-interest perception. They further found that the less citizens perceived the publicness of a public good, the greater the gap between public interest and self-interest in the consumption of the good, hence citizens were more ambivalent towards government provision of the good. To be clear, it is voters' perception of the publicness of the good that we speak about here, not an economic definition, and since voters pay taxes to generate government revenues to expend on goods and services perhaps voters' perception of publicness may be how government should decide on the financing of goods to satisfy public wants.

2.2.2 Redistribution of wealth

In 1848, John Stuart Mill wrote "should the same percentage be levied on all amounts of income" (Mill 1965). The notion of redistribution of wealth, the burden of paying, helping the disadvantaged, has been a topic of discussion by scholars (Musgrave 1959; Mishan 1972; Lindbeck 1985; Holcombe 1997) over the years.

Scholars (Lindbeck 1985; Holcombe 1997; Kirchler 2007) refer to three explanations as to why people are motivated to have broad-based redistribution policies. One explanation is selflessness with people wanting to be charitable to assist those that are disadvantaged in society. Another explanation relates to one of enlightened self-interest where the taxpayer may be affected by externalities for instance renovating or building new low income housing that is in the taxpayer's neighbourhood. A third explanation is narrow self-interest or the idea of how does the individual benefit in a future state such as employment insurance or a public pension. Narrow self-interest has been found to be the strongest motivator for redistribution policies for voters and politicians, both whom wield political power. Hence, the notion of redistribution of wealth has

similar attributes as the allocation of resources in that it is a matter of narrow self-interest which captures voters' preferences even if voters are reluctant to make their preferences known.

Redistribution policies can be categorized into four areas: broad horizontal redistributions, life-cycle and insurance-type redistribution for given individuals, vertical redistributions to specifically alter the size distribution of wealth or economic welfare, and fragmented horizontal redistribution among self-interest groups (Lindbeck 1985, 309-310). Lindbeck (1985) finds that of the four target areas, fragmented horizontal redistribution has become the most important target of redistribution policies as political leaders attempt to draw voters' confidence by appealing to narrow self-interests. One may also conclude that voters may not necessarily identify with the first three target areas as readily as they do with fragmented horizontal redistribution targets as voters may believe government has little maneuvering room in these three areas. There is little maneuvering room as these three areas are more universally provided to all citizens rather than to benefit the narrow self-interests of the fragmented horizontal redistribution targets.

Decisions revolving around horizontal equity may be difficult as government must consider adequacy, collectability, and transparency in implementing tax policies (Musgrave and Musgrave 1984; Hale 2002; Miller 2011). Even once horizontal equity decisions have been made, government still needs to consider vertical equities: the treating of unequals unequally or the ability-to-pay principle (Hale 2002; Miller 2011). The ability-to-pay principle requires the "equal treatment of persons possessing the same capacity to pay taxes" (Ontario Committee on Taxation 1967, 11) or phrasing it in a different way, higher earning individuals paying more in taxes than lower earning individuals resulting in a progressive tax system with redistributive

attributes. A consideration of allocating resources and redistributing wealth among citizens is a role different levels of government assume within a federal state.

2.2.3 Fiscal federalism

From a political perspective, federalism is a division of power between a national government and sub-national governments by way of a written constitution that decentralizes power providing each with independent decision-making authorities while operating within a coordinated framework versus a higher level of government delegating decision-making to a lower level (Wheare 1946; Oates 1994; Anderson 2010). From an economic perspective, federalism is represented by a national government and sub-national governments in which the national government is primarily responsible for macroeconomic stabilization, the redistribution of income, and the provision of public goods and services that benefit all citizens; while a sub-national government's primary responsibility is to provide public goods and services that meet the demands of citizens within its geographical area (Musgrave, Musgrave, and Bird 1987; Oates 1994). Fiscal federalism is about examining the roles, responsibilities, and interaction between a national government and sub-national governments as it relates to raising, borrowing, and spending of revenues (Anderson 2010).

Canada is a federal state with a national government, provincial and territorial governments, municipal and local governments, and First Nations self-government, with each having specific powers and responsibilities in relation to taxation and spending (Smith 2004; Tellier 2009). While all levels of government expend funds to provide public services to citizens, the ability to generate revenues through taxation, primarily lies with the federal government creating what some call a fiscal imbalance (Graham 2007; Tellier 2009). Is this a reality?

While the federal government does have certain expenditure requirements, its revenue collection far exceeds its expenditures (Graham 2007; Boadway 2013). Provinces, while having

a similar capacity to generate revenues through taxation, experience increasing pressures on expenditures from the rising costs in healthcare and education due to, among other factors, a demographic shift in population (Tellier 2009; Boadway 2013). While the federal government provides various transfer payments to the provinces for education, healthcare etc. to assist with offsetting increased expenditures and to ensure comparable levels of services across provinces in accordance with the Constitution, the result is that the federal government is perceived as having the upper hand in regards to power and decision-making as they control the purse strings (Bibbee 2008; Boadway 2013). However, both the federal government with the exception of provincial property taxes, and provincial governments with the exception of customs duties or that which interferes with trade, can levy almost any tax deemed necessary with the ability to tax income, consumption, and wealth (Musgrave, Musgrave, and Bird 1987). Lee (2007, 14) argues that provinces, by reducing income tax rates over the years, have been the “architects of their own fiscal problems.”

In regards to fiscal federalism, one may need to consider too shifting equalization payments paid to various provinces to level the playing field between what is known as the ‘have’ and the ‘have not’ provinces to get a sense of whether or not there is a fiscal imbalance (Musgrave, Musgrave, and Bird 1987; Hale 2006; Alberta Royalty Review Panel 2007; Boadway and Tremblay 2010; Boadway 2013). Here again there can be a shift in revenue base as experienced by Ontario, which had been considered a ‘have’ province since the introduction of equalization payments in 1957, beginning to receive equalization payments of \$347 million in 2009 and growing to \$2.2 billion in 2011, due to either a shift in economic fortunes or the calculation formula as there is a debate on the whys and wherefores of this shift (Greenberg 2011). While perceived wealthy Ontarians may feel chagrined at receiving these equalization

payments, it is unlikely that the Ontario government will turn down these payments as expenditures continue to rise. This brings into the mix the reliance that provinces may have on transfer payments as a source of revenue.

This reliance became more pronounced with the federal government's announcement in December 2011 that it will be altering the method used to calculate healthcare transfers to be aligned with economic growth rather than traditional methods resulting in a significant decrease in revenues for some provinces (Shaw and Spalding 2011). Whether or not there is truly a fiscal imbalance within Canada is beyond the scope of this paper, with the relevancy of the discussion here being that federal and provincial governments can both generate revenues through various means to fund the provision of goods and services but they need to be cognizant that the revenue base can shift depending upon various circumstances. Instead of relying on a shifting revenue base perhaps governments need to consider alternative means of funding for the provision of goods and services based on an efficiency model rather than through general taxation and transfer payment revenues.

Municipal and local governments in Canada generally only have the ability to tax real property to generate revenues as authorized by the province (Musgrave, Musgrave, and Bird 1987). As municipalities only have one method to tax, they must look to other means for generating revenues to pay for goods and services which may result in a dependency on the federal and provincial governments for financing. Looking at a Canadian example in which federal and provincial governments provide funds to municipalities for specific purposes means that higher levels of government control the priorities of municipalities or in other words, municipalities become dependent on senior levels of government for financing (Ridler 1984). Municipal governments' reliance on funding may impact their ability to focus on policy-making

as they are constantly trying to problem-solve as to how to shape their priorities to match available funding or granting offered by senior governments versus other priorities of their municipality (Ridler 1984). Relying upon the available funding programs may mean that local governments are not necessarily providing the right mix of public goods and services as preferred by local citizens. Limited revenue sources may be one reason that municipalities implement user fees for many services more so than other levels of government; with the other reason being that local governments can more easily target the individual preferences of their local citizens so can charge accordingly (Bowlby, MacDonald, and Gilbert 2001).

Unlike a national government, which has no direct way of making citizens reveal their preferences for pure public goods and services as all citizens consume whatever units of a national public good that is provided, sub-national governments can determine citizens preferences (Oates 1994). Sub-national governments can determine citizens' preferences as citizens are mobile and can choose which pure public goods they would like to consume thus pay for through taxes by selecting the region that they reside in, which becomes similar to the notion of a private market in which consumers choose the products they wish to pay for (Oates 1994). In a country like Canada where sub-national governments may govern a large number of people, understanding or responding to citizens' preferences may be more limited due to the density of population in large urban areas with a larger proportion of provincial revenues targeted to larger centres. For example, the Ontario government offers various incentive programs for regional centres to build or update transportation systems but the funding for these programs is based on per capita which freezes out or limits the amount of funds available for rural areas (O'Leary 2009).

As mentioned previously, we need to ask ourselves is the notion of citizens moving to a different province to benefit from goods and services a reality or simply theoretical? It appears unlikely that people would move because of the public goods and services offered in a particular sub-national government as this may mean changing employers, moving away from extended family etc. If one was to consider this from a country perspective then there is more likelihood of mobility as individuals may want to immigrate to a country that has more enhanced public services such as ‘free’ healthcare than in their home country. Again even deciding to migrate, one would need to think about employment and movement away from family.

This discussion on fiscal federalism leads us to the overall concept of public funding and how governments, in particular the federal government, determine revenue needs for the provision of public goods and services to citizens.

2.2.4 Public funding

The roadmap for public funding is guided through the government’s budgetary process in which government determines how to address the various needs of citizens. Working through the budgetary process government must determine how to realize a socially acceptable distribution of public expenditures that will satisfy the social values of their constituents (Margolis 1955). In providing public goods and services, governments need to consider opportunity cost since if resources are used to satisfy certain public wants, these resources will not be available to satisfy other public wants (Musgrave 1959). Resources include people, time, attention, focus, capacity, and most importantly, money which may impact the quantity of the other resources (Graham 2007). Thus given that public revenues may be limited to finance the supply of goods and services, governments may need to rely on other methods of funding.

In setting policy objectives related to redistribution policies and allocation of resources, governments need to decide on ‘who gets what’ which revolves around the notion of fairness or

equity of welfare based on horizontal and vertical equity with those that have a higher level of welfare paying more taxes than those with a lower level of welfare according to the ability-to-pay principle discussed above (Musgrave 1959; Musgrave, Musgrave, and Bird 1987; Library of Parliament 2005; Mackenzie 2013). Steinmo (1993) contributes that it is difficult for government to determine ‘who gets what’ and ‘who pays,’ as a modern tax system can be complex with a mix of payments and benefits for each individual depending on a number of overlapping attributes.

Besides a complex tax system to consider, the policy goal to be achieved is relative to how government perceives a problem as it relates to income redistribution or allocation of resources (Pal 1997). If the problem is not well understood then the solution or goal implemented may not provide the corrective measures that government seeks. When making decisions on funding redistribution policies government might want to conduct incidence analyses to determine the socio-economic impact on various groups (Duff 2004). Such as for vertical redistribution policies governments may want to consider income dependent transfers that are directed towards lower-income brackets to also include a portion of middle-income brackets (Lindbeck 1985) in order to reduce mimicking by individuals in middle-income brackets (Boadway and Keen 1993). This type of policy decision encourages those in a middle-income bracket to continue to pursue a higher standard of living as they are not tempted to regress to a lower-income level in order to benefit from income dependent transfers.

In funding redistribution policies and allocation of resources, governments typically use the notion of general fund financing with all revenues going into one public purse and all expenditures being taken from the public purse versus other methods such as earmarked accounts for specific activities (Bird and Tsiopoulos 1997a). Through parliamentary approval general fund

financing permits government to control and expend funds transparently on democratic imperatives (Good 2008). A concern with general fund financing is that the entity collecting the revenue may not be the same entity redistributing or allocating resources resulting in there being no linkage between revenues generated to any level of expenditure on a specific resource (Bird and Tsiopoulos 1997a). This means that determining whether or not redistribution policies and allocation of resources are provided in keeping with the intention of the policy is likely not possible or limited at best.

A further consideration in redistribution policies and allocation of resources is which level of government should perform the given function. While national government tends to be the main body that collects revenues from taxpayers' income with some also collected at the provincial level, which are then used to fund redistribution policies and transfer payments, local governments are generally more aware of resident needs so may be in a better position to allocate resources (Pauly 1973). However unless funding the allocation of resources is primarily done through transfer payments or a lump-sum subsidy, local governments need to be cautious in providing the appropriate balance of resource allocation and redistribution (Pauly 1973; Oates 1994). Local governments do not want to alienate higher-income taxpayers which could lead to out-migration and in-migration of lower-income individuals who would like to benefit from the resources provided, negating the desired effect of redistribution (Pauly 1973; Oates 1994).

From a public goods perspective, redistribution policies which are the largest expenditure by governments are pure private goods not pure public goods as once revenues have been allocated to one form of redistribution policies revenues are no longer available for other redistribution policies (Lindbeck 1985; Holcombe 1997, 2000). Therefore, the major output of government, that of redistribution, is not a public good (Holcombe 1997). As previously stated,

we define public goods as it depends on what government chooses to produce or not to produce. In other words, how government may decide to expend finite resources through redistributive policies. Further, one must remember that whatever redistribution policies are implemented, there is only one public purse and when money has been allocated to a particular redistribution policy it means that money may not be available for other policies depending on how government chooses to finance the redistribution policy.

2.2.5 Policy instruments

As there is no shortage of public wants to lay claims on government resources, governments need to consider how to generate revenues in order to finance public wants when setting policy objectives. To fulfill policy objectives, governments use various policy instruments. Selecting a policy instrument is but one step in the policy cycle (Bridgman and Davis 2003). By policy instruments, we mean the strategies and resources or technical means that governments use to achieve a desired policy objective or goal *vis-à-vis* target populations (Pal 1997; Howlett and Ramesh 2003; Harman 2005; Althaus, Bridgman, and Davis 2007). Althaus, Bridgman, and Davis (2007) provide criteria for the selection of suitable policy instruments for particular circumstances including appropriateness, efficiency, effectiveness, equity and workability.

Policy instruments may be linked to financial incentives to discourage or encourage a particular behavior, regulatory regimes, or the delivery of specific goods and services through government-owned enterprises (Lowi 1972; Baxter-Moore 1987; Howlett and Ramesh 2003). Scholars (Lowi 1972; Trebilcock and Hartle 1982; Hood 1983; Howard and Stanbury 1984) have developed frameworks to categorize the various methods of government intervention used as policy instruments which are generally based on a continuum. The continuum includes less coercive methods at one end and more coercive methods at the other end. Baxter-Moore (1987)

developed a continuum of policy instruments, as illustrated in Figure 2.1, that demonstrates the notion of government intrusiveness. In accordance with the framework, through the use of decisions and non-decisions, government intrusiveness may be direct or indirect. While there appears to be a substantial number of policy instruments, the actual usage is somewhat limited as governments typically use existing policy instruments through an incremental approach to tweak policy efforts rather than implementing new policy instruments (Pal 1997).

Figure 2.1 – Policy instruments continuum

Non-Decisions		Decisions						
		Incentives (Indirect Public Intervention)			Directives (Direct Public Intervention)			
Privatization of Conflict	Symbolic Response	Exhortation	Tax Expenditures	Public Spending	Regulation	Taxation	Public Ownership	State of Emergency
Minimum.....Degree of Intrusiveness.....Maximum								

Source: Nicolas Baxter-Moore, “Policy Implementation and the Role of the State: A Revised Approach to the Study of Policy Instruments,” in Robert J. Jackson et al., *Contemporary Canadian Politics*, (Scarborough: Prentice-Hall, 1987)

One policy instrument categorized by Baxter-Moore (1987) as a direct public intervention with a high degree of government intrusiveness is taxation. Taxation comes in various shapes and sizes including direct and indirect taxation (Bibbee 2008; Tellier 2009). Direct taxation generally has a compulsory aspect that is not tied to financing any specific services or benefits while indirect taxation is linked to particular goods or services (Bird 1976; McGee 2004; Pal 2006).

While taxation, both direct and indirect, is primarily viewed as a means of raising revenues to provide public goods and services, different tax structures can also be used as a means to redistribute income and more efficiently allocate resources (Maslove 1994). Steinmo (1993, 3) argues that tax policy is more complex than considering redistributing income and allocating resources as government must consider conflicting goals, motivations, and concerns

by citizens and decision-makers in areas such as “raising revenue, redistributing income, encouraging savings, stimulating growth, penalizing consumption, directing investment, and rewarding certain values while penalizing others” in developing a tax system. He adds that it is not a single choice, but a combination of choices, that comprise modern tax systems. Hence, we see that there is debate in the literature about tax policy, which goes beyond the purpose of this study, but the point is raised to emphasize that tax policy is broad and complex. Alt (1983) states that tax policy is a matter of persuading citizens to pay more than they may want to, resulting in government being able to distribute the costs of goods or services broadly to make the costs appear less significant.

Another consideration is the permanence of taxation as it is generally brought to bear through the political system to become law with no termination date (Alt 1983). As an example, personal income tax in Canada was first introduced in 1917 as a temporary measure to pay for the war (Statistics Canada 2008) but has continued over the years to become the primary source of revenue for government today. In the 1980s the percentage of personal income tax in Canada continued to increase from 31 to 37 per cent to help pay for deficits that government had incurred due to an overabundance of expenditures; however by the mid-1990s government realized that it had to learn to curb its expenditures to control deficits and not continue to raise taxes to increase revenues (Pal 1997). Hence we see that while tax rates may change depending upon economic circumstances, once government is reliant on a revenue source it has a tendency to become permanent.

Direct taxation, a policy instrument directive involving direct public intervention, is comprised of corporate income tax and personal income tax. Corporate income tax means corporations are liable for the payment of taxes on income similar to personal income tax where

individuals pay taxes on their earnings. In Canada, corporate income tax is determined differently than personal income tax as corporations only pay taxes on profits while individuals pay on their gross income (Macdonald 2011). Canada is experiencing a decrease in corporate income taxes from almost 30 per cent in 2000 to 15 per cent in 2012¹ (Standing Committee on Finance 2011b). Without getting into the whys and wherefores of political decisions to decrease the corporate tax rate, the result is having less government revenues being generated through corporate taxation to finance overall government expenditures. Less revenues means that other methods of financing may need to be considered or have a decrease in government expenditures. A second form of direct taxation, personal income tax is viewed as the most equitable means of determining tax-paying ability hence is the most prevalent method that governments typically use to finance those government expenditures where it is difficult or inappropriate to divide costs to recipients based on benefits received (Ontario Committee on Taxation 1967; Miller 2011).

The notion of equity is based on social judgements or ethical constraints, but from a self-interest perspective individuals will attempt to minimize the amount of personal tax owing, resulting in shifting the burden on to others (Alt 1983; Steinmo 1993; McGee 2004). For example, in Canada there are tax incentives that are available to higher income individuals thus reducing the amount of income tax owing which were reported in the findings of a study called Eroding Tax Fairness:

“The tax rates of the richest 1% of Canadians have dropped dramatically since 1990, while poorer Canadians have seen their tax rates rise steadily. The tax system is still progressive for middle-income earners in Canada, but not for upper-income earners. Not only does the top 1% pay a lower tax rate than they did in 1990, their rate is actually slightly lower than that paid by the poorest 10%. The principal finding of this study is that the overall tax system no longer meets the test of fairness across income groups. It finds Canada’s upper income earners are not paying their fair share in taxes compared to 15 years ago” (Lee 2007, 3).

¹ The federal corporate tax rate figures from 2000 to 2007 include the corporate surtax according to Figure 3 of the Standing Committee on Finance’s report (Standing Committee on Finance 2011b).

The ability-to-pay principle may appear to be the most equitable but it does not take into account the economic choices taxpayers make with their disposable income (Library of Parliament 2005). Hence, for example, if government expenditures include an income supplement for senior citizens who do not meet a minimum income threshold this may result in a benefit to some citizens who had the means but did not choose to use a portion of their disposable income to save for their retirement.

Another policy instrument directive involving direct public intervention is indirect taxation which may involve consumption taxes and benefit-related taxation. A consumption tax is one that is generally applied to the purchase of products, most commonly known as a sales tax, that can be a value-added tax that is general and applied on most products or narrow and only applied to specific products (Miller 2011). When applying consumption taxes governments need to be aware of how much to charge and if the tax will be accepted by citizens. For example, if governments are trying to discourage undesirable behaviour such as smoking by applying a narrow value-added tax, government will need to be aware that if they set the tax too high citizens will find ways to avoid it. Tax avoidance was the case in Canada in the early 1990s when government increased taxes on cigarettes to the point that citizens resorted to purchasing smuggled cigarettes to avoid the higher taxes (Farnsworth 1994). As a result, government lost out in two ways: one through loss of revenues from less tax collected due to decreased cigarette sales and two, an increase in law enforcement costs to curb smuggling activities. Additionally, in most cases of a narrow value-added tax, citizens receive no specific service for paying the tax but rather government is ‘simply’ attempting to dissuade an undesirable behaviour (Pal 2006).

Another interesting Canadian example, which is a broad based application of a value-added tax, is the combination of Provincial Sales Tax (PST) with the federal government’s

Goods and Services Tax (GST) to become a Harmonized Sales Tax (HST). While some provinces (e.g. Quebec, Ontario, New Brunswick, Newfoundland and Labrador, and Nova Scotia) have gone this route with citizens accepting the combined tax for the most part, others such as British Columbia (BC) have not. Citizens of BC opposed having a combined tax and in an August 2011 referendum, voted 54.73 per cent in favour of returning to the previous tax structure of separate PST and GST (CBC News 2011a). Thus, we see that it is important to find the appropriate amount to charge for a consumption tax so that citizens don't become evasive or rebellious in paying the tax.

A different form of indirect taxation is benefit-related taxation which includes benefit taxes and user fees. Bird and Tsiopoulos (1997a, 38) define benefit taxes as “compulsory levies applied to individuals who are assumed to benefit as a group from particular government services with the taxes not being directly related to the receipt of specific services by particular individuals.” Examples of benefit taxes are the financing of social insurance programs such as Employment Insurance and the Canada Pension Plan. User fees are defined as a payment to recover a cost of a ‘packageable’ government provided service received by a specific individual (Bird 1976; Sproule-Jones 1994; Bird and Tsiopoulos 1997a). Whereas benefit taxes and user fees are both forms of benefit-related taxation, user fees are distinguishable from benefit taxes as the beneficiary, the amount of the benefit, and the fee for the public service can be identified with precision (Sproule-Jones 1994; Bird and Tsiopoulos 1997a; Duff 2004). We further discuss user fees in the next section.

2.2.6 Financing public services through user fees

As governments make decisions on how to expend public revenues in order to provide public services to citizens, governments need to decide if they make the good available to all citizens by financing through direct taxation or rather through other methods such as user fees

that are based on an individual's consumption of the service. In 1967 the Ontario Committee on Taxation provided that:

“Wherever it is possible to identify unmistakably the beneficiaries of a particular public service, the benefit principle leads not to a tax but to the charging of a price or fee, which makes the relationship between the government and the users of its services virtually identical to that between participants in private market transaction. The fee may cover the entire cost of providing the service, or alternatively, where the service is deemed to provide social as well as individual benefits, it may cover a portion of the costs incurred” (Ontario Committee on Taxation 1967, 9).

So we see that charging user fees on public services that can be packaged to be consumed by individuals has an efficiency argument with fees seen as more directly linking services to beneficiaries, and a distributional argument as their incidence may have a greater impact on lower-income individuals (Bird 1976; Pal 1997; Norman 2004). The user fee is for a measurable amount of goods or services which the individual benefits from similar to a private market transaction in which individuals choose to voluntarily purchase the services with no compulsory nature such as found with direct taxation (Maslove 1994; Sproule-Jones 1994; Bird and Tsiopoulos 1997a; McGee 1999; Howlett and Ramesh 2003; Pal 2006). However, for certain public goods and services that are paid for through user fees there is an obligatory aspect such as with passports and driver's licenses. If a citizen desires to travel outside of Canada or to legally drive a car, they are obligated to purchase these public services which are only provided through a level of government.

User fees are based on three main rationales: philosophical, political, and economic. The philosophical rationale is that using an outcomes based lens one can view user fees as 'just' with those who clearly benefit from a service should be the ones to pay for it (Sproule-Jones 1994; Bowlby, MacDonald, and Gilbert 2001). User fees may also be considered 'unjust' when using an egalitarian view for the distribution of income in which philosophy prescribes fair treatment of all individuals in society (Sproule-Jones 1994). Given the vast array of how individuals may

choose to spend their disposable income measuring the ‘just’ or ‘unjust’ of user fees may be difficult (Sproule-Jones 1994). Sproule-Jones (1994) leverages Olson’s notion of fiscal equivalence to advocate that user fees may be the superior method of financing public services that can be selected by individuals as citizens can select which goods they are willing to pay for, with government adjusting service levels accordingly, thus reaching a balance in supply and demand or self-correcting to the appropriate level.

The political rationale for user fees is based on the representativeness of citizens’ interests in government decisions and enhanced accountability when fees are earmarked for a given purpose (Bowlby, MacDonald, and Gilbert 2001). While citizens would like to feel they are represented fairly in all government decisions, the reality of this is unlikely. Therefore, citizens may feel more in control if they can voluntarily decide to purchase government services through user fees versus government services that are provided to only some individuals but financed through general taxation (Sproule-Jones 1994). Earmarking revenues that are collected for particular services allows government to better understand the supply and demand for services and to demonstrate accountability in using public funds to provide services (Sproule-Jones 1994; Bird and Tsiopoulos 1997b). While earmarking funds does allow for government services to be tracked similar to a private market situation, one needs to be aware that if earmarking were done for all services where user fees were charged, the government would have many accounts to track which may not be efficient overall (Bird and Tsiopoulos 1997a). When earmarking is not used there may be a lack of incentive by managers to implement user fees and establish the right cost and service levels if funds are deposited to the general revenue fund which results in it being easier for the manager to oversee providing the service through general taxation rather than user fees where possible (Sproule-Jones 1994).

The economic rationale for user fees is that when used as a revenue source, allows government to be efficient in providing services as demand can be determined (Bowlby, MacDonald, and Gilbert 2001). The economic rationale for charging user fees can be stated as promoting efficiency by recovering costs to provide public services or user fees can also be seen as a revenue generator by charging what the market will bear (Sproule-Jones 1994). Charging what the market will bear or marginal cost may be difficult to justify as citizens may identify with the need to pay for services provided to individuals but it is unlikely that citizens would be in agreement to have government generate additional revenues from these individualized services. Of course, government may not disclose the costs of revenue generation within the offered service such as identified by the Office of the Auditor General in the case of Passport Canada who charges \$25 per adult passport for consular services abroad in which it was found “that more was collected in consular fees than the cost of providing the related services” (Office of the Auditor General of Canada 2008, 2). Marginal costing can also mean that the user fee would be below the average cost of producing the service and government may need to supplement revenues through general taxation in order to cover the costs of producing the service (Sproule-Jones 1994). Advocates of user fees describe them not as additional sources of revenue for government but rather that user fees should be used to promote economic efficiency in how government uses its resources (Bird and Tsiopoulos 1997b).

Therefore the rationale behind user fees can be summarized as: those that benefit individually from a service should pay for it; the collection of user fees should be accumulated in a separate account rather than general revenue collection; and if this done, then the provision of these services may be more efficient as supply and demand can be determined. The rationale for

user fees sounds straightforward but one also needs to consider beyond the efficiency argument, to include distributional effects on various levels of income earners, plus the visibility of fees.

2.2.6.1 The efficiency argument

In theory, user fees as a policy instrument should promote efficiency and effectiveness in the delivery of public services as government should be able to determine supply and demand for the service and then set the appropriate fee (Bird and Tsiopoulos 1997a; Norman 2004). In reality, obtaining the appropriate information to set the fee is difficult as the cost to deliver the service may need to be extrapolated from the overall costs of a program (Chartrand 1997). In setting fees one needs to think through fixed and variable costs such as overall program costs in determining the full cost of providing a specific service (Graham 2007). One also needs to consider that if a fee is set that is not the optimal fee it is difficult to change as increases or decreases in fees generally result in media attention with either a slant that the fee was either too high before or the government is price gouging citizens to raise revenues (Klott 1987; Farnsworth 1994; Klie-Cribb 2009). Additionally, citizens may challenge the fee through legal proceedings (Bird and Tsiopoulos 1997a; Office of the Auditor General of Canada 2008).

In 1931, the Supreme Court of Canada issued a ruling which included four criteria for establishing whether or not a user fee should be viewed as tax. According to the Supreme Court of Canada a tax has the following characteristics:

“enforceable by law... imposed under the authority of the legislature... imposed by a public body... made for a public purpose... come under the head of taxation” (Supreme Court of Canada 1931, 362-363).

In a subsequent ruling another factor was added to determine the difference between a fee and a tax, the Supreme Court of Canada ruled that in the particular case being examined that “there is no ‘nexus’ between the revenues raised and the cost of any services provided. As such, they do not resemble a user fee, nor any other form of a regulatory charge” (Supreme Court of Canada

1999, 6). Hence, there is the identification that a fee has a connection between revenues raised and the cost of providing the service. There have been numerous court cases before the Supreme Court of Canada challenging the notion of fees versus taxation including:

- 620 Connaught Ltd. v. Canada (Attorney General) [2008] 1 S.C.R. 131;
- Montréal (City) v. Montreal Port Authority [2010] 1 S.C.R. 427;
- NIL/TU,O Child and Family Services Society v. B.C. Government and Service Employees' Union [2010] 2 S.C.R. 696; and
- Alberta v. Elder Advocates of Alberta Society [2011] 2 S.C.R. 261.

Hence to obtain support from citizens when providing services that have associated user fees, government needs to be transparent about “what is done, how well it is done, how much it costs, and who pays for it” (Bird and Tsiopoulos 1997b).

User fees remove the need to determine citizens’ preference for goods and services as those that pay the fee desire to use the service (McGee 1999, 2004). However, we must consider supply and demand and when it may become illogical for government to still provide the service if demand drops considerably either from charging too high a fee or a lack of interest/need for the service. In private markets, a business recognizes the lack of demand for a good or service and either moves it out of inventory, shifting to a different product or service or in certain cases discontinues business altogether if the product or service was their primary business. With government this is less apt to occur as government may fail to recognize the decreased demand for a service in a timely manner especially if the service is paid for through general taxation. As those delivering the public service are generally public servants, it is irrational for these people to indicate that the service is no longer required as they may be confirming that their employment position is no longer required. It is important that government monitors the demand and supply of goods and services through such mechanisms as incidence analyses, reviews, and evaluations.

2.2.6.2 Distributional effects

If government decides to finance goods and services through taxation, it needs to consider externalities based on income distribution, as providing said goods as a matter of goodwill to those on the lower end of the income scale has ethical considerations and political ramifications, if higher income individuals are not paying their ‘fair share’ through loopholes in the tax system thus qualifying for good and services meant for lower-income individuals (Mishan 1972, 975). Sproule-Jones (1994, 9) argues that “a ‘just’ distribution of income remains immeasurable and of limited practical value in governments’ decision-making.”

A further consideration when deciding to implement the user fee option is government may need to consider social welfare or citizens’ ability-to-pay (Kendrick 1939). In regards to social welfare, if government decides to finance public services through user fees rather than direct taxation then lower-income households, who spend more of their income on the consumption of goods than higher-income households, may have a heavier financial burden resulting in user fees being viewed as regressive (Mishan 1972, 976). The higher-income/lower income dichotomy brings forth the idea of not only fairness when charging user fees but also the idea of unduly burdening those that have lower ability-to-pay fees for public services. This is especially important if the public service is mandatory and user fees are charged such as for a driver’s license. Therefore even though government can determine individual usage to charge user fees government may decide to finance some mandatory services that are provided to individual citizens through general tax revenues rather than user fees.

2.2.6.3 Visibility of user fees

A challenge with charging a fee for public goods is the impact on political life as citizens may be upset if charges are levied on a good that was previously provided for ‘free’ through general taxation (Bird and Tsiopoulos 1997a). No matter how rational the decision to charge a

user fee, it may be viewed as another form of taxation resulting in a perceived revenue grab if the former beneficiaries do not see a reduction in direct taxation with the introduction of the fee (Bird and Tsiopoulos 1997a). In making policy decisions about not only what public services to provide but whether or not to charge a separate fee, the political mechanism operates with incomplete information as public goods are produced on the expenditure side with an ability-to-pay principle on the revenue side (Tiebout 1956) thus there may be a disconnect in trying to make the determination whether or not to charge a fee.

A key component in user-charging policy is how to communicate or ‘sell’ user charges “both to the public at large and to those who stand to be directly affected by them” (Bird and Tsiopoulos 1997a, 34). This statement is not to be taken lightly as the BC government learned in August 2011 when it had to revoke the HST. BC Finance Minister Kevin Falcon said in regards to the results of the HST referendum that:

"We recognized when we started from a place where 85 per cent of the public was opposed to the HST, ***in large measure due to our mishandling of the issue***, that we had an uphill battle" (CBC News 2011a, bold and italics added).

Clearly, a good communication plan is a priority in any type of government initiative but especially in one that impacts citizen-voters’ pocketbooks, whether it is with user fees or consumption taxes such as sales tax.

There is public criticism of user fees as they can be viewed as a tax and seen as a ‘revenue grab’ by government in an attempt to generate more revenue (Bird and Tsiopoulos 1997a). In Canada for example, the Office of the Auditor General (2008, 1) reported that:

“increasingly fee payers are challenging the validity of fees, and courts have held that where a reasonable relationship could not be demonstrated between the fee and the cost or value of the fee, the fee represented an unlawful tax.”

Hence, we see that the public, as taxpayers, are critical of user fees but user fees do have their place in delivering public services. One of the considerations in government providing

public services to citizens is whether or not services benefit all citizens or whether the services are provided on an individualized basis. If public services are provided on an individualized basis, not to all citizens but available to all citizens then government can determine not only who receives the service, but also the mode of financing these services. When government is able to make this distinction it may be appropriate to charge user fees and this option may be a consideration in their decision-making process.

2.3 Decision-making

In the words of Goldenberg (2006, 9), “decision-making is an art not a science.”

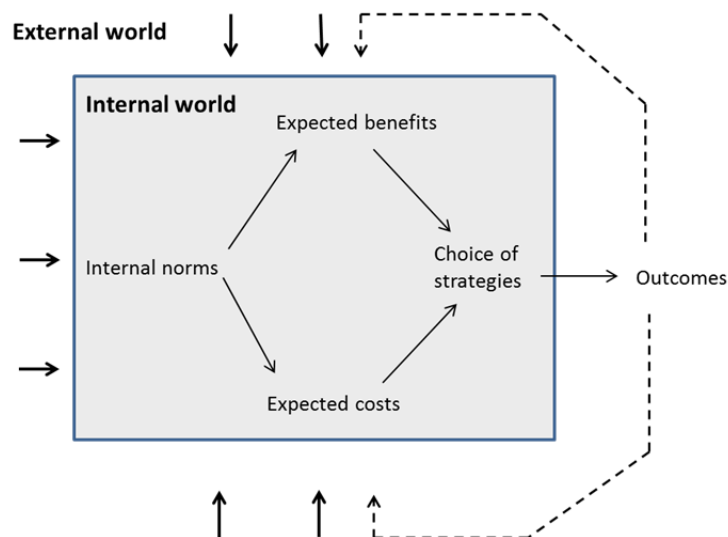
Decision-making is about making a choice between various options about what is to be done which leads to action or the actual doing of the choice (Simon 1997). Individuals make choices² from the various strategies or options available to them after weighing the pros and cons of each from available information at the time of the decision-making (Ostrom 2008). An individual’s choice results in an outcome that not only impacts the individual but which may also impact their environment. Ostrom (2008) refers to this as an individual’s internal world and the environment as the external world as indicated by Figure 2.2. Similarly, the external world through shared norms plus other influences may affect an individual’s norms regarding a particular situation consequently impacting an individual’s decisions (Ostrom 2008). As decisions are based on accessible information at a precise point in time, choices can shift and change over time as more information becomes available, leading to decision-making by trial and error with choices of today affecting decisions of tomorrow (Simeon 1976; Ostrom 2008).

For administrative organizations the task of making choices is as much a part of the domain as the task of doing – the two, choosing and doing – are integrally tied together (Simon

² The words choice and decision will be used interchangeably throughout this study

1997). Unlike individual decision-making,³ decisions within an organization not only impact the person making the decision but also those individuals whom the decision-maker has influence or authority over (Simon 1997). As organizations are oriented towards goals or objectives

Figure 2.2 – Individual decision-making



Adapted from: Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press, 1990) page 37

decisions by authoritative figures are not random but rather geared towards the organization's purpose providing a pattern of behaviour or procedures and bringing a sense of meaning to the organization (Simon 1997). By moving to an organizational form, part of the autonomy of an individual's decision-making is removed and is replaced by organizational decision-making which requires specifying functions of individual members, allocating authority as to who will have the power to make decisions, and setting-up other processes that are required to coordinate activities of group members (Simon 1997). The important part to understand is that in organizations, authority and power is allocated to particular members who make decisions on

³ One could argue that an individual's decisions may impact others such as within their family unit but the point here is that decision makers within an organization are making decisions that impact people that are fulfilling a role within a separate entity and working towards a common purpose.

behalf of the organization, not as individuals (Simeon 1976). Most decisions, whether it be by an individual or within an organization, involve compromise or trade-offs between options resulting in there being no completely 'right' or 'wrong' decision but hopefully by weighing the pros and cons of various options, an informed decision is reached (Simon 1997).

For government, while there are various stakeholders such as politicians, public servants and interest groups that play interacting roles in such areas as policy-making, it is politicians who are the formal decision-makers and who determine how government will operate by using their power and authority, as decided by voters, for allocating resources to promote the political party's agenda (Simeon 1976; Flanagan 2014). These formal decision-makers are what Good (2008) calls priority setters as they are responsible for determining government priorities as in how much money will be allocated to specific priorities. Priority setters do not work in isolation but are informed by public servants on the technical or administrative complexity of a particular set of issues. Hence senior public servants play an active role in framing policy options for political approval.

Accordingly in the interest of attaining means and ends to advance agendas, one would think that it is in the best interests of all stakeholders to work together towards common goals and objectives but this is not necessarily the case. As Olson's (1971) concept of logic of collective action indicates, individuals in groups will not work towards attaining a common goal, even if all have a similar self-interest in attaining the goal, but rather individuals are more apt to attempt to benefit from the common goal without contributing to it, resulting in free-riding. Depending on how many of the individual group members endeavour to free-ride will determine whether or not a collective benefit will be produced through the decision-making process in securing the provision of goods and services (Olson 1971; Dixit 1999; Ostrom 2008).

Beyond individuals not necessarily working towards a group goal there is the notion of individuals playing different or overlapping roles within several groups or organizations resulting in a power struggle for individual decision-making. The idea of playing different roles is similar to the idea previously mentioned in the section above on the publicness of public goods where it was argued that individuals can have multiple cultural identities depending upon competing value systems making it difficult to determine how we fit together as a society (Wildavsky 1987; Parsons 2003).

For example, for a federal politician in Canada there are several overlapping roles or identities. First, there is the self-identity that the individual puts forth as a candidate which is then influenced or shaped by the political party that the individual is affiliated with. Then, upon being elected as a Member of Parliament (MP) has promised to represent the constituents of his riding. Here we have three identities that may or may not conflict: self-identity, political party platform, and Member of Parliament. Second, if the MP is selected as part of the Cabinet and assigned ministerial responsibilities for a department, the individual may seek the largest portion of spending dollars available as this is a sign by peers in Ottawa of power and success and builds reputation (Good 2008). Now there is a shift of identity to not necessarily what's good for the constituents of the MP's riding but the power that the MP can attain in order to be successful and then perhaps at election time, appeal to voters that indeed the MP has done a fine job of representing the constituency in Ottawa. A third identity is the one attributed to the minister as being responsible and accountable for his department and ensuring that the deputy minister is managing the day-to-day operations in a sound financial and operational manner (Privy Council Office 2011).

Therefore, we see that in decision-making there can be competing identifies and/or priorities and it is not always easy or clear cut as to what a right or wrong decision may be even when presented with all available information.

2.4 Summary

We have examined the concepts of public goods and services, public finance, and decision-making. We determined that the definition of public goods for this study depends on what government chooses to produce or not to produce, hence more of a public sector output than a definitive description of a public good. The term ‘government chooses to produce’ does not necessarily mean government will fully produce the good, as government may also use alternative service delivery models including subsidizing or regulating the production of a ‘public good.’

As we determined that government will produce or provide whatever goods and services it deems appropriate, government then needs to decide how to finance these services. If government decides to finance public services through user fees then lower-income households may have a heavier financial burden resulting in user fees be viewed as regressive. Hence, the decision as to whether or not to finance the provision of some public services through taxation or user fees moves away from what services government should provide, to what choices as a society we make in providing public services. Hence we pursue the following research question for this study, *‘Why does the Canadian federal government decide to finance some public sector services through external user fees, while others are financed through general taxation?’*

In Chapters 3, 4 and 5, we examine the concepts of public goods and services, public finance, and decision-making through the lens of public choice theory to develop the theoretical framework for this study.

Chapter 3

Theoretical Framework: Public choice theory

3.0 Introduction

This study is about why the Canadian federal government decides to finance some publicly provided services to individuals through general taxation and others through user fees. One of the methods to explore this research question is through public choice theory. Public choice theory applies the methodology of economics to political science in nonmarket decision-making areas (Ostrom and Ostrom 1971; Buchanan and Tullock 1974; Lane 1990; Tullock, Seldon, and Brady 2002; Frederickson and Smith 2003; Mueller 2003, 2004). As this study revolves around decision-making in government, public choice theory is an appropriate theoretical framework. While economic-inspired theories such as public choice can never tell the whole story, “the theories continue to make an important contribution to a greater understanding of how government decides and operates” (Savoie 2013, 10).

Specifically in this study we will use the public choice framework as developed in James Buchanan and Gordon Tullock’s book *The Calculus of Consent: Logical Foundations of Constitutional Democracy* first published in 1962. *The Calculus of Consent* is the initial attempt to illustrate how the tools of economics could be applied to political institutions using a rational choice approach with an emphasis on rules about how choices are made (Mueller 2012a; Rowley and Houser 2012; Rowley 2012; Congleton 2012; Vanberg and Vanberg 2012).

Buchanan and Tullock’s model applies an individual’s utility maximizing behaviour in a private market setting to political choices and conceptualizes politics-as-exchange to create an ‘economic’ model of collective choice (Buchanan 1987; Gwartney 2013). Their framework focuses on how an individual as a part of collective choices in political settings are similar to how individuals pursue private choices as consumers in market settings (Clark and Lee 2013; McKenzie 2013). The Buchanan and Tullock model posits that an individual’s decisions and actions are driven by self-interest in which the individual expects to maximize his benefits while

minimizing his costs whether purchasing a consumer good, voting, or deciding how to finance publicly provided services (Holcombe 2013).

Before delving into our framework it is important to have a common understanding as to what we mean by certain terms. Public choice theory is postulated on the notion that individuals are rational. By the term ‘rational’ we mean from an economics perspective in which individuals calculate choices in a consistent, logical manner versus a psychological perspective (Downs 1957b; Sproule-Jones 1996; Frederickson and Smith 2003; Grofman 2004b). Hence, when we use the term ‘rational’ we mean, similar to Downs (1957a), in terms of efficiency where outputs/ends are maximized per given input/means or conversely, inputs/means are minimized to attain given outputs/ends through a logical, consistent manner. Therefore, an individual “moves toward his goals in a way which, to the best of his knowledge, uses the least possible input of scarce resources per unit of valued output” (Downs 1957a, 5). Hence, in the mind of a rational, individual decision-maker, he calculates the most reasonable way to attain his goals by considering his means (Downs 1957a). Accordingly, when we use the term rational, we are speaking about using a rational process to make decisions to achieve one’s goals.

When we use the term individual, we mean in an economic sense, as a basic unit of analysis, which could be a person or an entity that acts as a decision-maker in pursuing relative advantage (Ostrom and Ostrom 1971). A group is defined as a number of individuals with a common interest (Olson 1971), with shared values and norms who act in the group’s self-interest (Buchanan 2004). The term collective is described as a group or aggregate of individuals working together toward a common goal or preference (Poteete, Janssen, and Ostrom 2010) with a defined set of working rules for decision-making (Ostrom 2008) versus a group which has a common interest but not necessarily a common goal. Collective action is how individuals come

together and organize themselves to work towards policy change that promotes their common goal or preference (Buchanan and Tullock 1974; Schlager 2007).

While individuals may be a part of a collective action, individuals may have different aims and purposes for the outcomes of the collective action (Olson 1971; Buchanan and Tullock 1974). In order for individuals to make a choice between their collective action and private action goals, members of the collective select decision-making rules such as fifty per cent plus one of the vote is considered a majority (Buchanan and Tullock 1974). Making a choice between collective action and private action goals implies a form of exchange with all members of the collective action expecting to mutually gain from the political action thus increasing the power of all members (Buchanan and Tullock 1974). By power we mean “the ability to command things that are desired by men” (Buchanan and Tullock 1974, 23). Buchanan and Tullock (1974) utilize the concept of power through an economic approach meaning that an individual is a utility-maximizer both as a consumer and as a voter. As the economic approach means that power is attained through a form of exchange as in benefits versus costs, it does not necessarily require that an individual increases his utility at the expense of another individual.

Similarly in a political sense, power is not about one person winning and another losing, but rather as Buchanan and Tullock (1974) referencing Bruno Leoni, explain the political relationship as one of individuals exchanging power, each over the other, to mutually gain from the collective relation which is similar to the economic approach of exchange in that individuals cooperate to mutually gain. Through the notion of methodological individualism, Buchanan and Tullock posit that the state is thus used as an instrument in satisfying individuals’ interests, while acknowledging the potential for conflict among differing interests, as individuals use the politics-as-exchange model to mutually gain from cooperation (Buchanan 1987). In other words using

the model of exchange, individuals recognize that sometimes they will win and sometimes they will lose but over time their total utility should increase.

Additionally, even though collective action groups such as political parties or pressure groups, pursue common goals or preferences it does not necessarily mean that groups are working towards the ‘public interest’ or ‘common good.’ It is difficult to construe the impact of pressure groups on the ‘public interest’ as the activity of pressure groups either advances or retards progress in certain areas of a diverse society, benefiting some segments of the population to the detriment of others (Buchanan and Tullock 1974). Buchanan and Tullock (1974) elucidate if elected officials and public servants were pursuing the ‘public interest,’ why then does the institution of government require oversight bodies to ensure that public monies etc. have been allocated in the ‘public interest.’ As Cassinelli (1958, 48) argues, the term ‘public interest’ is an ambiguous term as it can mean what is *in the interest of the public*, or *what the public is interested in*, as in the interests possessed by the public. Focusing on the first meaning, *in the interest of the public*, we can attempt to define ‘public interest’ as “understanding the long-term consequences of action – or inaction – and the consequences for different regions or segments of the population” (Zussman 2008, 32). However, due to the very fact that society is diverse there is no right or wrong answer as one policy decision implemented to benefit one group in society, may have negative effects for other areas of society (Zussman 2008; Butler 2012). Accordingly, the ‘public interest’ may be more along the lines of *what the public is interested in*, and if this is the case then this may be construed as ‘self-interest’. Hence, given the above, it is very difficult to determine that there is actually a ‘public interest’ that is in the interest of the public.

We next outline the origins of public choice theory and then build a conceptual framework using *The Calculus of Consent* model.

3.1 Origins of public choice

Public choice originated through the seminal works of Duncan Black, Kenneth Arrow, Anthony Downs plus James Buchanan and Gordon Tullock (Frederickson and Smith 2003; Mueller 2003, 2004; Grofman 2004b; Rowley and Schneider 2004; Buchanan 2005). Even though public choice is primarily based on the field of economics, these scholars became known as nonconformists in their field by refusing to fit into the mainstream economic world (Grofman 2004b). For example, Black encountered problems getting published in economic journals (Grofman 2004b). Arrow in his attempt to colonize political science, rejected common approaches to the social welfare function (Grofman 2004b). Buchanan de-emphasized mathematics and refused to draw a line between normative and positive economics (Grofman 2004b). Downs while appreciated by political scientists was viewed as less relevant by economists (Grofman 2004b). Thus we see being a pioneer and experimenting in a new field can be a lonely endeavour as one works towards building credibility and acceptance.

Duncan Black is attributed with being the founding father of public choice with his work in 1948 on the rationale of group decision-making (Rowley 2004; Mueller 2004). Black's (1948b, 1948a) theorem was developed as there was no existing means of analyzing group decision-making or how individuals choose to make decisions in a group with the overall assumption of the theorem being that individuals rank their preferences in the decision-making process. Black (1948b) concluded that the theorem could be applied to any topic in which a decision is made through voting. In regards to decisions made through committee voting, Black (1948a) found that results depended on which approach was used to reach the decision such as a simple majority or unanimity. Black's articles *On the Rationale of Group Decision-making* and *The Decisions of a Committee Using a Special Majority*, attempted to create the "pure science of politics" (Black 1948a, 34) by providing the analytical foundation for much of the empirical

work in public choice as Black's theorem presented the framework for majority rule cycle and the median voter model (Mueller 2004; Buchanan 2005).

In 1951, Kenneth Arrow extended Black's theorem with Arrow's contribution found in *Social Choice and Individual Values* (Rowley and Schneider 2004). Arrow's (1963) work focused on the properties of social choice functions in a democracy, that of voting which connects political decisions to market mechanisms and economic decisions, combining the preferences of individuals in the making of social choices or group decisions. Given the preferences of individual voters, Arrow searched for normative criteria to create a state that ought to be chosen when individual preferences were aggregated to maximize a social welfare function (Mueller 2003). Arrow (1963) found that in order to understand the ordering of individual preferences, one must also be able to compare an individual's choices to other individuals' choices in addition to comparisons as to what other alternatives may be available. Arrow's impossibility theorem concluded that no method of aggregating individual preferences could guarantee a thorough social ordering, thus invoking again the problem of cycling as the theorem questioned whether or not cycling, as proposed by Black, should occur in a democratic state (Mueller 2004; Buchanan 2005). Unless restrictions were placed on individual preference orderings within a society, Arrow determined that no rational method of maximizing social welfare could be found (Downs 1957b). Arrow's work provided a mathematical result related to the nature of collective choice in a democracy through economic modeling which was subsequently utilized by social sciences (Grofman 2004a).

Anthony Downs (1957a) in his book *An Economic Theory of Democracy*, theorized that there was a structural relationship between the function of government and the self-interest of elected officials that run government. He found that the political constitution of society

determines the relationship between those that govern and citizens, as the constitution provides rules for transforming citizens' preferences into social action. Hence, he stated, elected officials will carry out social action in order to achieve their private ends. Downs established that elected officials achieve their private ends or self-interested goals by implementing government action that "most pleases voters" (Downs 1957a, 292). Whereas others such as Arrow and Black had been concerned about individuals' preferences, Downs found that due to the amount of uncertainty in society, that government does not know what voters' goals are or how to realize them, suggesting that government actions are not strictly tied to the vote function. But rather he found that there is a wide spectrum of choices regarding social action both with elected officials and voters, thus elected officials are willing to "listen to policy advice and adopt it" (Downs 1957a, 293). Voters may not be fully informed thus willing to listen to suggestions; however he found that "self-interest is the chief motive for all social action" (Downs 1957a, 293). With elected officials pursuing their self-interests, Downs found that these individuals could then become a part of the labour function, similar to a private market setting, resulting in elected officials being considered as a part of human agency; thus economic modeling could be applied.

While Arrow's study focused on a comparison between the state and an individual, James Buchanan's work in the 1950s concentrated on a assessment between the state and the market with the primary concept being that individuals engage for mutual benefit, resulting in a quid pro quo process in both a market scenario and the institutions of government (Mueller 2003). The notion of engaging for mutual benefit or agreement is the premise behind James Buchanan and Gordon Tullock's *Calculus of Consent: Logical Foundations of Constitutional Democracy* that was first published in 1962. Whereas Downs' approach was to look at the behaviour of political parties through a market theory lens in which the notion of maximizing voter support was similar

to individuals attempting to maximize their spending dollars, Buchanan and Tullock (1974) constructed a model of collective choice that was similar to the theory of private choice as a part of market theory. Their approach was related to Tullock's previous work in 1958 that looked at choices that individuals deal with, and individual actions taken, within a bureaucratic hierarchy. Buchanan and Tullock's research identified the difference between collective decision-making when used as a part of the electoral process through voting rules, and the application of voting rules as applied to the actual effort of making collective choices (Mueller 2004, 2012b). Building on other scholars' research, their theory provided the basis for what are known as the two primary assumptions of public choice theory: one, the average individual is a self-interested utility maximizer; and two, decisions are only made by individuals, not collectives (Frederickson and Smith 2003).

To summarize, these five scholars each contributed important underpinnings that became the ontology of public choice theory:

- Black (1948b) contributed that individuals rank their preferences in group decision-making;
- Arrow (1963) found that without restrictions, no rational method of aggregating individuals ranked preferences could create a state that ought to be chosen to create a social welfare function;
- Downs (1957a) concluded that due to a large degree of uncertainty in society, elected officials cannot readily determine voters' preferences thus will implement social action that seems to please most voters with the chief motive of implementing the social action being to achieve the self-interest of elected officials; and
- Buchanan and Tullock (1974) developed a theory of collective action based on individual actions in which individuals engage for mutual benefit. In other words, individuals are self-interested utility maximizers, and only individuals make decisions, not groups.

While these scholars are acknowledged as being the pioneers of public choice, others have been identified who influenced the thinking of their work. To name but a few, Marquis de Condorcet in 1785 contributed the Condorcet method in which voters rank electoral candidates

in order of preference creating a paradox (Mueller 2004), a concept that is widely used today. Buchanan (2005, 166) states that Knut Wicksell is “the most important of all precursory figures in public choice” with Wicksell in 1896 recognizing that parliamentary assembly majorities were likely to enact legislation that benefited their constituents at the expense of others. Joseph Schumpeter is attributed with contriving the term methodological individualism from an economics perspective which is a primary underpinning of public choice (Mueller 1997a) that will be described in the next section.

There are scholars who followed the five recognized pioneers of public choice who have also contributed other important aspects to public choice theory. Mancur Olson’s 1965 dissertation called *The Logic of Collective Action* used public choice rationale to study interest groups behaviour through the use of collective action problems, namely the free rider problem (Mueller 2003). William Niskanen in 1971 leveraged rational choice analysis to explore bureaucratic behaviour in his book, *Bureaucracy and Representative Government* (Rowley and Schneider 2004). Nobel Prize winner Elinor Ostrom while having made many contributions to public choice, in 1990 contributed *Governing the Commons: The Evolution of Institutions for Collective Action* in which she explores the problem of collectively managing common pool resources (Ostrom 2008). These are but a few examples to demonstrate that, as with most theories, public choice theory is not static; it has evolved as new applications are tested and scholars add their contributions.

Many of the theories and methods developed in the early days of public choice are still relevant today with public choice scholars continuing to build public choice research by applying theories and methods to new problems such as terrorism, trade liberalization and globalization,

internet governance, and environmental policy (Tullock, Seldon, and Brady 2002; Rowley and Schneider 2004; Shughart and Tollison 2005b).

Now that we outlined the origins of public choice theory, we will next develop our conceptual framework.

3.2 The conceptual framework

Public choice theory can be described as a positive theory with explanatory and descriptive powers resulting in a formalist approach as aggregate explanations can be used to generalize social patterns that ensue from rational actions by a large number of individuals (Sproule-Jones 1975; Little 1991; Mueller 1997b, 2003; Rowley and Schneider 2004; Shughart and Tollison 2005b). The aggregate results of individual rational actions can be formalized into a model of aggregate explanation in which individuals determine the pros and cons of available alternatives to derive specific consequences (Little 1991). Since the individual is the basic unit of analysis for all economic analysis, Mueller (1997b) explains that individuals are assumed to have certain preferences and interact in certain institutional settings. He further explains that during these interactions, individuals discover and characterize aggregate outcomes by examining the consequences of assumed behaviour of individuals and the institutional constraints on that behaviour. In other words, an individual's "goals and actions are modeled, and from these models one aggregates up to the level of society" (Mueller 1997a, 125). As public choice theory revolves around the premise of methodological individualism in which individuals are assumed to have certain objectives or preferences and interact in various organizational settings in which aggregate outcomes are realized (Mueller 1997b), the model of aggregate explanation is appropriate for this study. Similar to Buchanan and Tullock (1974), when we leverage the model of aggregate explanation, we are using it to explain a particular element of politics but it does not

mean that all individuals act according to the behavioral assumption made, or that one individual acts this way at all times, but rather public choice theory explains one small part of collective action in whatever model has been constructed.

The determination of individual rational behaviour through a reductionist approach provides the two epistemological elements of public choice theory: one, that the average individual is a self-interested utility maximizer; and two, only individuals, not collectives, make decisions (Ostrom and Ostrom 1971; Buchanan and Tullock 1974; Lane 1990; Tullock, Seldon, and Brady 2002; Frederickson and Smith 2003; Mueller 2003; Shugart 2013). The first epistemological element, that the average individual is a self-interested utility maximizer, implies that an individual knows what he wants and can rank his preferences selecting those that maximize his own benefits at a minimum cost to himself (Ostrom and Ostrom 1971; Buchanan 1989; Frederickson and Smith 2003).

To explain the first epistemological element, Buchanan and Tullock (1974) use the definition of rational in terms of individual behaviour, not group behaviour, which then leads them to compare an individual's rational behaviour in a market setting to a collective action setting. In a market setting, they state, an individual is contrived as maximizing his utility function through self-interest by ranking his preferences to receive more of something rather than less, leading to the conclusion that this is a rational decision based on efficiency. In a collective action setting, such as described in Arrow's (1963) impossibility theorem which focuses on social choice functions in a democracy, it was determined that no method of aggregating voters' preferences can assure a thorough social ordering even if one understands an individual's preferences versus interpersonal comparisons, unless an individual is so powerful he is said to be a dictator based on the weight of his preference ranking as compared to the

preferences of the rest of the collective. Hence in a collective action setting, Buchanan and Tullock (1974) determined that individuals through politics-as-exchange will choose the costs and benefits from collective action that provides the individual more benefits rather than less as determined by whether or not the cost increases or decreases to the individual, similar to how the individual maximizes his utility function when he ranks private goods, rather than working towards a social choice that benefits more of the collective. In order to assume 'complete' individual rational behaviour, Buchanan and Tullock (1974) assume that there is an acceptable end within the collective action and that the ability to choose alternatives will lead to the achievement of said goal. However, as these scholars state, there are two areas within this logic that require clarification.

One area that requires clarification is that it is assumed by Buchanan and Tullock (1974) that in a market setting the consequences of individual choices are made under perfect certainty in order for the individual to achieve complete rational behaviour. In other words, individuals have chosen to gather as much information as the individual believes is necessary to do a cost-benefit analysis to then make a rational decision to maximize his utility. The level of certainty, risk, or uncertainty in decision-making that individuals encounter depends on the level of information possessed (Ostrom and Ostrom 1971). A high level of certainty is attained when an individual knows all available strategies, the outcome of selecting a particular strategy, and his preference for each outcome (Ostrom and Ostrom 1971; Tullock, Seldon, and Brady 2002). Accordingly with a high level of informational certainty, an individual simply chooses the strategy which leads to the outcome that maximizes his utility (Downs 1957a, 1957b; Ostrom and Ostrom 1971; Tullock, Seldon, and Brady 2002). However due to time constraints, individuals may choose to not become fully informed or hold a high degree of certainty but

rather rely on information that has been gathered by others such as friends or the media in order to choose among available alternatives (Teske et al. 1993). Williams (2004) contends that making decisions with incomplete information is necessary given the complexity, scarcity and uncertainty of society. Further, he finds that information may be interpreted incorrectly, or individuals may have different interpretations of the same information, or individuals have different notions as to what constitutes the optimal amount of information required to make a decision. As there is no way of determining what the optimal level of information is, except as determined by the individual, the individual may function under an illusion that he is more informed than he actually is – he may possess informational ignorance, however his decision still remains rational even when made with less-than-perfect information (Buchanan 1999b). All this to say that how much information is required to make a rational decision in a market setting is up to the individual and when he feels that he has attained informational certainty, he will make a decision that he believes will maximize his utility.

In regards to individual decision-making which is a part of a group or collective action, Buchanan and Tullock (1974, 37) determined that “in analyzing the behaviour of the individual in the political process there is an important element of uncertainty present that cannot be left out of account.” These authors argue that an individual cannot achieve perfect certainty or complete rational behaviour in a collective action setting as the individual doesn’t know the outcome of others’ decisions, resulting in an element of uncertainty in decision-making. Consequently, individuals do not necessarily know the correlation of their individual action with the overall results of that action. Nevertheless, given that collective choice is a continuous, ongoing process used to achieve social choices, each individual decision is viewed as only one small link in a chain, and therefore operating in an uncertain or uninformed environment is acceptable. In

addition, to offset a portion of the uncertainty, the cumulative results of individuals' actions may be mitigated through the use of exchange in order to achieve a mutually agreed upon outcome thus reducing the level of uncertainty.

While Buchanan and Tullock (1974) do not specifically discuss information as a constraint in their model, it is acknowledged that information can also be considered a constraint as there are those within the realm of the collective action process that hold information, and others that may seek the information held to make decisions. There is a debate in the literature as to whether or not informational constraint is a factor in voting preferences since the governing party holds information regarding the impact of policy instruments that affect the economy that others may not have (Rogoff 1990; Franzese 2002; Tellier 2006). Some scholars (Frey and Schneider 1978a, 1978b, 1979) argue that a governing party in seeking re-election, behaves opportunistically to use economic performance indicators such as a low rate of unemployment, to sway individuals' votes and increase the governing party's popularity at the time of an election. Others (Kramer 1971; Nordhaus 1975; Rogoff 1990) argue that while the governing party may try to use information to sway voters, voters are aware of the governing party's intent hence voters base their voting behaviour on the results of the governing party's past experiences to form an expectation of what voters consider to be the 'usual' behaviour of the governing party. For example, if the 'usual' behaviour of government means that economic conditions have deteriorated, individuals may vote against the governing party.

Another area Buchanan and Tullock (1974) note that requires clarification is that individuals may be expected to be less rational in a collective action situation as compared to a private action since in the collective action situation the degree of responsibility for the final decision does not squarely rest on the individual unless the individual has been delegated the

authority to make the final decision on behalf of the collective action. In a private action decision it is necessary for an individual to make a choice in order to benefit from the exchange process unless the individual chooses to engage the services of a professional shopper but even then he has made a decision to use these services. These scholars argue that the individual in a collective action setting loses the inherent sense of decision-making responsibility as he assumes that others will make the decision whether he participates or not, or whether he gathers enough information to do a complete cost-benefit analysis to determine the most positive choice for the collective. Too the individual may recognize that he is but one of a multitude of votes and whether or not he even votes, he perceives, is unlikely to make a difference in the overall collective action results (Blais 2000; Tullock, Seldon, and Brady 2002). In a situation in which an individual such as an electoral candidate, attempts to determine the outcome of a voting decision within a collective action setting, it is important for the individual to realize that it is the voter's perception of the value of his vote on the outcome and the cost of becoming more informed, not what he would want if he were better informed that the electoral candidate should be targeting (Tullock, Seldon, and Brady 2002). Buchanan and Tullock (1974, 38) determined that one would not expect "models based on the assumption of rational individual behaviour to yield as fruitful a result when applied to collective-choice processes as similar models have done when applied to market or economic choices."

The second epistemological element that only individuals, not collectives, make decisions is known as methodological individualism. Whereas methodological individualism is generally associated with economics⁴ there is nothing specific about it that makes it so as methodological individualism can also be used as an explanatory approach throughout the social sciences (Vanberg 2004). Joseph Schumpeter in 1908 is attributed with developing the term

⁴ Not all economic analysis is based on methodological individualism

methodological individualism (Mueller 1997a) though he narrowly applied it from a pure economics perspective which only deals with the flow of goods and the behaviour of individuals (Heertje 2004). In a broader context, methodological individualism can be used in economic analysis as a general method of explanation in which the individual is the starting point to be applied beyond consumers and producers in private markets to such areas as the behaviour of politicians, public servants, and lobbyists (Heertje 2004). This broader definition allows for the analysis of optimizing behaviour of individuals in both the public and private sector (Heertje 2004). Methodological individualism is thus defined as collective decisions simply being an aggregate of individual preferences (Ostrom and Ostrom 1971; Frederickson and Smith 2003; Grofman 2004b).

3.3 Summary

We have established the key elements of our framework utilizing public choice theory: actors either as individuals or in groups make decisions by acquiring adequate information, as determined by the actors, in a rational, self-interested manner in order to maximize their utility. To further develop our framework one needs to understand the relationship of the key elements to activities by delving into concepts such as understanding costs associated with making decisions and financing publicly provided services which we examine in the next chapter as we use Buchanan and Tullock's *Calculus of Consent* model to build our primary actors.

Chapter 4

Theoretical Framework: Building the model

4.0 Introduction

In constructing their model, Buchanan and Tullock (1974, 8) state that if progress is going to be made in developing a new framework from the ground up around the actions of individuals as a part of group decision-making in a complex political arena, as compared to the simpler consumer-producer transaction in a market setting, that they “do not propose to present a fully developed theoretical structure.” Congleton (2012), in referring to *The Calculus of Consent*, contributes that new models are often a subset of what the model develops into as only so many questions can be raised and only a limited number of situations can be analyzed providing opportunities for others to add to the literature in the future. Accordingly, the Buchanan and Tullock model is presented in general terms thus permitting scholars (Elster 1988; Cooter 2000; Berggren and Karlson 2003; Procaccia and Segal 2003; McClennen 2004; Pitt 2004; Bradbury and Johnson 2006; Rowley 2012) of today to relax, expand, or challenge assumptions. The fundamental economic logic that *The Calculus of Consent* brings to bear in understanding complex political arrangements has stood the test of time (Wagner 2013).

4.1 Strengths and limitations of the model

While recent studies bring several key elements into focus, the most significant for the purpose of this study, is the attempt to limit the effects of the tyranny of the majority on the minority in regards to the redistribution of resources. Tyranny of the majority, as developed by Buchanan and Tullock (1974), is defined as fifty per cent plus one of the vote for a particular benefit results in one hundred per cent of the cost being paid for by all taxpayers. Bradbury and Johnson (2006) empirically leverage Buchanan and Tullock’s notion that supermajority rules can reduce tyranny of majority issues in a democracy. Bradbury and Johnson’s findings indicate that while supermajority rules have little effect on general government expenditures and tax

revenues, they do find that supermajority rules are linked to lower public welfare transfers or redistributive spending supporting Buchanan and Tullock's analysis of the fiscal effects of supermajority rules. While this study does not revolve around supermajority rules, the significance of Bradbury and Johnson's work is that we need to be aware that there are methods available to alleviate the effect of tyranny of the majority to level the playing field for all citizens in the redistribution of resources.

Both Procaccia and Segal (2003) and Pal and Weaver (2003) support Buchanan and Tullock's notion of constitutional entrenchment to protect endowed property.⁵ These scholars find that as individuals exist behind a veil of ignorance individuals will join collective action groups as they are concerned about losing an existing portion of their incomes or net worth due to the external costs of other collective action groups. Rowley (2012) identifies that whereas *The Calculus of Consent* fails to provide characteristics of the state of nature in a pre-constitutional environment, Buchanan and Tullock likely meant natural law governs allowing individuals to protect their basic rights, as individuals would likely only agree to rules in a constitutional setting in which government protects endowed property thus limiting the domain of collective action. Protection of endowed property within constitutional entrenchment suggests government becomes a referee between different collective action preferences and that collective action within the prescribed rules will not be reneged on in a post-constitutional environment by dramatically altering existing legislation, thus limiting the range of collective action preferences. Protection of endowed property is further considered by McClennen (2004) who contributes that prudential concerns⁶ should be factored into decision-making to protect politically disadvantaged members of a society by placing final decision-making responsibilities with the judiciary as the

⁵ By endowed property we mean property rights bestowed upon an individual which government cannot take from them without just compensation (Procaccia and Segal 2003)

⁶ Prudential concerns refers to guarding against losses instead of only being concerned with expected gains

judiciary is considered non-partisan. Pitt (2004) disagrees with McClennen's findings, arguing that judicial systems are not without politics as many judicial figures are political appointees hence placing decision-making regarding prudential concerns within the court system does not necessarily provide a 'fairer' distribution of resources across all members of society. While McClennen's findings are disputed, the notion of instilling a second level of decision-making in the allocation of resources appears to have merit.

However putting in place institutional safeguards such as a two-tier decision-making process may result in decision-making gridlock as argued by Elster (1988) and Cooter (2000). These scholars state that constitutionalism requires trade-offs between the perceived high transaction costs associated with constitutionalism and the need for political action. Without trade-offs there is potential for decision-making gridlock between the executive versus legislative branches and/or the slowing down of decisions such as the ability of pressure groups to influence legislation. Berggen and Karlson (2003) disagree arguing that while sometimes a division of power can cause high transaction costs, though they argue this is not always the case, a division of political power is positive as it may reduce the influence of pressure groups and subsequently through additional deliberation, improve political decision-making.

Beyond analyzing different situations and altering assumptions, the Buchanan and Tullock model has what some scholars (Wade 1979; Weschler 1982; Zafirovski 2001; Congleton 2012) identify as shortcomings or oversights. While *The Calculus of Consent* includes pressure groups as a part of the framework, Buchanan and Tullock do not discuss pressure groups using methodological individualism for the overall group. This is demonstrated in the model when Buchanan and Tullock (1974, 9) noted that the "word 'group' could be substituted for the word 'individual' without significantly affecting the results;" however they choose to use the

individualist approach as the “ultimate choice-making process can only take place in individual minds.” Critics (Wade, 1979; Weschler, 1982; Zafirovski, 2001) have construed that focusing on the individualist approach for decision-making is too narrow. In subsequent writings Buchanan (2004) relaxed the individualist approach to include pressure groups as he determined that pressure groups could be analyzed through methodological individualism without affecting the outcome as an individual’s values and preferences as a member of a pressure group are influenced by the overall shared values and preferences of the pressure group since the individual cannot be separated from the group. Therefore, he states, methodological individualism goes beyond the notion of individuals influencing one another within a group, to include a group’s shared values as a part of methodological individualism as individuals cannot be separated from the group, subsequently becoming meaningless to think in terms of individual interests being separated from group interests. The idea of communities of interests with shared values contributing to decision-making lends itself to the analysis of collective action groups through methodological individualism. Hence, by broadening the definition of individual decision-making, group choices can be viewed as different than private choices, not because individuals think differently in the decision-making process, but rather because group decision-making institutions with shared values vary fundamentally from private decision-making institutions with individual values (Shughart and Tollison 2005a).

Another shortcoming of the model is that Buchanan and Tullock construct a politics-as-exchange approach and through this approach identify associated interdependence costs, but they neglect to elaborate how one determines what comprises these interdependence costs (Congleton 2012). Before explaining interdependence costs, we will delve into the concept of politics-as-exchange for policy positions explained by Buchanan and Tullock as a move from simple

exchange or interactions between two individuals such as occurs in a private market setting to complex exchanges as in a political realm (Buchanan 1989). It is through exchanges that individuals attain power, not ‘power’ as in politics-as-power (e.g. elites over peasants) but rather ‘power’ in that individuals through mutual cooperation each have the ability to maximize their utility through exchange (Buchanan 1989) to attain Buchanan and Tullock’s (1974, 23) definition of power - “the ability to command things that are desired by men.” While this type of exchange sounds very agreeable, in reality most observed relationships incorporate some elements of the politics-as-exchange approach and some coercive element such as politics-as-power (Buchanan 1989). In a situation where there is no coercive element, one attains perfect competition. It is when one adds in the rent seeking factor⁷ which is a part of decision-making costs that coercion becomes a factor (Buchanan 1989).

4.2 Decision-making costs

Buchanan and Tullock’s (1974, 46) model outlines two types of costs that individuals incur in a collective action setting to maximize utility - external costs⁸ and decision-making.⁹ Being a part of a collective action, these authors argue, increases decision-making costs for an individual as it takes time and effort to reach a mutually agreeable outcome versus in a market setting in which the individual does not need to consult with others to make a decision. Buchanan and Tullock (1974) find that minimizing external costs and decision-making costs are suitable goals for social or political organizations and they call the sum of these costs, interdependence costs. The expectation of interdependence costs is that the external cost curve

⁷ Rent seeking is legal and illegal activities to obtain special privilege (e.g. monopoly, special zoning, protective tariffs, bribes, threats, smuggling) (Tullock, Seldon, and Brady 2002).

⁸ External costs are costs that the individual expects to endure as a result of the actions of others over which he has no direct control.

⁹ Decision-making costs are costs of participating in decisions where two or more individuals are required to reach an agreement.

decreases by the number of votes required for the collective action to occur, and the expected decision cost curve increases with the number of votes required with the result being that when one plots the two curves, the total cost of interdependence costs is the sum of the curves. Hence with the assumed cost curves, the cost-minimization rule tends to be in the mid-range of voting rules, an observation that becomes important when considering the median voter. A shortcoming of the Buchanan and Tullock model, as identified by Congleton (2012), is that it is difficult to completely understand what external costs and decision costs are comprised of, resulting in it being difficult to minimize interdependence costs without doing numerous cost-benefit analyses which take time resulting in increased decision costs. Thus one may end up with a circular problem.

With it being difficult to identify interdependence costs and recognizing that costs are impacted by the type of decision-making rule, Buchanan and Tullock (1974) contribute that the selection of the decision-making rule or voting rule is a group choice and the ultimate decision-making authority must be identified. The decision-making authority's evaluation of the collective choice will be influenced depending upon the decision-making rule. The type of decision-making rule (e.g. majority, full consensus) is important as it stipulates the proportion of actors necessary to agree to make an affirmative decision (Buchanan and Tullock 1974). The more votes required to make an affirmative decision, the higher decision costs become. A fully rational individual will try to choose the decision making rule which will minimize the expected costs that he must endure as higher decision-making costs lowers his net benefits. However unlike property rights in which the individual has legal recourse, the lowering of his net worth may be the result of an externality in which he has no legal recourse so he may be inclined to join a collective action setting so that he may benefit from the political exchange even though the

individual's decision-making costs increase (Buchanan and Tullock 1974). When a collective action group is successful in political exchange, such as lowering or eliminating an externality, it may mean that tyranny of the majority prevails with all taxpayers financially supporting publicly provided services that may only be demanded by, and benefit the preferences of, a particular collective action group(s). Tyranny of the majority is an example of external costs as the majority through collective action groups, force the underrepresented minority such as voters who are not a part of the collective action group, to subsidize the preferences of the majority (Buchanan and Tullock 1974).

Decision costs are also impacted by the composition of the group, whether members are homogeneous with lower costs likely the more goals or norms are aligned, or heterogeneous with higher costs more likely in a disingenuous group (Buchanan and Tullock 1974). The benefit of having a larger group size whether it be homogeneous or heterogeneous is that more positive and negative externalities may be considered by the collective action (Olson 1971; Congleton 2012). However, the larger the group size the more difficult it becomes for individuals to obtain gains that directly benefit them as the larger group may simply ratify collective decisions in which smaller groups of committees have established the fine details behind a collective decision (Olson 1971; Ostrom 1991; Congleton 2012). For example in a collective action setting, in which one of the rules of decision-making is usually who has the authority to make decisions, the members of the collective action have granted the right as to who will have the ultimate decision-making authority in exchange for moving towards the collective action's common goal or preference. Similarly in an electoral process, elected officials have been granted the right by voters, the authority of running government in exchange for elected officials providing voters' preferences thus enabling both groups the opportunity to mutually gain from the exchange.

Buchanan (1999b) contributes that in collective action settings individuals choose a ‘leader’ or ‘expert’ who is empowered to make the necessary ultimate decisions. The leader of a group is empowered to not only set the agenda but also to decide who will be given the opportunity to express their views, and order the proceedings but the leader also becomes increasingly dominant as the size of the group increases resulting in the role of individual members becoming more diminished (Ostrom 1991).

While choosing a leader saves the individual time and effort in decision costs, it distances him from the preference decision details with the results perhaps decreasing his overall net benefit (Olson 1971; Ostrom 1991; Congleton 2012). However by providing the authority to others to make decisions that may impact him, the individual can identify his own costs possibly making it less relevant that he can’t identify the group’s overall costs. Additionally, in collective action settings the granting of authority may be for a set timeframe; hence the individual recognizes that he has absolved himself of the authority to make overall collective action decisions but he knows that at the end of the term he can remedy the situation by voting to change the authority figure if he deems that his net worth has not increased marginally (Ostrom 1991; Buchanan 1999b). Conversely, the leader who has been granted decision-making authority knows that if he has not moved the collective action group towards the group’s preferences that the individual may be removed at the end of the term. Hence, it may be in an authority figure’s self-interest, assuming he likes to be in the authoritative position, to attain the collective group’s preferences in some form in order to remain in the position of authority.

Thus we see a shift in the literature from individuals being involved with all decisions in the politics-as-exchange process to empowering elected authority figures to make decisions, suggesting that it is not necessary for one to be able to determine the overall costs of decisions to

individuals. Buchanan and Tullock (1974, 76) determined that as an institutional structure may vary, it is possible to affect the expected costs of the collective action group and in some cases, largely eliminate the importance of the decision-making rule in the individual constitutional calculus thus reducing the extent of interdependence costs that the individual might expect from any particular decision-making rule. Furthermore in subsequent research, Buchanan (1999b) determined that in the real world within a constitutional setting, individuals do not make fiscal choices that contribute to the redistribution of resources but rather limit themselves to choosing authority figures to make necessary fiscal decisions on their behalf. Accordingly, we see a shift from the importance of decision-making rules to the importance of fiscal rules as elected authority figures decide who gets what and who pays.

This is not to say that individuals absolve themselves of making decisions in collective choices beyond participating in the democratic process of voting for elected officials. But rather individuals continue to influence government decisions that affect the community of individuals through pressure groups with collective outcomes emerging out of the utility-maximizing behaviour of many individuals acting in many distinct capacities (Buchanan 1999b). Thus while the institution of government decides what the private 'costs' and 'benefits' will be for individuals, not on an individualized basis but rather as an overall society, the decision may be influenced by the behaviour of individuals through the collective action process.

4.3 Financing public services

According to Buchanan and Tullock (1974), the collective action process may influence government activity to benefit specific individuals or groups in a self-interested manner while being financed through general taxation. They state while there are some government provided services that benefit all citizens and are financed through general taxation, it does not mean that

all revenues employed in paying for these services are collected equally or fairly from all citizens. Special tax exemptions may be introduced for certain collective action groups or individuals thus greatly reducing the efficacy or ‘acceptability’ of any generally accepted norms in collecting revenues from citizens. Thus an individual voter based on his intensity of interest for any given area understands that his general welfare may be improved by accepting a decision contrary in an area where his preference is weak in exchange for a decision that is in his favour in an area where his feelings are stronger resulting in bargaining among voters that becomes mutually beneficial to maximize voters’ utility through special tax exemptions. Bargaining among voters can be beneficial but it can also be harmful as a voter may not participate in all bargaining resulting in him having to bear the costs of collective action as an underrepresented minority. The *Calculus of Consent* assumes that all individuals face uncertainty in decision-making hence all are in equal positions of exchange. In subsequent writings Buchanan (1999b) relaxes this assumption allowing that individuals may have unequal bargaining positions. As a result if individuals have different degrees of uncertainty based on the amount of information they have chosen or not chosen to attain, some individuals may have a stronger bargaining position and may receive an enhanced benefit package.

While individuals may attempt to control variables relating to their tax liabilities in order to enhance their benefit package, in reality shifting an individual’s income-wealth distribution is difficult as tax rate structures are generally based on an individual’s position in the market economy not on his public goods preferences (Buchanan 1999a). Hence, an individual is not in a position to accept or reject ‘offers’ from others to bargain a better benefit position. However, an individual can express his public goods preferences through the electoral process by either

approving or not approving various tax-sharing arrangements and various proposals for public spending programs through voting (Buchanan 1999a).

As Buchanan and Tullock (1974, 197) state “redistribution of real income, per se, is rarely collectivized, in spite of the almost universal acceptance of some collective effort to intervene in the distribution process.” Further they argue, Western governments find that a more effective redistribution of resources is accomplished through a highly progressive tax structure that is nominally general to permit taxes with special-benefit public services in the fiscal process. By implementing a tax structure that is nominally general, such as in the United States (US), means that government does not necessarily need to explicitly state what public services will be provided or how they will be funded nor does government need to announce proposals to levy taxes that will provide a specific public service (Buchanan 1999b). In Canada, while taxes and public services may be more directly linked, public services are provided by several layers of government resulting in it being challenging for citizen-voters to keep track of what taxes they pay for which public service. Hence, the collection of taxes linked to the provision of services becomes murky resulting in individuals being limited in determining how they benefit from public services by the taxes they pay. Accordingly, as individuals may not be able to directly link costs and benefits in the provision of public services, individuals may continue to ask for more public services that address their preference function without realizing the costs of providing said services (Buchanan 1999b). As voters may no longer be able to link the collection of taxes to the provision of services, they basically shift the decision to elected officials as the designated authority figures, with the presupposition that elected officials understand the needs and ability-to-pay of individuals. Even though voters may shift fiscal choices to elected officials for the provision of public services to decide on who gets what and who pays, most often individuals are

not supportive of an increase in their tax-share arrangement to finance said services (Steinmo 1993; Buchanan 1999a). To also consider is that individuals may attempt to control variables relating to their tax liabilities through illegal tax evasion or legal tax avoidance (Slemrod 2007).

Buchanan and Tullock (1974) argue that government may use general taxation to finance pressure group preferences and/or governments may use discriminatory taxation to finance general benefits to all citizens. In other words, some citizens may receive benefits that have been paid for by all taxpayers through general taxation, and all citizens may receive benefits that have been financed by only a portion of taxpayers through discriminatory taxation. As discussed in Chapter 2, taxation may be direct or indirect (Bibbee 2008; Tellier 2009). Direct taxation typically has a compulsory aspect that is not tied to financing any specific services or benefits while indirect taxation is linked to the purchase of particular goods or services (Bird 1976; McGee 2004; Pal 2006). While it has been argued that user fees are a form of taxation (Maslove 1994), others argue that user fees are a more efficient method of providing goods and services (Bird and Tsiopoulos 1997a; McGee 2004). If we consider user fees as an indirect form of taxation charged for specific services, it is then up to government as the provider to ascertain the efficient provision of these services whether it be through user fees or general taxation. Government may also decide to introduce user fees to draw attention to certain segments of the population who individually benefit from a government service. Hence, different types of tax arrangements may impose political externalities on some individuals (Brooks 1997) but as previously stated, individuals do not generally support an increase in their tax-share arrangement; thus elected officials need to be cautious in how they communicate the financing of publicly provided services.

While pressure groups may marginally influence the redistribution of resources to sway government to adapt pressure group preferences, the bulk of redistribution of resources is outside the sphere of pressure group influence and rests with elected officials. As stated above individuals choose a 'leader' who is empowered to make the necessary ultimate decisions (Buchanan 1999b). Assuming the 'leader' wants to remain in the authority role, it is in the leader's self-interest to make fiscal choices that will be acceptable to individuals even though individuals may not be aware of the direct cost of providing public services. Making fiscal choices acceptable to voters may result in the leader being re-elected in the authority role at the end of their term. One method that elected officials may use for financing and providing public services is through fiscal illusion as it relates to the allocative and redistributive functions of public finance.

A fiscal illusion occurs when voters have a misperception or underestimate their tax burden which may in part be attributable to the 'invisibility' of indirect taxes versus the 'visibility' of direct taxes (Sausgruber and Tyran 2005). Mueller (2003, 221) explains the notion of a fiscal illusion as:

"there are certain revenue sources of the government that are unobserved or not fully observed by the citizens. If money from these sources is spent, some or all citizens benefit from these expenditures, and support for the government increases. Because the citizens are unaware of the source of these expenditures, they do not perceive the pain of having either paid higher taxes or foregone a tax cut to bring about this increase in expenditures. Thus, spending revenue from sources that are hidden from the citizens' view by fiscal illusion should increase the popularity of the government and thus those in government who seek re-election have an obvious incentive to spend any revenue that is subject to fiscal illusion, and seek revenue that has this characteristic."

When government utilizes a fiscal illusion, the government needs to be aware that it may be reducing not only the visibility of revenues but also limiting the amount of information provided to voters. Earlier we discussed that individuals may not have, or choose not to have, adequate information to make an informed decision thus would be making a decision based on

“alternatives *imperfectly*” (Buchanan 1999b, 125). When we look at a fiscal illusion there is a subtle difference in the behaviour of the individual as he is now making a decision based on “alternatives *falsely*” (Buchanan 1999b, 125) in which the elements to be considered are subjective and non-observable. The government may choose to present elements in either an optimistic or pessimistic manner with the illusion arising as the individual perceives the characteristics of the alternatives rather than fact based (Buchanan 1999b). An illusion arises as the characteristics of the alternatives are perceived by the individual with government using illusions to communicate fiscal choices (Buchanan 1999b).

Buchanan (1999b), leveraging the works of Puviani and Fasiani, discusses fiscal illusion as the notion of a disconnect between the total amount of resources actually utilized in producing or supplying public services and the individual’s share in this total which may be obscured to the taxpayer. Examples include income taxes, specific excise taxes, public debt, inflation through currency creation, and the making of false promises such as leading an individual to believe that a spending program is to be temporary and short-lived but not shutting down the program. Other types of costs which may be a part of fiscal illusion that are incurred by government in tax revenue generation include administrative costs in collecting and enforcing tax laws along with the political costs of creating tax legislation (Downs 1960; Holcombe 1998; Andersen 2012).

Using the above concepts as presented in *The Calculus of Consent* and further elaborated on in subsequent works by public choice scholars, we next develop the actors of our model.

4.4 Actors

In this section we consider how public choice theory can be applied to the major actors in our model that of government, citizen-voters, and pressure groups.

4.4.1 Government

Similar to *The Calculus of Consent* model, we assume the existence of a constitution that captures the rules for decision-making through the integration of individual choices into social preferences. Before going further we will outline what we mean by rules for decision-making. Rules for decision-making can be informal as in rules-in-use¹⁰ or formalized with documentation as in rules-in-form¹¹ between various actors with rules generally have a hierarchical ordering as to how decisions are made (Buchanan and Tullock 1974; North 1990; Sproule-Jones 1996, 1993). Rules can be hierarchically categorized into lower-level operational rules,¹² middle-level institutional rules,¹³ and higher-level constitutional rules¹⁴ (Buchanan and Tullock 1974; North 1990; Sproule-Jones 1993, 1996). Buchanan and Tullock (1974) demonstrate that at the constitutional stage, citizen-voters in order to minimize interdependence costs resulting from collective action, will choose to abide by a voting procedure that selects authority figures to make decisions on their behalf associated with social preferences as outlined broadly in a constitution. These elected authority figures comprise the political executive of government.

Government is comprised of elected officials and the bureaucracy. As the authority figures and decision-makers, elected officials control the bureaucracy through informal rules and formal rules. The bureaucracy is considered the administrative or operational arm of government, which implements policy decisions taken by elected officials (Simon 1997; Savoie 2003; Carnis 2010). As a result of the different roles plus the complex rules used for decision-making, an interesting interplay develops between these two groups. As our focus is primarily on authority

¹⁰ Examples of rules-in-use are norms of behaviours and conventions. Conventions, while being fundamental to a constitution though not legally binding, are flexible and adapt over time as circumstances change providing guidance but not specific courses of action that must be followed (Franks 2009).

¹¹ Examples of rules-in-form are legislation, regulations and common law.

¹² An example of lower-level operational rules is the rules used to deliver public services.

¹³ For instance middle-level institutional rules consist of who has authority to make decisions including changing operational rules.

¹⁴ The terms and conditions to change institutional rules is an example of higher-level constitutional rules.

figures that make decisions on behalf of citizen-voters, the part of government that will be our main focus is elected officials. Thus, when we say government, we mean elected officials. This is not to say that the bureaucracy doesn't play a role, as we will see in several areas, but rather that it is not the bureaucracy who has been voted into a position of authority to make decisions on behalf of citizen-voters.

Government is one of the major actors in our model. As a rational actor, it is interested in maximizing utility through re-election (Downs 1957a). Re-election (or election) is the primary objective of both the governing party and opposition parties (Downs 1957a). Similar to Downs (1957a, 11), it is assumed that for each election, the party that receives the most votes controls the entire government until the next election, thus government has unlimited freedom of action, within the boundaries of the constitution. Hence in order to be re-elected or elected, candidates of political parties must appeal to citizen-voters and receive enough votes to become the governing party as illustrated in Table 4.1. One way of appealing to citizen-voters is to alter citizen-voters' cost-benefit packages by offering tax incentives and/or enhancing publicly provided services that appeal to citizen-voters. Citizen-voters have a virtually insatiable desire for increased public services but they don't want higher taxes (Steinmo 1993; Tanaka 2007; Good 2008), accordingly citizen-voters are open to the notion of receiving more, or a different mix of, publicly provided services. Dunleavy (1991) provides that political parties frequently position election platforms around zero-sum policies that redistribute but do not enlarge social resources. In other words, political parties attempt to redistribute social resources without increasing taxation resulting in providing some citizen-voters with enhanced public services and perhaps, taking away from others.

Table 4.1 – Actors and Roles

Actor	Role in decision-making	Self-interest goals	Influence
Government – elected officials	• Final decision-maker in deciding who gets what and who pays • In US, two levels of elected political authority which may be controlled by different political parties	• To obtain enough votes to form and control government including the public purse	• Decides on public services, tax incentives, tax expenditures for electorate • Vote-trading • Controls bureaucracy through appointment process
Government - bureaucracy	• Provide information/ analysis to government for decision-making	• Retain position • Avoid risk • Avoid public scrutiny	• In US, carry out president's instructions to retain position
Citizen-voters	• Votes for political candidate who may become elected official who controls government	• Receive more public benefits than what they pay for through taxation	• Limited influence on elected officials' decision-making except during elections or through pressure groups
Pressure groups	• Withdraw votes of members or monetary contributions if groups' preferences not met through elected officials' decision-making	• Obtain members' preferences at the expense of others	• In US, influence by providing votes and/or monetary contributions

In redistributing resources, political parties may attempt to shape socio-economic policies that impact the cost-benefit packages of citizen-voters based on the political party's ideology. According to Downs (1957a, 28) "parties formulate policies in order to win elections, rather than win elections in order to formulate policies." Further, he states, that from a rational perspective, to maximize utility the goal of a political party is to "reap the rewards of holding office *per se*" (Downs 1957a, 28) by treating policy formulation as a means to attain the political party's private ends – to be elected or re-elected (Hettich and Winer 1997). Previously we discussed that citizen-voters and pressure groups can only marginally influence the redistribution of resources to sway government to adapt to their preferences with the 'leader' of the governing party having the authority to make fiscal decisions impacting the redistribution of resources. In order for a

political party to become the governing party it must appeal to citizen-voters' preferences at election time. From a public choice perspective, rational political leaders will treat state power as a 'free good' which can be used to secure partisan advantage to control government to accomplish changes in citizen-voters' preferences that are favorable to the governing party (Dunleavy and Ward 1991; Felgenhauer 2012). Thus, even though citizen-voters' preferences may only marginally shape the redistribution of resources, electoral candidates of political parties need to be aware of citizen-voters' preferences at election time in order to be elected or re-elected to form government to shape policies towards party ideology.

To be aware of citizen-voters' preferences during an election campaign, government faces an information constraint. According to Downs (1957a), government faces an information constraint as it is difficult to determine the right mix of tax incentives and/or enhanced publicly provided services that appeal to citizen-voters' preferences to win their vote. He further adds that as a part of an information constraint, political parties may encounter high decision costs in three areas. One area of high decision costs is attaining costly and perhaps, imperfect information in attempting to understand citizen-voters' preferences. A second area of high decision costs is that political parties may need to develop strategic tactics to differentiate themselves from others' policy platforms regarding the primary issues that citizen-voters may deem important. Without policy differentiation citizen-voters may simply vote for the incumbent or not vote at all. A third area for high decision costs could be encountered by a political party as the leader of the party attempts to not only influence voters but to also keep party candidates 'on message' during an election campaign in order to secure the vote and become the governing party. Hence we see that similar to Downs (1957a), political parties are leaders in their ability to influence voters'

decisions, but also followers as candidates try to shape their party's policies to attract as many votes as possible.

According to the Downsian model, political parties can anticipate incurring high external costs as opposing political parties attempt to discredit other political parties' policy platforms through misinformation, influence, and persuasion. Downs (1957a) suggests that citizen-voters are unlikely to want to have a loss in utility by paying more taxes, political parties may need to develop their electoral campaign around providing a different mix of public services through marginal changes to existing revenues or face disenchanted voters. Without understanding the preferences of citizen-voters, government might not be re-elected especially if opposition parties have a better understanding of citizen-voters' preferences. Not understanding citizen-voters' preferences may occur if a political party focuses on what citizen-voters may consider a minority issue rather than a majority issue such as environmental issues when unemployment is high. Rather than attempt to determine precisely the preferences of citizen-voters, political parties may provide their position on a broader range of topics then let citizen-voters infer what tax incentives or publicly provided services they may receive (Coughlin 1986). We need to keep in mind in understanding political parties election motives that maximizing votes is the central goal of political parties in order to win the right to be the governing party thus political parties may well ask themselves for any policy expenditure they put forward whether or not the vote gain is worth the expected revenue cost (Downs 1957a).

To be considered too is that the governing political party holds a monopoly on information regarding the inside workings of government including the status of the public purse. As the governing political party is privy to information that other political parties are not, other political parties face an information constraint for not only re-election but, in some parliamentary

systems, in trying to unseat the government to force an election. Government holding a monopoly on information also means that government possesses information that may not be available to citizen-voters. While government may have a monopoly on information, citizen-voters understand this and may use other measures to evaluate current government during the electoral process. While citizen-voters may not have enough information to make the connection between tax incentives and publicly provided services to make an informed decision, government needs to tread lightly as citizen-voters do not necessarily vote prospectively. Citizen-voters may vote retrospectively supporting government when policies benefit the citizen-voter or voting for an opposition party when policies do not support the citizen-voter, by using economic indicators, such as the employment rate or inflation, to evaluate government performance and the impact it has on the citizen-voter (Fiorina 1981; Dunleavy and Ward 1991; Barreiro 2008). As mentioned previously, there is a debate in the literature as to whether or not information constraint is a factor in voting preferences (Rogoff 1990; Franzese 2002; Tellier 2006) with some scholars (Frey and Schneider 1978a, 1978b, 1979) arguing that the governing party behaves opportunistically to leverage the party's popularity with citizen-voters versus other scholars (Kramer 1971; Nordhaus 1975; Rogoff 1990) arguing that citizen-voters are aware of the governing party's intent and suggest that citizen-voters will vote retrospectively.

Government faces a budget constraint in offering tax incentives and/or enhancing publicly provided services as it is assumed that government's intent is to operate within a balanced budget (Margolis 1955; Musgrave 1959; Graham 2007; Miller 2011). Government is inclined to operate within a balanced budget as a debt-financed spending spree on publicly provides services and expenditures cannot be sustained over the long-term (Musgrave 1959; Buchanan 1989; Graham 2007; Miller 2011). At some point the consequences of debt-financed

spending must be accounted for by such measures as reducing or discontinuing selected public services and/or increasing revenues through taxation – both of which may be unpopular with citizen-voters (Musgrave 1959; Buchanan 1989; Miller 2011). Over the longer term incurring public debt, a form of fiscal illusion, results in giving up some part of citizen-voters' incomes in future periods in order to meet interest and amortization charges on the public debt (Buchanan 1989). Government's communication rarely speaks about the public debt in addressing citizen-voters but rather is more likely to announce putting in place a balanced budget (Graham 2007; Good 2008, 2014) creating fiscal opacity. In announcing a balanced budget, the government generally means for the current fiscal term, not overall which normally includes interest on servicing any debt (Good 2008, 2014).

Federalism may be a constraint upon government too as different levels of government operate independent fiscal systems upon the fiscal resources of individual citizens who are impacted by more than one level of government (Buchanan 1950). Buchanan and Tullock (1974), in discussing federalism as the optimal size of government as categorized into small and large political units, explained that a collective unit should be extended to include other collective units as in other jurisdictions of government, as long as the external costs from externalities do not exceed the expected incremental costs of decision-making that result from adding the excluded jurisdictions. Hence, they added, where the decentralization of collective activity permits both cost functions to be reduced, collective activity should be organized in small rather than large political units. However, a large political unit may be justified "by the overwhelming importance of the externality that remains after localized and decentralized collectivization" (Buchanan and Tullock 1974, 115). A federal state, with its separate and overlapping levels of government with each level having different responsibilities, compounds

decision-making in providing public services, resolving market failures and social problems due to externalities and transaction costs (Tullock, Seldon, and Brady 2002; Mueller 2003).

According to Mueller (2003, 39) whereas governments may exist “to economize on the transaction costs of making collective decisions” a federal state is optimally comprised of a few levels of government with multiple roles rather than many levels of government with each having a separate role or task. For the citizen-voter of a representative democracy, he argues, the individual is expected to participate in the voting process that selects leaders as authority figures for each level of government and then monitor the chosen authority figures and the bureaucracy who execute the collective decisions. Hence, if a federal state was comprised of many, rather than few levels of government, citizen-voters would have high transaction costs for both participating in and monitoring authority figures due to the amount of information they would need to obtain, or choose not to obtain, to make an informed decision. Conversely one could consider having only one level of government that provides all public services but again, the transaction costs would be quite high, in this instance for the government, as this one level of government would need to ascertain the bundle of goods for each community across the country which may be an overwhelming endeavour due to factors such as geographical size, density of population, and diversification of preferences (Mueller 2003).

Publicly provided services delivered by different levels of government, each with their own tax source, plus transfer payments from higher levels of government, plus shared governance and financing models, adds to the murkiness of citizen-voters understanding the link between taxes paid and public services provided. An outcome of fiscal federalism may create fiscal opacity and may be why citizen-voter turnout for elections is low – citizen-voters may not think they can make a difference in the electoral results or they do not have enough information

at the various levels of government to make an ‘informed’ decision (Courtney 2004; LeDuc and Pammett 2010). In addition, citizen-voters may not differentiate who is providing what service and at what cost – they may simply feel that they want more public services but they don’t want to pay more taxes. In Canada for example while voter turnout was previously higher for provincial elections than federal, since the late 1980s voter turnout has declined for both (Courtney 2004; LeDuc and Pammett 2010; Pammett 2012). We look closer at citizen-voters and the role they play in the next section.

4.4.2 Citizen-voters

Citizen-voters are the second major actor in our model. Rational citizen-voters maximize their utility by receiving more publicly provided services than they finance through taxation as illustrated in Table 4.1. As such, a citizen-voter will vote for the political candidate, as a part of a political party, whose platform appears to maximize the voter’s utility (Downs 1957a; Coughlin, Mueller, and Murrell 1990; Felgenhauer 2012). While citizen-voters may not be knowledgeable about the details of government’s budget, they have views about the acceptability of taxation and priorities for spending (Rubin 2014, 17).

In order to determine which political party will provide a citizen-voter the most benefits and/or the least costs to maximize utility, the citizen-voter needs to gather information regarding each political party’s policy stance on specific publicly provided services that may be of interest to the citizen-voter, plus how much the political party estimates it will cost to provide these services. As government generally tends to provide many services, in order to be fully informed a citizen-voter needs to do a cost-benefit analysis on each political party’s platform for each public service including anticipated costs which would likely result in high decision costs for the citizen-voter (Downs 1957a, 1957b; Ostrom and Ostrom 1971; Tullock, Seldon, and Brady

2002). Due to time constraints, and determining how much information is required to make an informed decision, citizen-voters may choose to not be fully informed, or they may become informed by relying on others' opinions such as family, friends, or the media (Teske et al. 1993). Or citizen-voters may have information ignorance as they may think they are more informed than what they are (Buchanan 1999b). Any of these choices are considered rational in making a decision (Buchanan 1999b).

Citizen-voters face an information constraint to make an informed decision as they only have access to information that government makes publicly available. According to Downs (1957a), uncertainty and a lack of information makes it very difficult or even impossible for a citizen-voter to actually determine his expected cost/benefit package either by the governing party or through the electoral promises of opposition parties. Hence, he argues a citizen-voter is more likely to estimate his perceived utility income, and then examine the electoral platforms of political parties where the difference between party platforms on particular policy issues is great enough to impress the citizen-voter thus winning the electoral candidate the citizen-voter's vote. Another consideration that may come into play in deciding which electoral candidate to vote for, is whether or not the electoral candidate's political party has a reasonable chance of winning to become the governing party as the citizen-voter would like to believe that his vote counts towards enhancing his cost/benefit package (Downs 1957a).

As a citizen-voter incurs higher decision costs as a result of any increased time and effort that he expends on making his voting selection, if the citizen-voter cannot differentiate between political parties' platforms he may abstain from voting (Downs 1957a; Dunleavy 1991). Unlike a private market transaction, there are limited mechanisms beyond voting at the next election that ensures the governing party upholds their election promises which may have attracted the vote of

the citizen-voter when evaluating the various political parties' election platforms in terms of the citizen-voter's cost-benefit analysis (Downs 1957a; Simmons 1992). As there are no mechanisms to ensure that the governing party fulfills its election promises, and if citizen-voters cannot differentiate between political platforms, citizen-voters may choose to not vote at all. Even though citizen-voters may vote because they consider voting important as a part of their democratic right, many citizen-voters may choose to remain relatively uninformed due to high decision costs or a citizen-voter may determine that his single vote is unlikely to make a difference in the overall results as he is but one vote (Downs 1957a).

As citizen-voters may face an information constraint, individuals may consider joining collective action groups as citizen-voters may be concerned with losing an existing portion of their net worth or protecting endowed property due to the external costs of other collective action groups (Procaccia and Segal 2003). However, being a part of a collective action group increases decision-making costs for citizen-voters as it takes time and effort to reach a mutually agreeable outcome within the group versus in a market setting in which the individual does not need to consult with others to make a decision (Buchanan and Tullock 1974). One method of limiting the increase in decision-making costs is for citizen-voters of the collective action group to choose a 'leader' who is empowered to make the necessary decisions on behalf of the collective action group (Buchanan 1999b). Thus we see a shift from citizen-voters being involved with all decisions in the collective action process to empowering an authority figure to make decisions.

Citizen-voters may attempt to control variables relating to their tax liabilities in order to maximize utility by joining collective action groups. A citizen-voter may join a collective action group related to taxation in order to provide a louder voice in either supporting or rejecting a taxation policy. For example, if government announces it will change how a tax is implemented

and applied, such as a sales harmonization tax between different levels of government, the voice of many through collective action groups is more apt to be heard than each citizen-voter objecting to the change. The collective action group may already exist to pursue other public services/taxation matters with the government suggesting that it is easier for citizen-voters to mobilize than if citizen-voters were to start a new collective action group, or lobby government individually, through such venues as letter campaigns. This is not to say that government will not impose the taxation change, given lobbying efforts by citizen-voters and collective action groups, but rather the government would want to be cognizant of the timing of implementing the change (e.g. close to an election) and the financial impact the taxation change may have on segments of citizen-voters.

In reality, shifting a citizen-voter's cost/benefit package is difficult, either individually or through a collective action group, as tax rate structures are generally based on a citizen-voter's position in the market economy not on his public-goods preferences (Buchanan 1999a). However a citizen-voter can express his public-goods preferences through the electoral process by either approving or not approving various tax-sharing arrangements and various proposals for public-spending programs as proposed by different political parties (Buchanan 1999a). It is assumed that if citizen-voters vote their preferences during an election that political parties will alter their policy platforms to appeal to citizen-voters in order to become the governing party resulting in the self-interested behaviour of political parties producing the 'optimal' policy outcomes for citizen-voters (Simmons 1992).

So we see that a citizen-voter may have two dimensions in which to consider his vote, one dimension is how the citizen-voter chooses to vote on an individual basis through the electoral process and the other dimension is through the influence of a collective action group.

However, to be clear, that while a collective action group may influence a citizen-voter's voting decision, it is the citizen-voter that casts his vote during an electoral process, not the collective action group. The citizen-voter being the one with the voting right makes the citizen-voter a very important actor as political parties, through electoral candidates, attempt to attract the most votes to be elected or re-elected. We next examine pressure groups as an actor.

4.2.3 Pressure groups

As citizen-voters attempt to increase their benefit package in order to maximize their utility, they may join collective action groups to aid the citizen-voter in eliminating external costs from others' actions and/or to secure additional benefits that are more costly to attain through private action such as police or fire protection (Buchanan and Tullock 1974). As previously explained, the notion of methodological individualism can be expanded to include pressure groups as individuals' values and preferences as members of a pressure group are influenced by the overall shared values and preferences of the pressure group since the individual cannot be separated from the group (Buchanan 2004). However an individual can belong to more than one pressure group.

Pressure groups are the third actor in our model. Pressure groups maximize their utility by spending resources on political activities to secure the group's preferences (Olson 1971; Becker 1983, 1985; Thorburn 1985; Mueller and Murrell 1986; Dunleavy 1991). As illustrated in Table 4.1, pressure groups pursue their self-interest at the expense of others as government strives to operate within a budget constraint of expenditures equaling revenues (Becker 1983, 1985).

By pressure groups, we mean groups in which members act together to influence public policy-making in order to promote their common goals by engaging with government through

such measures as advocacy or hiring lobbyists (Pross 1975a; Becker 1983; Mueller and Murrell 1986). The term pressure groups encompasses interest groups both socio-cultural and socio-economic, social movement groups, business groups, unions, and all other such groups that act in a similar fashion as we have defined pressure groups. We do not mean that any citizen-voters with similar interests will automatically emerge as a pressure group to promote their self-interest, as groups of any size are costly to form and there is an incentive by citizen-voters to free-ride as noted by Olson (1971). But rather we mean that pressure groups are more formalized with common goals and formal decision-making rules that pursue collective action (Buchanan and Tullock 1974; Schlager 2007; Ostrom 2008).

However not all pressure groups act the same. Some pressure groups such as those representing business primarily pursue shaping the economic landscape of a state (Lehmbruch and Schmitter 1982; Heinz et al. 1997) whereas environmentalists target the impact on the environment of altering the economic landscape. Other pressure groups may focus on social issues such as social services, education, and health, to name but a few examples (Mueller and Murrell 1986; Dunleavy 1991; Pal 1997). Or we could differentiate between pressure groups that pursue selective benefits for their members with others pursuing collective benefits (Young and Everitt 2010, 171). While a pressure group works towards a common goal, this does not equate to everyone involved within a pressure group casting their vote in favour of the political party that the leader of the pressure group has deemed best represents the pressure group's goals. For example, pressure groups that represent many businesses are unlikely to control citizen-voters as their groups are diverse with many citizen-voters who may belong to more than one pressure group and have competing interests.

Pross (1975b, 1992) describes four typical features of pressure groups. First, a pressure group tries to persuade government to pursue the policies the group advocates. Second, pressure group is comprised of the association of individuals within a formal structure as in the group has financial resources, adopted procedures, and assigned responsibilities. Third, a pressure group is able to articulate and aggregate common goals. Fourth, a pressure group has the desire to influence those who hold decision-making authority. One of the primary roles of pressure groups is to communicate, whether it be in a manner that is distinctly noticeable by the public such as protests, or unobtrusive dialogue with government, pressure groups provide a two-way communication link between its members and government (Pross 1992; Heinz et al. 1997; Pal 1997).

Olson's work is recognized as the "pioneering application of public choice analysis to the study of interest groups" (Mueller 1997b, 7). Olson (1971) contributed that smaller pressure groups that have narrow interests, such as those who are organizing for resolution to a specific issue, are often successful in attaining their common goal versus broader based pressure groups. As noted by Clodman (1989) theme-based pressure groups formed around a narrow set of issues are more successful in attaining their common goals than segment-oriented groups which have specific demographic or professional characteristics in common. Further, this scholar found that as segment-oriented pressure groups issues are more diverse with a range of perspectives on the same issue, it is more difficult to build consensus on the common goal. Whereas narrow interest or theme-based pressure groups are more successful on specific issues that provide collective benefits to members, it is broader interest or segment-based pressure groups that are more fruitful in obtaining non-collective benefits such as the availability of financial incentives (Olson 1971).

The role and influence of pressure groups is more dominant in some countries than others with some pressure groups providing votes and/or monetary contributions to electoral campaigns with the intent that elected officials will respond favorably to the pressure group's demands if the political party succeeds in becoming the government (Mueller and Murrell 1986; Young 2000; Shughart 2004). Not only do we see pressure groups playing a role in providing membership votes for political candidates/parties but if pressure groups can deliver promised votes then political parties should find it to their benefit to compete for pressure group support (Mueller and Murrell 1986; Coughlin, Mueller, and Murrell 1990). With political parties competing for pressure group support, we can suggest that pressure groups in this example have an identity of their own beyond simply representing their citizen-voter members as it is the pressure group that the political party pursues.

Political parties pursue pressure groups' support by targeting campaign promises to the pressure group rather than to individual citizen-voters. In examining the impact of pressure groups on the size of government, Coughlin et al (1990) construct a model that assumes a candidate or political party will either receive all of the votes of a given pressure group or none of the votes. While this assumption may be required to lay the boundaries for the model, in reality, how does a pressure group ensure that all citizen-voter members vote for the 'chosen' candidate/political party as mandated by the leader of the pressure group? In another study, Becker (1983, 1985) provides a simplistic view that only concentrates on pressure groups and chooses to ignore government and citizen-voters. But are these models realistic?

Given the diverse demographics of citizen-voters¹⁵ it is conceivable that citizen-voters may belong to or support more than one pressure group. It is also plausible that if a citizen-voter

¹⁵ For example, an individual could be a member of a family with young children, and/or have aging parents, and/or have various occupation, industry, or income considerations.

belongs to several pressure groups, that the various pressure groups may not align their mandated voting for specific electoral candidates or political party. For example, a citizen-voter may be associated with a pressure group that advocates increased public services for senior citizens which are financed through general taxation. This same citizen-voter may belong to another pressure group which lobbies government to reduce taxes for small businesses thus impacting the amount of revenue that is available to finance publicly provided services for senior citizens or young children. How then does a citizen-voter decide to cast his vote?

Public choice theorists know very little about the dynamics of pressure group creation, but the logic of collective action suggests that narrow interest pressure groups will tend to dominate the democratic political process, putting the general population of citizen-voters at a disadvantage in the competition for wealth transfers, which characterize pressure group politics suggesting that society as a whole suffers from ‘tyranny of the minority’ (Shugart 2004). Public choice literature is limited on how one measures pressure group influences though it has been ascertained that more pressure groups seem to form when there is strong economic development and/or political stability (Holsey and Borcharding 1997).

4.5 Summary

In this chapter we presented Buchanan and Tullock’s model as well its strengths and limitations. We have described two types of costs that individuals incur in a collective action setting to maximize utility - external costs and decision-making costs. We also explained how the collective action process may be used in the financing of public services. In the next chapter we use the actors developed and apply them to the Canadian context.

Chapter 5

Theoretical Framework:
Applying the model to
the Canadian context

5.0 Introduction

In this chapter we apply *The Calculus of Consent* model to the Canadian federal government by utilizing the actors previously developed. Buchanan and Tullock's model is constructed using a two-house or bicameral legislature with representatives for both houses elected (Buchanan and Tullock 1974). As their model is based on the US system of government it is necessary to examine the differences and similarities between the US and Canadian systems to assess the applicability of the model to the Canadian context. While we discuss similarities and differences of the two systems, this will not be done at an in-depth level as this is not the primary focus of the study. Following the high level assessment of the two systems, we develop our three actors as they relate to the Canadian federal government.

5.1 United States versus Canada

As illustrated in Table 5.1 there are similarities and differences between the US and Canada in regards to our three actors: government, citizen-voters and pressure groups.

Table 5.1 – United States versus Canada

Actor	United States	Canada
Government		
Bicameral system of government	• Executive branch includes President and Cabinet • Legislative branch comprised of elected House of Representatives and elected Senate	• Executive branch includes Governor General, Prime Minister and Cabinet • Legislative branch comprised of elected House of Commons and appointed Senate
Head of state	• President, elected	• Queen represented by appointed Governor General
Head of government	• President, elected	• Prime Minister, elected indirectly
Political authority	• Fragmented between Legislative and Executive branches (President and Cabinet members cannot belong to either House)	• No separation between House of Commons and Executive (Prime Minister and Cabinet members expected to belong to either House)
Decision-making	• Vote-trading to break decision-making gridlock between	• Decision-making by Executive as House of Commons and Executive

	Legislative and Executive	typically controlled by same party • Senate approval taken for granted
Budgetary process	• Legislative and Executive both have power to make budget decisions	• Executive makes budget decisions
Appointment process of senior level bureaucrats	• Patronage appointments by President	• Non-partisan bureaucrats appointed by Prime Minister
Role of committees	• Congress standing committees have authority to review the application, administration and execution of legislation	• Limited political advantage for elected officials to participate in parliamentary committees as little changing of legislation
Citizen-voters	• Political donations allowed but not tax deductible	• Political donations allowed and tax deductible
Pressure groups	• Can provide votes and/or monetary contributions to political campaigns • Expectation that political decisions will result favourably to pressure group demands	• Since 2006 cannot make political donations • Limited ability to influence government decision-making

5.1.1 Government

Government institutions are not neutral, nor do they solely exist to change the distribution of control among policy-making participants but rather government institutions through decision-making affect how government, citizen-voters, and pressure groups develop their policy preferences (Steinmo 1993). Few institutions of government exist in pure form but are rather ‘living organisms’ that evolve over time (Breton 1989, 1996). We use the term ‘living organisms’ as there are mechanisms such as rules-in-use within constitutional bounds which provide political parties opportunities and constraints to alter the parliamentary landscape (Sharman 1990; Dunleavy 1991; Sproule-Jones 1993; Levy 2009). Constitutions are vague providing basic logic and a community of understanding but rarely defining the governance for decision-making, resulting in each nation state adapting its political foundations to the realities of governing its citizens (Steinmo 1993; Sproule-Jones 1993; Levy 2009). While the governance for decision-making may be vague, constitutions do tend to provide a set of governmental

institutions, including the relationships between them, thus creating a distinct arrangement as to how these institutions shall interact (Sharman 1990). The institutions of government come in many shapes and sizes with most having executive, legislative and judicial branches.

In the US system of government political authority is intentionally fragmented between the legislative and executive branches (Sharman 1990; Steinmo 1993; Simeon 2002; Tullock, Seldon, and Brady 2002; Pal and Weaver 2003; Andersen 2012). While having a separation of powers between legislative and executive branches provides a means of checks and balances (Steinmo 1993; Berggren and Karlson 2003; Andersen 2012), it may result in decision-making gridlock or slowing down decisions as the legislature and executive may be controlled by different parties (Elster 1988; Dunleavy 1991; Cooter 2000).

Conversely in Canada there is no separation of political authority between the legislative and executive branches as one political party typically controls both branches though Canada does have a bicameral parliamentary system with one of the roles of the Senate being to provide checks and balances in decision-making regarding legislation (Thomas 2002; Russell 2009; Savoie 2010). However unlike the US system in which both the House of Representatives and the Senate are elected (Flanagan 2014), in Canada members of the Senate are political appointments resulting in senators generally tending to ‘show their gratitude’ by voting for their political party’s affiliation resulting in the executive branch taking Senate approval for granted (Franks 1987; Thomas 2002; Howlett and Lindquist 2007). Thus whereas the Senate is meant to provide checks and balances in Canada, it basically rubber stamps legislation that has been passed by the House of Commons especially if the same party controls the House of Commons and the Senate (Franks 1987; Thomas 2002; Howlett and Lindquist 2007).

To break decision-making gridlock in the US system, vote-trading may take place (Buchanan and Tullock 1974). However in Canada with the executive and legislative branches not separated and taking the approval of the Senate on legislative matters for granted, there is little need to negotiate between political parties for policy-making particularly if the governing party is in a majority situation (Pal and Weaver 2003). Hartle (1988, 170) contributes that with a majority and strong party discipline, the Canadian system resembles the US system but without the checks and balances of Congress.

In the US the president is elected whereas in Canada the prime minister is not directly elected by voters but rather becomes prime minister as the leader of the political party who has attained the most seats in an election or otherwise able to maintain the confidence of the House of Commons (Dunleavy 1991; Good 2008; Savoie 2013). In the US congressional system of government elected offices are held for a fixed term whereas in Canada the system sets a maximum term but no minimum term (Hartle 1988, 170). In the US the president and cabinet members cannot belong to the House of Representatives or Senate. In Canada the expectation is that the prime minister and cabinet members belong to either the House of Commons or Senate (Bourgault 2014). This difference again demonstrates how political authority is fragmented in the US but not in Canada.

As our model indicates that government maximizes utility through re-election thus re-election becomes the primary objective of both the governing party and opposition parties (Downs 1957a), we find that the model is applicable to the Canadian parliamentary system as elected officials have a means to position for re-election and maximize utility.¹⁶

¹⁶ Other differences in the US system of government include that the US has primarily a strong two-party system versus multiple political parties in Canada (Flanagan 2014). In the US, candidates campaign as individuals with only loose coordination provided from the political party; in Canada whereas legally all candidates campaign as individuals, in practice they are expected to support the party platform and repeat talking points provided by the

Budgetary process

There is a difference between the US and Canada in regards to the budget process and decision-making power. In the US, elected officials in both the executive and legislative branches attempt to use their decision-making power to shape the budget and policy matters (Rubin 2014). Rubin (2014) states that in some cases the executive branch dominates and in other instances the legislative branch has an equal or larger role. She further adds that decision-making regarding budgetary processes generally fall between the extremes of total dominance by either branch with the balance of power being relatively even. However, the two branches of government devise methods to tip the balance of power in their favour. For example, Congress may put together a bundle of measures, some of which the executive branch may strongly desire, making it difficult for the president to veto (Rubin 2014).

In Canada with there being no separation of power between the legislative and executive branches means that budgetary decisions are different than in the US. In Canada, budgetary decisions are embodied in the executive through the Prime Minister's Office (PMO) and the Privy Council Office (PCO) in conjunction with the Department of Finance (Good 2014). Whereas the PMO and PCO have traditionally been involved in budget matters at a lower level, increasingly they are playing a more stylized role in describing and explaining the budgetary process and its outcomes to citizen-voters focusing on government priorities (Good 2014). PMO and PCO playing a larger role in budgetary matters has resulted in a shift from bi-lateral relationships between ministers of central agencies and departments to a multi-lateral relationship which includes PMO and PCO (Good 2014). Whereas this shift has impacted the

national campaign team (Flanagan 2014). Election signage in the US identifies the candidate but rarely the party, while in Canada signage includes the political party's logo and colours (Flanagan 2014).

power of traditional decision-makers within cabinet, the executive branch exclusively controls the budgetary process with a majority government.

Even though the budgetary process differs between the US and Canada, we find that the Buchanan and Tullock model applies to the Canadian context as elected officials have a means to position for re-election and maximize utility through participation within the budget process. The key difference is there are fewer power positions in Canada to influence the budget process as the executive is comprised of members from the governing party. Elected officials who are not members of the executive have little ability to influence decisions impacting the budgetary process in a majority situation.

Appointment process

The appointment process for senior level executives differs between the US and Canada. In the US system bureaucratic appointments are identified as patronage appointments thus labeled 'political' with the understanding that these appointments will only be held for the duration of the current presidential administration (Graham and Hays 1993; Tullock, Seldon, and Brady 2002). In Canada, through Governor-in-Council appointments while deputy ministers and heads of agencies are appointed by the prime minister, these positions are considered non-partisan though they do need to be sensitive to politics (Savoie 2003, 2010; Bourgault 2014). However, a deputy head holds office 'during pleasure' which means that he may be replaced or removed at the discretion of the prime minister (Privy Council Office 2008, 2009). In other words, if the deputy head is not behaving in the manner expected by the prime minister he may be removed from his position. Through the Governor-in-Council appointment process the prime minister has a process in place to control the appointments of senior level bureaucrats. Unlike the US, in Canada the deputy head does not resign his position when there is a change in government which is helpful as they know the files within the department and if the government has new

ministers appointed to portfolios it is beneficial to have a non-partisan briefing from the deputy minister (Savoie 2010).

Even though the appointment process for senior level bureaucrats is different between the US and Canada, elected officials in each system have a means of controlling the bureaucracy through senior level appointments; thus Buchanan and Tullock's model is applicable to the Canadian context.

Role of Congressional and Parliamentary committees

The role of committees varies between the US and Canada. In the US, Congressional standing committees have the authority to review the application, administration and execution of legislation; therefore there may be a political advantage for elected officials to be interested in being a member of a Congress committee (Halchin and Kaiser 2012). In Canada, parliamentary committees have shown a slight inclination to amend government legislation as it works through the committee process to appease opposition parties and pressure groups but in reality this results in little changing of policy (Jones Dawson 1975; Pross 1993; Pal and Weaver 2003; Smith 2005; Tellier 2014). Thus elected officials in Canada invest little time in attending parliamentary committees as they see only limited political advantage to do so as no committee can change the intent of legislation (Gillies and Pigott 1982; Savoie 2010). With the inability to change the intent of legislation, parliamentary committees do not function in the same manner as Congress committees in the US (Gillies and Pigott 1982).

However certain committees such as the Standing Committee on Finance may be a committee that elected officials want to participate in as the Standing Committee on Finance conducts pre-budget consultations meetings which have national media coverage providing the opportunity for elected officials to be seen as participants in the actual making of the budget (Good 2008).

Malloy (1996) contributes that while parliamentary committees would like to inform policy-making, in actuality the government utilizes committees to act as a public forum to communicate with others such as pressure groups. In Canada, while parliamentary committees can inform democratic debate about policy choices, the existing literature provides that it is difficult to generalize about the overall influence parliamentary committees have on policy-making which likely speaks to the scarcity of policy studies on why committees exist, what roles they play in the parliamentary process, and how well they do their work (Malloy 1996; Schofield and Fershau 2007).

Given the limited amount of influence that parliamentarians have in altering legislation through committee work in Canada, we find the applicability of the Buchanan and Tullock model may be limited in this area. However, as committees do provide a venue for political party opposition members, citizen-voters and pressure groups to present their views on various public issues, we consider parliamentary committees an enabler for furthering the interests of non-government actors thus relevant in applying the Buchanan and Tullock model.

5.1.2 Citizen-voters

Citizen-voters maximize their utility by receiving more publicly provided services than they finance through taxation. As such a citizen-voter will vote for the political candidate and party, whose platform appears to maximize the voter's utility (Downs 1957a; Coughlin, Mueller, and Murrell 1990; Felgenhauer 2012). The literature states that citizen-voters as a whole play only a small role in the actual making of policy except when it comes to the electoral process (Howlett and Ramesh 2003; Howlett and Lindquist 2007). In the electoral process, the citizen-voter plays a very important role as electoral candidates 'test' their policy platforms (Cross 2004; Petry 2007; Flanagan 2014).

We see a difference between the US and Canada in how citizen-voters may support electoral candidates. In the US, while citizen-voters can donate money to political candidates or campaigns these donations are not tax deductible (IRS 2014). In Canada, citizen-voters can donate money to political candidates or campaigns and deduct this expense on their tax returns (Elections Canada 2013). Whether the ability to deduct political donations makes a difference in citizen-voters supporting electoral candidates is unknown. However, we suggest that in either system citizen-voters may expect redistributional programs announced by the government to benefit the citizen-voters that financially supported the winning political party.

We find that Buchanan and Tullock's model is applicable to the Canadian context in regards to the behaviour of citizen-voters.

5.1.3 Pressure groups

Pressure groups maximize their utility by spending resources on political activities to secure the group's preferences for their citizen-voter members (Olson 1971; Becker 1983, 1985; Thorburn 1985; Mueller and Murrell 1986; Dunleavy 1991; Rubin 2014). The role and influence of pressure groups is more dominant in the US than in Canada due to a different political culture and legislation related to political donations. In the US, pressure groups can provide votes and/or monetary contributions to electoral campaigns with the intent that elected officials will respond favorably to pressure groups' demands if the political party succeeds in forming government (Mueller and Murrell 1986; Young 2000; Shugart 2004). The practice of trading financial and/or vote support from pressure groups for policy-making favours doesn't apply to Canada as the rules governing the democratic process are different. In Canada, elected officials have passed legislation banning pressure groups and indeed, anyone other than individual citizens from making donations to political parties. Effective January 1, 2007, the *Canada Elections Act* which

governs campaign donations, was amended so that businesses and pressure groups could no longer make political contributions in order to “reduce opportunities to influence politicians...and to encourage political parties to engage the electorate more directly” (Justice Canada 2006). In 2000 parliamentarians introduced strict limits on how much pressure groups could spend on election advertising to discontinue the practice of negative ads targeted against a political party (Flanagan 2014, 44). Hence in Canada, pressure groups cannot attempt to ‘trade’ financial and/or vote support for policy-making favors by elected officials.

As there are different rules between the US and Canada in regards to pressure groups supporting political candidates and parties, the application of Buchanan and Tullock’s model in swaying government decision-making may be limited in this area.

We find that the Buchanan and Tullock model is applicable to the Canadian context in regards to political authority and decision-making, the appointment process for senior level bureaucrats and committees plus the role of citizen-voters. The applicability of the model may be limited in regards to pressure groups as there are different rules between the two systems.

We next examine in more detail how we expect each of our actors to behave.

5.2 Actors

5.2.1 Government

In Canada’s Westminster parliamentary system the executive branch is made up of the monarch, prime minister and cabinet, authoritatively directing the whole legislative program of government (Sutherland 1991, 1996; Bakvis 2001; White 2005). The cabinet, led by the prime minister, is comprised of selected members of parliament from the political party with the most electoral seats (Flanagan 2014). Canada’s parliamentary system is hierarchical, with those at the top such as the prime minister and cabinet ministers, holding higher levels of authority than other

members of parliament (Docherty 2004). Holding higher levels of authority results in cabinet being the single most important policy-making agency (Gillies and Pigott 1982, 261).

The Westminster parliamentary system generally includes the principles of responsible government in which ministers individually, and the cabinet collectively, are answerable to parliament (Mallory 1979; Franks 1987; Breton 1996; Bourgault 2014). Since each entity that constitutes the administrative part of government is led by a minister, the entire bureaucracy is answerable to parliament (Franks 1987; Breton 1996; Savoie 2013). As the prime minister leads the cabinet and the bureaucracy he has the authority to appoint and dismiss all ministers, parliamentary secretaries, deputy ministers and heads of agencies (Sutherland 1996; Bakvis 2001; Bourgault 2014). In appointing deputy heads, a critical advisor to the prime minister is the clerk of the Privy Council Office (PCO) who is familiar with the complexities of the system and the people involved (Zussman 2013, 101). While the prime minister has tremendous authority, the role does not exist in a constitutional sense as part of the Westminster parliamentary system but rather the role has evolved through convention (Dunn 2002).

In the Canadian parliamentary system, government includes the cabinet and the bureaucracy, with the cabinet being the principal decision-making body on policy issues as illustrated in Table 5.2. The government maximizes utility through re-election thus re-election becomes the primary objective of both the governing party and opposition parties (Downs 1957a). To be elected or re-elected, the leaders of political parties position political policy platforms to appeal to groups of citizen-voters' preferences (Dunleavy 1991; Steinmo 1993; Good 2008; Flanagan 2014). A political party derives "utility by establishing public policies that meet its ideological stance" (Tellier 2006, 371). A political party chooses the party's policy platform which reflects its ideological stance, but it is the leader of the political party who

chooses the election policy platform as demonstrated by the following news article quoting a member of parliament following the 2013 Conservative Party Convention:

“Our mandate as government comes from Canadians in an election campaign. The party chooses the party platform. The leader chooses the election platform. On that basis, we are elected to govern” (Kennedy 2013).

According to Downs (1957a, 28) “parties formulate policies in order to win elections, rather than win elections in order to formulate policies.” Once a political party is elected to form government with no effective separation of legislative and executive powers, nor a need to make public how a decision was reached due to cabinet secrecy, a majority governing political party in their self-interest may shape public policies in their own self-interest to reflect party ideology or other priorities (Dunleavy 1991; Howlett and Ramesh 2003; Felgenhauer 2012; Andersen 2012).

The prime minister as the head of government, as the leader of the cabinet, and as the leader of the political party he is affiliated with, is empowered to make the necessary decisions on behalf of the political party to remain in control of government thus maximizing the political party’s utility (Franks 1987; White 2005; Flanagan 2014). In the political party’s self-interest, the prime minister controls the overall decision-making process around government expenditures and revenues.

Table 5.2 – Actors and Roles in the Canadian context

Actor	Role in decision-making	Self-interest goals	Influence
Government – elected officials	• Final decision-maker in deciding who gets what and who pays • Two levels of political authority with Senate appointed by prime minister	• To obtain enough votes to form and control government including the public purse	• Decides on public services, tax incentives, tax expenditures for electorate • Vote-trading in minority government may be required • Controls bureaucracy through appointment process
Government -	• Provide information/	• Retain position	• Provides non-partisan

bureaucracy	analysis to government for decision-making	• Avoid risk • Avoid public scrutiny • Enhance status, resources	advice to government
Citizen-voters	• Votes for political candidate who may become elected official who controls government	• Receive more public benefits than what they pay for through taxation	• Limited influence on elected officials' decision-making except during elections
Pressure groups	• Limited as cannot trade financial incentives or vote support for policy-making favors by elected officials	• Obtain members' preferences at the expense of others	• Cannot promise votes or make monetary contributions thus influence is limited • Provide information/analysis to government for decision-making through parliamentary committees

In Canada's bicameral parliamentary system, one of the prime minister's roles is to appoint senators. In order to control the overall decision-making process, the prime minister generally appoints loyal supporters to the Senate who are supporters of the party in power (Franks 1987). While the Senate's role is viewed primarily as one of checks and balances to decision-making regarding legislation (Thomas 2002; Russell 2009), the Senate also plays a role in the investigation of policy matters by conducting in-depth studies on public concerns such as poverty, health matters, international trade, and human rights (Parliament of Canada 2012). Not only does the Senate examine legislation passed by the House of Commons and conduct in-depth studies on public concerns, but it can also introduce new legislation.¹⁷ So while there are those (Franks 1987; Thomas 2002; Howlett and Lindquist 2007; Russell 2009) who question the relevance of the Senate,¹⁸ the Senate does table reports and legislation that the House of Commons may not have the resources to bring forward. While the institution of the Senate itself is heavily criticized, its committee work related to new legislation or specific studies is

¹⁷ The Senate cannot introduce money bills such as bills which impose taxes or provide for the collection or spending of public money (Parliament of Canada 2012).

¹⁸ Franks (1987) states that the Senate is the most criticized Canadian government institution and that reform and/or abolition of the Senate has been discussed for more than half a century.

recognized as a valuable contribution (Franks 1987; O'Neal 1994). Hence senators play a role as minor actors in our model.

In the Westminster parliamentary system, in which there is no effective separation of legislative and executive powers, a majority government debates with the opposition parties in the House of Commons¹⁹ chamber over the policy-making process during Question Period and other venues such as standing committees. However, largely this is simply a matter of grandstanding (Dunleavy 1991; Malloy 1996) as a majority government can put in place almost any legislation that it deems appropriate (Dunleavy 1991; Malloy 1996). In addition to being a member of the political party caucus, and possibly a member of the cabinet, members of parliament are members of one or more parliamentary committees (Cullen 2011). Whereas a caucus committee is made up of elected members of the same political party with meetings held in a private setting,²⁰ parliamentary committees are comprised of members of parliament from all officially recognized political parties with these meetings being open to the public (Schofield and Fershau 2007). There are parliamentary committees for both the House of Commons and the Senate.

In 1968 as part of the report of the Special Committee on Procedure, parliamentary committees were provided the mandate of reviewing legislation, scrutinizing estimates, and making investigations into issues on policy or administration (Gillies and Pigott 1982; Franks 1987). As parliamentary committees are comprised of members from all political parties, the committees provide a venue for each of the political parties to advance their position on a particular policy issue during hearings plus providing a setting for pressure groups to present

¹⁹ The House of Commons is an institution normally comprised of elected Members of Parliament and is the central forum for discussion about the responsibility and accountability of government (Franks 1987).

²⁰ Besides attending national caucus meetings, political parties hold meetings of the regional caucus, Senate caucus, women's caucus etc. (Parliament of Canada 2012)

(Gillies and Pigott 1982; Cullen 2011). Malloy (1996) provides an interesting empirical example with his case study on parliamentary committees and the 1989 GST inquiry. He found that while parliamentary committees would like to inform policy-making, government utilizes committees to act as a public forum thus providing a gap between the expectations of parliamentary committee members' understanding of their role and the reality of how government functions. Whereas opposition parties and pressure groups may want to have the ability to influence new policy measures, the government strategically guards against allowing such influence as opposition parties and pressure groups may be looking for opportunities to embarrass the government (Malloy 1996; Savoie 2003). Experiences on parliamentary committees can vary depending if one is on the government side or in opposition, or whether government is in a majority or minority situation (Cullen 2011).

Certain committees such as the Standing Committee on Finance may be a committee that elected officials want to participate in as the Standing Committee on Finance conducts pre-budget consultations meetings which have national media coverage. As Good (2008, 228) suggests:

“Unlike nearly every other parliamentary committee, this one [Standing Committee on Finance] provides MPs with a unique opportunity for national exposure...perhaps what is most important for the MPs is that this media exposure focuses on fiscal and budget issues that are yet to be determined...provides the opportunity for individual MPs to be seen as participants in the actual making of the budget.”

Similarly, the provinces of Ontario and British Columbia hold pre-budget consultation meetings through legislative committees. However, British Columbia is the only jurisdiction of the three which has a linkage between the legislative committee and the ministry of finance (Tellier 2012). The Ontario and federal governments conduct pre-budget consultations through legislative committees that are not linked to the ministry/department of finance (Tellier 2012).

The role of the House of Commons as an institution is not clearly defined and in particular, what role it should play in the policy-making process is blurred (Mallory 1979; Franks 1987; Malloy 1996; Levy 2009). This lack of clarity becomes particularly relevant when there is a minority government in place as was clearly demonstrated in 2008 with all political parties attempting to interpret rules and conventions to their advantage to gain control of the House and the policy-making process (Russell 2009; Weinrib 2009; Franks 2009). Cabinet secrecy protected by both convention and common law shields the process of policy decision-making by protecting the views and opinions of individual ministers and public servants from disclosure to political opponents but not the substance of the matters deliberated (d'Ombain 2004; White 2005). Accordingly when government puts forth legislation which enacts new policies or alters existing policies, the cabinet is not required to reveal to the opposition parties, pressure groups, or citizen-voters, how decisions are made to reach these policies.

Government operating behind the cloak of cabinet secrecy results in opposition parties, pressure groups and citizen-voters encountering an information constraint as the government decides what and how information surrounding policy-making decisions is conveyed to others (Dunleavy 1991; Savoie 2003, 2010). The centralization of policy-making by the governing party through the use of cabinet secrecy, results in information being used as ammunition in political struggles as the governing party believes that the less opposition parties and others know about an issue, the less they can provide their dissent (Gingras 2012). The withholding of information as ammunition in political struggles through cabinet secrecy increases in the case of a minority government (Breton 1989, 1996). With a minority government there is an increase in competition between parties to either maintain governing party status or from the opposition's perspective, to undermine the governing party to force an election (Breton 1989, 1996). In

Canada, the *Access to Information Act*, often presented as a means of facilitating open and transparent government, is generally favoured when the political party is in opposition but politicians largely change their minds or drag their feet in responding to requests when they become the governing party (Gingras 2012). Attempting to gain information surrounding policy decisions results in opposition parties having increased decision costs in not only the day-to-day workings of the House of Commons but also when opposition parties are formulating their party policy platform for an election.

Canada's federal government faces a budget constraint in balancing expenditures with expected revenues. Regarding a budget constraint, to consider is that the bureaucracy controls the level of expenditures already attained (Frey and Schneider 1979). Good (2008) argues that in Canada while government has the authority to monitor the inputs and outputs of the bureaucracy, the reality is that the review of expenditures only focuses on any new money announced in the budget with existing expenditures going to the same place as the year before. The political executive as the authority figure with input from the bureaucracy chooses the entire size and allocation of the budget which they may choose to be as large as possible to cover non-service delivery costs such as creating legislation and enforcing compliance of regulatory matters resulting in a deadweight loss for citizen-voters (Andersen 2012). The overall budget includes tax expenditures yet when the government tables the annual budget tax expenditures are not included (Good 2008). If tax expenditures were included, the actual budget would expand to be nearly twice the size than what it appears in the annual published budget (Good 2008). This is corroborated by going to Finance Canada's website and finding that under publications, the Budget documents and the Tax Expenditures and Evaluations report are listed separately. Further, it is not until page 10 in the Tax Expenditures and Evaluations report that there is a

reference to the current budget and linking it to tax expenditures²¹ (Finance Canada 2012b). As Steinmo (1993) contributes a modern tax system can be complex with a mix of payments and benefits for each individual depending on a number of overlapping attributes.

Accordingly, when the government puts forth the budget and its Tax Expenditures and Evaluations report, it is virtually impossible to ascertain the benefits and costs that each Canadian citizen-voter receives or pays due to the complexity, impact, and interaction of various tax expenditures:

“The cost of each tax measure is determined separately, assuming that all other tax provisions remain unchanged. Many of the tax expenditures do, however, interact with each other such that the impact of several tax provisions at once cannot generally be calculated by adding up the estimates and projections for each provision” (Finance Canada 2012b).

Tax incentives or tax expenditures are of interest as taxation has generally been used to raise revenues but tax incentives such as Registered Pension and Retirement Savings Plans, provide opportunities for a segment of citizen-voters to lower their tax liability (Doern and Wilson 1974; Woodside 1983, 1986). When citizen-voters utilize tax incentives, it means that the government forgoes revenue which then puts an additional burden on other citizen-voters who may not opt to utilize the tax incentive or less revenue may mean that the government doesn't have as much to spend on public services (Woodside 1983). For example, personal income tax deductions for Registered Retirement Savings Plans in Canada in 2011 were \$7.4 billion with taxation on withdrawals from Registered Retirement Savings Plans amounting to \$5.1 billion resulting in the government forgoing \$2.3 billion in tax revenue (Finance Canada 2012b).

However, we must remember that government policy instruments such as tax incentives do not stand alone but rather a tax incentive may touch on more than one policy area (Linder and Peters

²¹ Tax expenditures are defined as deviations from the benchmark tax structure that applies the relevant tax rates to a broadly defined tax base -e.g. personal income, business income or consumption. Tax expenditures then are the application of special measures announced in the budget such as low tax rates, exemptions, deductions, deferrals and credits achieving policy objectives at the cost of lower tax revenue (Finance Canada 2012b).

1989). So while it may appear that government has forgone \$2.3 billion in revenues, one needs to understand that the policy objective for Registered Retirement Savings Plans is to encourage Canadians to save for their retirement so that they may not require government assistance through programs such as the Guaranteed Income Supplement.²² The Guaranteed Income Supplement is an example of how certain publicly provided services benefit pressure groups that are paid for by all citizen-voters as it is only a segment of the population that qualifies for this benefit (McGee 1999, 2004).

Government interventions may benefit one segment of citizen-voters to the detriment of others resulting in potential conflict which may affect government at election time. It is in the self-interest of government to attempt to introduce tax incentives that are distributive to include as many citizen-voters are possible to avoid conflict and the perception of favouritism (Lowi 1972; Doern and Wilson 1974; Woodside 1983, 1986). However, one important feature of tax incentives is that they tend to be less visible versus public expenditures. Public expenditures have an audit trail through the Consolidated Revenue Fund thus are more visible. Lack of visibility results in most citizen-voters being unaware of who, and how much, some may be benefiting from tax incentives (Woodside 1983).

Not only is it difficult for citizen-voters to understand their cost/benefit package, and others, but in addition the government does not indicate what the overall impact of the Budget and Tax Expenditures and Evaluations will be on the provincial and territorial governments which have the same citizen-voters that are impacted by the federal government budget. As recently noted by the Auditor General of Canada (2012), not including provinces' and territories' financial standing in long-term fiscal projections results in citizen-voters, pressure groups, and

²² The Guaranteed Income Supplement is a monthly non-taxable benefit to low-income residents of Canada who are recipients of the Old Age Security pension (Service Canada 2013).

opposition parties not having all relevant information to form an overall picture of government to support public debate and hold the government to account. Understanding long-term fiscal sustainability implications is important as this refers to the capacity of government, meaning all levels of government, to finance its expenditures and debt obligations without placing an excessive burden on future citizen-voters (Office of the Auditor General of Canada 2012). The Auditor General concluded his report with a recommendation that the federal government should provide long-term fiscal sustainability analysis that includes the provinces and territories which Finance Canada replied to with a cloudy response:

“Given that the federal government is not accountable for the fiscal situation of the provinces and territories, the Department will publish long-term fiscal analyses for the federal government on an annual basis, by 2013 at the latest” (Office of the Auditor General of Canada 2012).

So while Finance Canada replied to the recommendation, they are not prepared to act on it by including the provinces and territories in their long-term fiscal analyses. While government faces a budget constraint in balancing expenditures with expected revenues, it also uses the budget decision-making process to its advantage by deciding what, when, and how much information will be conveyed to citizen-voters.

Understanding long-term fiscal sustainability across all levels of government demonstrates how federalism can be a constraint in providing public services and collecting revenues. Federalism is a constraint as citizen-voters cannot always determine which level of government provides what services and how these services are financed. This would be particularly true in the matters of public service provision that are affected by policy interdependence (Smith 2004) such as a shared governance model or shared financing model (Howlett and Lindquist 2007). Whereas the Constitution outlines powers and responsibilities in relation to taxation and expenditures between the federal government and the provinces, there is

only one citizen-voter for both levels of government; “governments must pay attention to tax harmonization to ensure that the taxpayer is not being subjected to conflicting demands and overwhelming tax burdens” (Brown 2002, 61). However, while it may be in a citizen-voter’s self-interest to understand which public services are provided by each level of government so that citizen-voters can understand how their taxes are distributed, it may not be in government’s self-interest to make provision of services versus taxes collected transparent as citizen-voters may believe they pay too much tax. Federalism permits various levels of government to exhibit characteristics of competitiveness and collusion depending on whether or not they represent the same political party or whether it is in their self-interest to take ‘credit for’ certain decisions or to ‘blame’ another level of government (Sproule-Jones 1975). Taking ‘credit for’ and ‘blaming’ others may increase government’s external costs.

As mentioned previously, government is comprised of elected officials and the bureaucracy creating a political-administrative paradigm. As authority figures, elected officials control the bureaucracy who implement the decisions taken by elected officials (Simon 1997; Savoie 2003; Carnis 2010). The bureaucracy as the administrative arm of the cabinet is comprised of various organizations with each led by a deputy head who supports the minister responsible for the organization (Bourgault 2003; White 2005). The relationship between parliamentarians and the bureaucracy is not widely studied but generally revolves around relations that are informal, indirect, and changeable based on changing interpretations of unwritten constitutional conventions (Thomas 2002). With no formal rules but rather relying on conventions, parliamentarians and the bureaucracy have an understanding over their respective duties with the bureaucracy providing impartial and objective advice to parliamentarians regarding policy matters (Savoie 2003). The cabinet decides on policy matters with the

bureaucracy implementing whatever policy decisions have been made in a nonpartisan manner (Savoie 2003). Providing impartial advice and complete relevant information for decision-making, followed by loyally implementing ministerial decisions, whether supported by the advice of the bureaucracy or not, is one of the democratic values of the public service (Treasury Board of Canada Secretariat 2003b). Thus, we have the bureaucracy willingly playing a background role in providing advice for policy-making and then implementing policy decisions, with the cabinet making the actual policy decision and then communicating to citizen-voters.

While the deputy head's 'supreme loyalty' is to the minister responsible for the department, the deputy head is also answerable to the prime minister who is accountable for the unity and direction of government overall, thus the deputy head contributes to the unity of the government he serves (Osbaldeston 1989; Privy Council Office 2003). Through Governor-in-Council appointments, there is a process in place to control appointments of senior level bureaucrats. As the prime minister is responsible for the appointment of senior level bureaucrats, the cabinet uses their authority to control bureaucrats resulting in a limited requirement for direct monitoring or supervision (Mueller 2003; Borcharding and Besocke 2004) or even to assure compliance with policies without stipulating or even necessarily understanding what substantive outcome is most desired (McCubbins, Noll, and Weingast 1987). For example, by legislating requirements for the bureaucracy to disclose certain information, allows cabinet to be aware of an organization's policy execution plans before said plans are put in place presenting an opportunity for cabinet to intervene if these plans do not align with the direction of the governing party (Borcharding and Besocke 2004; Savoie 2003, 2010). One needs to be aware that when policies are formed an 'actual' policy may be different from an 'optimal' policy as the latter considers technical and informational constraints but not the constraints of politics (Drazen

2000). The constraints of politics means that ‘actual’ policies may tend to favour certain segments of citizen-voters in order for elected officials to win votes but the implementation of the policy remains with the bureaucracy who must decide on how to best execute given available resources. Hence, the bureaucracy does not exist in isolation from politics resulting in a complex relationship between elected officials and the bureaucracy. Therefore, we see that when a political decision is made regarding a policy there may be, or likely is, an impact on the bureaucracy which creates an interesting public administration paradigm as numerous pieces of legislation and regulations must be adapted and adhered to.

Not only are there numerous pieces of legislation, regulations and policies to be adhered to but senior public servants must also learn how to engage with a multitude of decision-makers and influencers within government. For example, in working through the process for implementing or amending user fees, a deputy head needs to get approval and/or input from his minister, TBS, Privy Council Office (PCO) and the department of Finance prior to tabling a user fee proposal within Parliament. Additionally, the deputy head needs to ensure that the request to amend or introduce user fees aligns with government’s priorities.

In making decisions regarding government’s priorities, the prime minister holds the key as it his government and he can “structure its policy-making processes and organize its capacity to deliver public services as he sees fit” (Savoie 2013, 108). In delivering the prime minister’s mandate, a productive relationship is required with the bureaucracy and this begins with the relationship between the prime minister and the clerk of the Privy Council as secretary to the Cabinet (Zussman 2013; Bourgault 2014). Zussman (2013, 34) in an interview with a former clerk of the Privy Council states that “it is crucial to have a clear understanding at the beginning

about how deputy ministers and ministers should intersect, how the PCO and PMO should intersect, and how the clerk and the prime minister should operate together.”

In regards to budgetary matters, whereas traditionally it was not in government’s interest to link priorities and budgets (Schick 2003) this has changed in Canada with key players now giving significant attention to overall planning, communicating government’s priorities, and linking these priorities to the budget (Good 2014, 31). With this shift we now see that priority setting through the budget has become crucial with government “finding that priorities need to be established upfront and early on, and it is less prepared to let expenditure priorities simply emerge...as a consequence, a new and separate institutional role of priority setters has emerged in the budgetary process” (Good 2014, 30).

Key players in the budgetary process now include the department of Finance, the Prime Minister’s Office (PMO) and PCO. PMO and PCO explain their role in budgetary matters as priority setters which may be aligned with, or in contrast to, the department of Finance (Good 2014). The department of Finance sees itself as not only being responsible for fiscal matters but as being a strong influencer regarding changes affecting major policies and programs (Good 1980; Hartle 1988; Good 2014). Whereas deputy heads previously held a higher place in the power pecking order of government overall, there has been a shift and it now “belongs to central agencies, first with the Privy Council Office, then the Department of Finance and the Treasury Board Secretariat” (Savoie 2010, 203) plus of course, the PMO.

As leaders of their government organization, deputy heads are the connective tissue between the bureaucracy and political leadership (Evans, Lum, and Shields 2014, 324). As ministers are often generalists with few networks of their own, senior public servants are in charge of not only the technical side of files but also in reaching out and persuading key

government players (Bourgault 2014, 366). Accordingly when a deputy head wants to consider a change in a program within his department he needs to ensure he aligns with the priorities of government. To do this he may need to meet with several key players – Finance, PCO, PMO, TBS - all of whom at some level may influence the priorities of government and fiscal decisions.

To make certain that the deputy head's request aligns with government priorities and the fiscal framework, the deputy head will need to engage with his minister. In addition to the minister, the deputy head will likely need to involve the minister's political advisors. Zussman (2013, 32) describes the relationship between the minister and political advisors as unique with there being "no universal definition of responsibilities." The minister's political advisors are not supposed to interfere in matters between the minister and the deputy head (Bourgault 2014, 377). However, as both the deputy head and political advisors are responsible for advising the minister, these two parties are often in competition (Bourgault 2014).

At times the relationship between the deputy head and the minister's political advisors can create problems within the operations of the department (Bourgault 2014). As Savoie (2003, 198) explains access-to-information requests and the media have made departmental operations and programs more sensitive to politics and political direction with political advisors wanting to get to the bottom of any potential news story quickly so as to brief the minister, and possibly the PMO, on its development and political implications. All well and good if political advisors are operating with transparency and in a cooperative manner with the bureaucracy as they have the opportunity to strengthen how government functions (Zussman 2013, 32).

However at times there may be concerns regarding how political advisors may contribute to the view that the bureaucracy is non-supportive of the government's agenda and should act simply as implementers of policy rather than as policy generators (Zussman 2013, 33). Bourgault

(2014, 377) in referring to a report by the media, stated that during the 2008 economic crisis a PCO staffer informed a senior public servant that “we don’t want your advice; we want you to do as you’re told.”

The minister and/or his advisors and/or the deputy head may also need to meet with the PMO to move a file forward. Bourgault (2014, 377) comments that

“Deputy minister’s relations with PMO have become fraught. For one thing, the PMO has grown much more powerful than it once was...Moreover, the PMO assumes special mandates that sometime intrude on departmental turf. Finally, some staffers in the PMO may, rightly or wrongly, distrust a given minister, minister’s chief of staff or DM, prompting them to intervene more strongly in that department’s affairs. Deputy ministers say they sometimes have more problems with the PMO than with the office of their own minister.”

Deputy heads need to be adept at working through a number of relationships with various central agencies players. It is not enough to be strong administrators of their organization, deputy heads also need to develop relationships with key influencers and decision-makers of government priorities. Not only do senior public servants of departments need to engage with central agencies to move agendas forward but officials from Finance, TBS, and PCO meet with their counterparts on a regular basis to discuss expenditure items and planned approaches for dealing with them (Good 2014). As a part of discussing expenditure items and planned approaches, central agency officials may ask for information from departments. In order to respond to the many demands from central agency, departments now have a “veritable army of bureaucrats” (Savoie 2010, 202).

A further way that elected officials control the bureaucracy in monitoring administrative procedures is establishing ex post sanctions. Ex post sanctions are represented in the Canadian federal system by the oversight bodies of the Officers of Parliament, the independent ‘watch-dogs’ who perform work on behalf of and report to Parliament (Parliament of Canada 2011).

5.2.2 Citizen-voters

Our second major actor, citizen-voters maximize utility by voting for the electoral candidate that they believe will provide them the most publicly provided benefits at the least cost to the citizen-voter (Downs 1957a; Coughlin, Mueller, and Murrell 1990; Felgenhauer 2012). While citizen-voters are interested in receiving more publicly provided services, they do not want to pay more taxes (Steinmo 1993) as illustrated in Table 5.2. Political parties understand that citizen-voters want to receive more publicly provided services but not pay more taxes and as such in order to win their vote, political parties will promise redistributive programs to benefit groups of citizen-voters that appear to favour the political party at the expense of other groups of citizen-voters (Frohlich and Oppenheimer 1990).

Beyond providing the setting of norms, attitudes and values for policy-making, citizen-voters play only a small role in the actual making of policy except when it comes to the electoral process (Howlett and Ramesh 2003; Howlett and Lindquist 2007). In the electoral process, the citizen-voter plays a very important role as electoral candidates ‘test’ their policy platforms through the use of indicators such as public opinion polls to assess whether or not their proposed policies are resonating with citizen-voters to win their vote (Cross 2004; Petry 2007; Flanagan 2014). However, it is difficult to actualize how much citizen-voters respond to political parties’ policy platforms, as once elected, elected officials do not have to keep electoral promises (Howlett and Lindquist 2007). It also brings back into the debate whether or not citizen-voters cast their vote prospectively or retrospectively. In Canada since parties generally avoid real policy debate during the electoral process, voting may be driven more by short-term forces such as flexible partisanship, one-sided issues, and party leader images rather than by long-term sociological factors (Clarke and Kornberg 2012). A further consideration in capturing citizen-voters support is whether or not citizen-voters believe political parties are representative and

inclusive; as in do candidates reflect the populace they represent in regards to linguistic diversity, gender, ethnicity, and cultural values (Haig-Brown 2002; Docherty 2004; White 2010). If citizen-voters cannot identify with electoral candidates or political parties, they may choose not to participate in voting.

In Canada, citizen-voter participation has steadily declined from 75 per cent in 1988 to 61 per cent in 2011 of voter turnout as a percentage of registered voters (Elections Canada 2012). Surveys have demonstrated that abstaining from voting in Canadian federal elections can be attributed to citizen-voters not being interested in elections, or thinking their vote has no meaning, or they don't feel they know who to vote for (LeDuc and Pammett 2010; Perrella 2010). Others put forth the notion that traditional voting at polling stations does not adhere to the busy lifestyles of Canadians with suggestions that Canada should consider adapting electronic voting (Courtney 2004; Roy 2006; Goodman, Pammett, and DeBardeleben 2010). Not only has electoral participation declined but Milner (2005) suggests that in Canada a democratic deficit exists among young voters in particular who not only choose not to vote but also lack the basic knowledge to make an informed choice as to whether or not to vote. In other words, unlike the purchase of consumer goods, citizen-voters are choosing to not gather information to become more informed about political party platforms. Understanding that individuals may lack basic knowledge to make an informed choice means that electoral candidates campaign on policies that are "what the people want given their perception of the value of their vote on the outcome and the cost of becoming informed, not what they would want if they were better informed" (Tullock, Seldon, and Brady 2002, 7). Thus we see that winning citizen-voters' votes is important for electoral candidates in an attempt to control government but not as important for citizen-voters, as voters may decide to not be fully informed when casting their vote or they may

decide not to vote at all. Buchanan (1999b, 8) determined that citizen-voter's self-interest remains rational when decisions are made on the basis of less-than-perfect information.

Citizen-voters in Canada face not only external costs from what other citizen-voters or pressure groups may prefer but also external costs from government using collected taxation revenue for administrative or compliance and regulatory purposes rather than using revenues to finance publicly provided services that benefit citizen-voters (Downs 1960; Holcombe 1998; Pal and Weaver 2003; Andersen 2012). If citizen-voters perceive that they pay too much in tax for public benefits they receive, they may resort to tax evasion or tax avoidance (McGee 2004; Kirchler 2007; Slemrod 2007). For example, in a parliamentary form of government, the governing party represents pluralities of voters and if elected officials use taxation revenue to target publicly provided services within their constituency to provide additional benefits for their riding, it exerts external costs on citizen-voters who do not live in the elected-officials ridings resulting in citizen-voters perhaps attempting to avoid remitting their total tax obligation (McGee 2004; Andersen 2012).

In the redistribution of resources, government may need to consider not only who the 'winners' are but also the 'losers' by collecting evidence to systematically determine which subset of the population bears the costs of providing public services (Sproule-Jones 1975, 38). Gathering information on the benefits and burdens for each citizen-voter group is not easy as the budget is not determined by bearing in mind overall expenditures and overall taxation but rather is the sum of different policy decisions (Downs 1960). Added into the equation is that most expenditure versus financing decisions are not based on the overall burden on a specific segment of the population but rather these decisions are based on the voting potential for the governing party (Downs 1960). As citizen-voters are rational they will vote for the political party whose

policies they believe will provide them with more benefits or not penalize them economically in order to help others (Downs 1960). Citizen-voters prefer taxes that someone else pays (Steinmo 1993). It is in the self-interest of government to find the appropriate balance between expenditures and the collection of revenues to maximize votes at the next election (Downs 1957a).

In order to possibly sway government's redistribution of resources in favor of various segments of citizen-voters, some citizen-voters in Canada participate in pressure groups which are discussed next.

5.2.3 Pressure groups

Pressure groups maximize their utility by spending resources on political activities to secure the group members' preferences (Olson 1971; Becker 1983, 1985; Thorburn 1985; Mueller and Murrell 1986; Dunleavy 1991). One method that pressure groups maximize their utility is through managing their interdependence costs by reducing their decision costs as appropriate and attempting to minimize external costs as imposed by others. We earlier determined that government works within a budget constraint, hence assuming a balanced budget there is only so much taxation revenue to finance publicly provided services. We also determined that citizen-voters have a virtually insatiable desire for increased public services but they don't want higher taxes (Steinmo 1993; Good 2008). Thus pressure groups pursue the group's self-interest at the expense of others as government only has a limited amount of funds available to provide public services (Becker 1983, 1985).

In endeavouring to apply these various ideas to the Canadian landscape, we find that the study of the nature and behaviour of Canadian pressure groups is limited (Jones Dawson 1975; Pross 1992; Phillips 2007). However, the following rationale as provided by Young and Everitt

(2004, 3) is a convincing argument as to why Canadian citizen-voters choose to participate in pressure groups:

“The pervasive character of government makes it inevitable that most of us will at some point want to influence the direction of a government decision. This desire is often driven by self-interest. Many of us are drawn into political activity in an effort to make government provide a service...the desire to affect government decisions can be driven by values...a desire to change government policies to concord with personal beliefs...a great many Canadians have been motivated to political action simply by a sense of outrage over governments’ actions or inactions.”

Given the formal structure and financial resources of pressure groups, it is highly likely that pressure groups are more adept at accessing government to change or alter government decision-making than the average citizen-voter. Hence, a citizen-voter may be inclined to join a pressure group.

In order to influence public policy-making in Canada’s Westminster system, pressure groups need to become proficient at bringing their views to the attention of cabinet as this is where decision-making happens (Jones Dawson 1975; Franks 1987; Smith 2005). With no separation between the legislative and executive powers, the prime minister and cabinet become the primary target for citizen-voters and pressure groups to make their preference demands known for public policies (Breton 1989, 1996; Smith 2005). Pressure groups understand that for their demands to be considered and financed they need to access those that control the purse strings (Breton 1989, 1996; Smith 2005). However, we must keep in mind that with the Canadian Parliament being characterized as having strong party discipline (Franks 1987) and reliance on cabinet secrecy by the governing political party (d’Ombraïn 2004), pressure groups are challenged to affect changes to policy outcomes and are virtually shut out of the system especially with a majority government (Gillies and Pigott 1982; Young 2000; Pal and Weaver 2003; Smith 2005).

As the bureaucracy is the administrative arm of government, pressure groups understand that policy-making shifts between the cabinet and the public service with various alterations to proposed legislation (Jones Dawson 1975; Savoie 2003). Pressure groups recognize that they need to attempt to meet with both cabinet members and members of the bureaucracy in order to have their voices heard (Franks 1987; Pal 1997; Smith 2005). But to be clear even though bureaucrats have a role to play in informing policy such as organizing policy communities, it is cabinet who has the decision-making power of how the final policy will read with bureaucrats executing the decision (Pal 1997; Smith 2005; Good 2008; Savoie 2003). If legislation is proposed which pressure groups are opposed to, as a last line of defence, groups may try to lobby members of Parliament who are not a member of cabinet and/or appear at parliamentary committee hearings in an attempt to alter legislation (Gillies and Pigott 1982). In moving from meeting privately with government to appearing at parliamentary committees, pressure groups are in effect publicizing their cause.

While all pressure groups by definition are similar in that they try to influence government decision-making in some manner to gain advantages for their members, their focus may differ. Some pressure groups have narrow interests and focus around a theme or specific issue while others are broader based or segment-oriented groups focusing on non-collective benefits. Pressure groups which represent businesses largely represent segment-oriented issues (e.g. Canadian Association of Chemical Distributors) but may also represent theme-based issues (e.g. Business Coalition on Cost Recovery (BCCR)).²³ For example, Canada's Research-Based

²³ The Business Coalition on Cost Recovery formed to lobby government on user fees. The Business Coalition on Cost Recovery is a coalition of business associations including: Canada's Research-Based Pharmaceutical Companies (Rx&D), Canadian Animal Health Institute (CAHI), Canadian Association of Chemical Distributors, Canadian Chemical Producers Association, Canadian Consumer Specialty Products Association, Canadian Manufacturers & Exporters (CME), Croplife Canada, Forest Products Association of Canada (FPAC), MEDEC - Canada's Medical Device Technology Companies, and Nonprescription Drug Manufacturers Association of Canada

Pharmaceutical Companies (Rx&D) advocates for policies that support pharmaceutical and biotechnology investments while the Canadian Animal Health Institute (CAHI) represents animal health products, with both organizations focusing on segment-oriented interests. However, in 2006 these two pressure groups plus others united to form BCCR to pursue the theme-based issue of user fees in the federal government. We will further discuss BCCR and its impact on the federal government's altering of the user fee process in subsequent chapters.

A question arises as to whether or not government treats pressure groups equally or do some, such as business-represented pressure groups who focus on the economy, have a louder voice in regards to policy matters? Coleman (1988, 4) found in his study called *Business and Politics: A Study of Collective Action* that:

“All groups and categories of citizens are not equal. Nor is it a matter of one group being favoured in this instance and another in the next. There is a systematic bias in the Canadian system, which consistently gives the business community a better hearing and considers its demands and proposals more seriously when policies are being designed. This observation can be demonstrated in virtually any instance of public policy-making.”

Further, Coleman (1988, 4) argues that the business community having an increased voice is understandable as many policy decisions impact all Canadians for jobs and economic growth, thus:

“Governments need money to do what they think they have to do. They may raise the money they need through taxes or they may borrow it on capital markets. In either case, if the private sector is not doing well, governments may experience difficulties in raising revenues. The yield from taxes may be poor, or the cost of borrowing money high. Governments thus have a direct reason for being solicitous of the interests of business.”

Even though government may have a direct reason for listening to business, Canada's business interest associations are fragmented, mostly segment-oriented, and operate in isolation, resulting in business not easily being held accountable for its private sector impact on society nor

understanding how it fits into the larger context of society (Coleman 1988). As discussed with politics-as-exchange sometimes we win, sometimes we lose, but overall one's utility should increase over time; (Buchanan 1987) there may be less of a compromise between the gains of business and redistribution of resources with other segments of society as business does not have an overall view of citizen-voters (Coleman 1988).

As businesses and their related associations represent a disproportionate amount of private revenue generating power among other pressure groups, business in effect benefits from tyranny of the majority when it comes to receiving government incentives and/or tax breaks such as government bail outs or a reduction in corporate tax rates. This is demonstrated by examining the annual budget in which we see that the headings and proposed initiatives directly link government to the economy. For example, two of the four chapter headings in Budget 2013 directly relate to the economy with Economic Developments and Prospects, and Supporting Jobs and Growth (Finance Canada 2013a). These two chapters represent more than half of the content of the overall budget and cover a variety of topics of interest to businesses including training programs and creating job opportunities for apprentices, youth, workers with disabilities, aboriginal people, and new immigrants plus strengthening the competitiveness of business globally.

Nonetheless, even though government positions the budget around the economy this does not mean that government doesn't include the interests of other pressure groups. For example sub-sections of Budget 2013 include areas that relate to protecting the environment, building stronger aboriginal communities, and investing in communities (Finance Canada 2013b). In Canada's complex and competitive political environment which represent many interests of society, business pressure groups cannot afford to become complacent, thus need to engage

systematically with government as they compete with the interests of other pressure groups (Stritch 2007, 446).

Depending upon financial resources, one method pressure groups may use to influence government is through lobbyists. Galston (2008, 550) contributes that the introduction of legislation provides “new opportunities for self-interested activities, and groups emerge to take advantage of them” including using financial resources to hire lobbyists to engage with government. For pressure groups such as unions, using lobbyists to pursue collective action may be the only tool available to them to attempt to alter government policy-making (Howlett and Ramesh 2003). However for unions to have an impact requires government to encourage them to play a role in providing input which is not the case in Canada (Howlett and Ramesh 2003).

A relative straightforward and cost effective method of providing input to policy-making by both pressure groups and citizen-voters is through the online consultation process for such items as the annual budget. For the federal government, both the Standing Committee on Finance and Finance Canada provide an opportunity for pressure groups and individual citizen-voters to participate in the pre-budget process by submitting ideas through their websites. For the Standing Committee on Finance’s Pre-Budget Consultations 2012, there were approximately 800 responses commenting in areas where the Committee had requested input: economic recovery and growth, job creation, demographics change, productivity, and other challenges with the actual responses posted on the website (Standing Committee on Finance 2011a). The Standing Committee on Finance issues an annual report in December that takes into consideration the input from pressure groups and citizen-voters (Standing Committee on Finance 2011b). Hale (2002) suggests that the Committee’s pre-budget reports are a fairly reliable indicator for the direction of the budget. While beyond the scope of this study, one could review the 800

responses and map them to the Committee's report to determine whether or not the report accurately reflects the responses put forth by pressure groups and citizen-voters or if the report 'picks and chooses' responses to support the direction that the government is leading the country or to support the governing party's ideology.

While engaging pressure groups and citizen-voters through pre-budget consultations appears as if government provides a mechanism for pressure groups and citizen-voters to participate in how tax dollars are spent, in actuality there is no formal collaboration between the Standing Committee on Finance and Finance Canada who tables the budget (Tellier 2012). No formal collaboration may mean that the Standing Committee on Finance provides a venue for pressure groups and citizen-voters to voice their concerns but these matters do not necessarily equate to government support dollars through tax expenditures. Finance Canada conducts its own pre-budget consultations via roundtables in different geographical areas across the country and through an online pre-budget consultation website (Finance Canada 2013b). Unlike the Standing Committee on Finance, pressure groups' and citizen-voters' submissions on the website plus minutes from the roundtables are not available to the public. Hence, it is unclear if, and/or how much, participation from pressure groups and citizen-voters is used to actually prepare the budget.

Pressure groups and citizen-voters can also participate through the public consultation process of policy-making. The Government of Canada has created a website called *Consulting with Canadians* which provides links to current and past consultations. There were approximately 350 consultations posted over a two-year period,²⁴ with some consultations providing summaries of the results but not the direct results of pressure groups and citizen-voters comments (Consulting with Canadians 2013). Some legislation requires that public consultation

²⁴ Two-year period includes January 2011 to December 2012

occurs. For example, the *User Fees Act* (S.C. 2004, c. 6) (UFA) sets forth that prior to a regulating authority making changes to a user fee, the authority must take reasonable measures to notify service users and provide them an opportunity to provide comments to improve the services to which the user fee relates (Justice Canada 2004). This is not to say that the regulating authority is required to act on input from public consultations, though the UFA does provide that an independent advisory panel must be established in the event that responders wish to complain about proposed fee changes. We further discuss the UFA in subsequent chapters.

In the event that pressure groups are not in agreement with proposed policy-making changes, as perhaps influenced by other pressure groups, pressure groups may choose to become more vocal by publicly voicing their dissent to proposed policy-making. As most proposed legislation will have some proponents and some dissidents, government may decide to attempt to withhold information by dragging their feet through the *Access to Information* process so that it cannot be used against them (Pross 1993; Gingras 2012). While the *Access to Information* process may provide documents from the inner workings of government, pressure groups and citizen-voters can also keep somewhat informed through the virtually unlimited amount of information that can also be found online relating to most topics (Savoie 2003).

In order to be successful at influencing policy-making, pressure groups overall must be adaptable and accommodate themselves to how decision-makers within government are structured within the political system (Thorburn 1985; Pross 1993). With Canada being a federal state, this means that pressure groups need to adapt internal structures, the functioning of the group, and any lobbying efforts at both the federal and provincial levels if the issue they are addressing is under the purview of both levels of government (Jones Dawson 1975; Thorburn 1985; Pross 1993). Not only do pressure groups need to be cognizant of the nuances between

lobbying federal and provincial governments but they also need to be aware that consultation and negotiation takes place directly between governments themselves (Thorburn 1985; Franks 1987). With discussions occurring between governments, pressure groups may not be informed on a policy issue making it difficult for them to contribute their ideas or to even understand which level of government makes the final decision (Thorburn 1985; Franks 1987).

A further complexity in understanding decision-making, is that federal government policies may have regional situational differences or jurisdictional overlaps that pressure groups need to understand to move their agenda forward (Jones Dawson 1975; Thorburn 1985; Sproule-Jones 1996). For example if a pressure group was interested in water quality management it would need to know that in British Columbia water is regulated by the federal government's *Fisheries Act* whereas in Ontario, water management has been delegated to the province (Sproule-Jones 1996). Understanding who has the delegated authority for decision-making is important when pressure groups are seeking policy changes.

Canada provides funding to organized pressure groups especially if the government wants to encourage the creation of pressure groups to represent certain sectors (Schwartz 1996; Young and Everitt 2004; Smith 2005). If government funding was not available to pressure groups and groups had to secure their own funding, one may find that not all income levels of citizen-voters could participate that were so inclined and not all segments of society would be represented (Young and Everitt 2004). The growth in the number of pressure groups within Canada, and globally, can be attributed to the increased complexity of the socio-economic environment, media, and the actions of government such as the funding of pressure groups even though these groups are working together to influence public policy-making that may not align with government priorities (Pross 1975a; Galston 2008). We need to be cognizant that pressure

groups that are claiming to speak for a wide cross-section of the population might not have enough grassroots financial support to survive without funding from government (Canadian Study of Parliament Group 1989; Young and Everitt 2004). Hence some pressure groups may feel compelled to toe the line and not rock the boat dramatically on contentious issues in fear of retaliation and having their funding removed by the federal government (Canadian Study of Parliament Group 1989; Young and Everitt 2004). In 2011, the federal government provided approximately three billion dollars in funding to various pressure groups (Finance Canada 2012a) so not an insignificant amount. Budget 2012 announced proposed legislation that limits the amount of government provided funding that can be utilized for political activity²⁵ (Finance Canada 2012a). Limiting how much funding may be used for political activity provides a method for government to control government-funded pressure groups with the ‘threat’ of cutting off their funding (Young and Everitt 2004).

The most significant method government uses to impact pressure groups is through taxation, not funding. Business-focused pressure groups are allowed to claim expenses such as paying lobbyists, while non-business groups cannot claim expenses though non-business groups are exempt from paying income taxes (Young and Everitt 2004). Pressure groups that have charitable status are allowed to issue tax receipts (Bridge 2000; Young and Everitt 2004). For others union dues paid by members are tax deductible (Bridge 2000; Young and Everitt 2004). Furthermore, while not considered pressure groups, small contributions by citizen-voters to political parties are deductible (Carty, Cross, and Young 2000). Offering a small tax credit to citizen-voters has been shown to make individuals inclined to contribute to political parties to assist with raising financing, a similar credit could be considered to assist certain pressure groups with their financing too (Young and Everitt 2004).

²⁵ The definition of political activity in the Income Tax is unclear (Bridge 2000)

5.3 Summary

In this chapter we applied the Buchanan and Tullock model to the Canadian context by first doing a comparison between US and Canada to demonstrate the applicability of the model and then relating the model to our three actors. Citizen-voters play only a small role in influencing policy decisions except when it comes to the electoral process. During the electoral process citizen-voters may hold the most important role as it is through voting and obtaining enough seats that electoral candidates become government. As citizen-voters desire to lower decision costs, citizen-voters will vote for elected officials to make decisions on their behalf regarding social choices for both the provision of public services and the fiscal choices required to finance these services. To attempt to sway government's redistribution of resources in favor of various segments of citizen-voters, some citizen-voters in Canada participate in pressure groups.

Government, while elected to represent citizen-voters, pursue their self-interest to be re-elected by shaping policy decisions to bring them favorable results at the polls. They may focus these policy decisions around the political party's ideology. As government recognizes that citizen-voters don't want to pay more taxes, government may use fiscal illusions so that citizen-voters may not be aware of how much they are financing within government for administration services. At times government may desire to openly demonstrate fiscal responsibility by imposing user fees for publicly provided services that disproportionately benefit some citizen-voters. We will further develop these concepts through our working propositions in the next chapter.

Chapter 6

Methodology

6.0 Introduction

This study applies Buchanan and Tullock's *The Calculus of Consent* model to the Canadian federal government context to explain why decisions are made to finance some publicly provided services through general taxation and others through user fees. To interpret, analyze and understand the research issues, we develop working propositions (WP) related to our three actors: government, citizen-voters and pressure groups. The working propositions focus on the relationship between elected officials, citizen-voters and pressure groups (WP1, WP2 and WP3); the legislative environment that elected officials and the bureaucracy operate in (WP4); and the relationship between elected officials and the bureaucracy (WP5 and WP6).

Relative to our theoretical framework, WP1 is appropriate as elected officials operate within a budget constraint thus have a compelling reason to be seen as fiscally responsible by citizen-voters since elected officials maximize their utility by attaining enough votes from citizen-voters to form government. WP2 is applicable as citizen-voters will continue to ask for more benefits or tax breaks even though government operates within a budget constraint, as citizen-voters maximize their utility by obtaining more public services than what they pay for. As government operates within a budget constraint, pressure groups are motivated to pursue government at the expense of others, as outlined in WP3, since pressure groups maximize their utility by spending resources to obtain more benefits and/or lower costs for their citizen-voter members. To control the bureaucracy, elected officials have created an environment through legislation, management policies and oversight bodies, resulting in a complex operating and reporting regime for the bureaucracy to adhere to as portrayed in WP4. Given this complex legislative environment, according to WP5, deputy heads who are responsible for the fiscal management of government organizations, are unlikely to implement user fees unless operating budgets are decreased as the process is complex. In addition to a complex environment,

consistent with WP6, deputy heads are constrained in the implementing of cost recovery measures as the final decision rests with elected officials who may not be in favour of user fees as user fees are not popular with citizen-voters. We apply the Buchanan and Tullock model using these six working propositions as outlined in the next section.

6.1 Working propositions

As mentioned in the previous chapter, while government may use the concept of fiscal illusion, since government operates within a budget constraint, it is in the self-interest of government to find the appropriate balance between expenditures and the collection of revenues to maximize votes at the next election (Downs 1957a). Modern tax systems are complex with government providing a blend of publicly provided services and tax incentives for each citizen-voter depending upon circumstances (Steinmo 1993). Self-interested citizen-voters are interested in receiving more publicly provided services that someone else pays for and/or increased tax incentives that lower their tax liability (Steinmo 1993; Tanaka 2007).

6.1.1 Relationship between elected officials, citizen-voters and pressure groups

Working proposition one (WP1): *It is in elected officials' self-interest to not support the decision to finance services that are provided to individuals through user fees as it is not popular with citizen-voters. However, this decision may be altered depending upon the economic situation at the time and whether or not elected officials want to be viewed by citizen-voters as being fiscally prudent.*

Working proposition two (WP2): *It is in citizen-voters' self-interest to demand more publicly provided services and tax expenditures from elected officials who form government even if it increases others' costs (e.g. higher taxes) as citizen-voters are unlikely to be aware of the financial cost implications of additional public services and tax expenditures as the tax system is complex.*

Working proposition three (WP3): *It is in pressure groups' self-interest to seek from elected officials, incentives or tax breaks for their citizen-voter members without considering the impact on other members of society.*

As government operates within a budget constraint, at times elected officials may want to demonstrate fiscal responsibility to citizen-voters by recognizing that for some publicly provided services that benefit only a portion of citizens, more visible consumption taxes such as user fees

may be appropriate (Sproule-Jones 1994). Accordingly, in elected officials' self-interest they may design policy instruments that shape the revenue system to maximize votes as part of elected officials' continuous effort to remain in control of government (Hettich and Winer 1997; Mueller 2003). For some policy decisions to finance publicly provided services to individuals through user fees rather than taxation, the decision may support the governing party's ideology. There is a common assumption that right-wing political parties favour smaller operating budgets by instilling consumption taxes such as user fees, while left-wing parties favour public spending increases thus financing more public services through general taxation rather than user fees (Tellier 2006).

From a rational perspective, it is in elected officials' self-interest, who seek to form government, to select policy instruments that will resonate with as many citizen-voters as possible while attempting to achieve policy objectives as the success or failure of a particular policy measure may impact elected officials at the polls (Trebilcock and Hartle 1982; Atkinson and Nigol 1989). The selection of a policy instrument, as one part of the policy cycle, illustrates the management of the policy process but does not convey how difficult decisions are made as in most situations there is more than one solution (Bridgman and Davis 2003). As elected officials operate within an information constraint, elected officials are more likely to choose less coercive policy instruments such as exhortation to gauge impact/acceptance by citizen-voters and then move to more coercive techniques such as regulation or taxation if required, thus providing the option for flexibility and reversibility (Lowi 1972; Doern and Wilson 1974; Atkinson and Nigol 1989). Elected officials will not necessarily choose the most cost effective or most efficient policy instrument but instead will attempt to gauge how citizen-voters and pressure groups may

react to anticipated benefits/costs as it impacts them as a result of elected officials' actions or inactions (Trebilcock and Hartle 1982; Harman 2005).

Hence the decision to implement a policy instrument such as user fees or not, may be influenced by the relationship between elected officials and citizen-voters. Citizen-voters may continue to ask elected officials for more public services paid for by others through general taxation (WP2). Elected officials seeking to maximize their utility by winning enough votes to form government may wish to appease citizen-voters; however, elected officials may be encouraged to be fiscally prudent as they operate within a budget constraint (WP1). Since pressure groups maximize their utility by spending resources to obtain more benefits and/or lower costs for their citizen-voter members, and given government operate within a budget constraint, pressure groups are motivated to pursue government at the expense of others, as postulated in WP3.

6.1.2 Legislative environment

Working proposition four (WP4): *It is a complex legislative environment for government organizations to operate in as defined areas within the management of a government organization are not about implementation of a single public policy that provides clear direction, but rather a single area of management within a government organization can be impacted by numerous public policies.*

Whereas the decision to implement user fees for public services ultimately rests with the deputy head of the organization there are other considerations or influences beyond the control of the organization that may impact the decision (Parole Board of Canada 2011d). These influences may include elected officials' decisions or central agency policies such as balancing between national security and human rights (Eliadis 2011), or balancing between national security and privacy (Chandler 2009), or balancing privacy with creating, collecting, using and sharing information across government (Treasury Board of Canada Secretariat 2012c). A complex operating and reporting regime for the bureaucracy to adhere to, as depicted in WP4, has been

created by elected officials through legislation, management policies and oversight bodies, to provide elected officials a means of controlling the management of the public service.

6.1.3 Relationship between elected officials and bureaucracy

Working proposition five (WP5): *It is not in deputy heads' self-interest, while being responsible for sound financial management within their departments, to change methods of financing the provision of goods and services unless there is a reduction in their budget. It is not in deputy heads' self-interest as changing methods to finance public goods and services requires going through a rigorous process. Government has put in place a complex set of rules which must be followed in order to implement user fees. Unless operating budgets are decreased, deputy heads are unlikely to commit additional resources (people and financial) to implement a new costing structure.*

Working proposition six (WP6): *It is not in a deputy head's self-interest, even though the deputy head has legal authority over the financial management of the organization, to alter the financing method of providing goods and services as he requires approval by the elected official to whom he reports. Given WP1, WP2 and WP3, it is unlikely that the elected official will support the implementation of user fees for public services that were previously provided through general taxation unless elected officials have the desire to be seen as being fiscally prudent as it is not in government's self-interest.*

The Governor-in-Council appointment process provides the statute which specifies appointment authority (Privy Council Office 2008) that includes the deputy head being responsible for the management of the department overall including the monitoring of the department's inputs and outputs. Deputy heads being responsible for the management of their department aligns with management reforms in OECD²⁶ countries which are "grounded on the principle that managers must be permitted to run their operations without undue outside interference" (Schick 2001, 9). The notion of allowing the deputy head to manage his department is illustrated in Canada with the Glassco Commission's (1962) recommendations to 'let the managers manage' and the Lambert Commission's (1979) findings to 'make the managers manage.' The *Federal Accountability Act* (R.S.C., 2006, c.9) further emphasized the role of the deputy head by deeming the deputy head to be the accounting officer for the department which

²⁶ OECD is the acronym for Organisation for Economic Co-operation and Development, an organisation that helps governments address economic, social and governance matters in a global environment <http://www.oecd.org/>

included being responsible for whether “departmental programs are delivered in compliance with administrative policies and procedures,...steps taken to maintain effective systems of internal control,...and what the department has done in order to ensure that the accounts fairly portray the financial position of the department” (Privy Council Office 2007). Additionally in 2009, Treasury Board of Canada Secretariat (TBS) introduced the *Policy on Internal Control* which requires the deputy head to sign the department’s *Statement of Management Responsibility Including Internal Control Over Financial Reporting* to ensure that the deputy head is attesting to his responsibility for the financial management of the department (Treasury Board of Canada Secretariat 2009c). All this to say, that the financial management of a department clearly resides with the deputy head so it is in the deputy head’s self-interest to ensure not only sound financial management of his department but to seek ways to more efficiently allocate funds to deliver services.

Over the years as the deputy head was given increased autonomy with more flexibility and latitude in the management of his department, one financial incentive provided was retention of funds raised from cost recovery rather than having funds distributed to the Consolidated Revenue Fund (Good 2008). Thus deputy heads may be motivated to review programs and determine whether or not the benefits of a program is directed at Canadians as a whole or individually. If it is determined that programs are directed towards selected individuals, a user fee may be appropriate (Treasury Board of Canada Secretariat 1997), and if this is the case deputy heads may be recognized as running their department more efficiently if they decide to initiate user fees. However, the selection of policy instruments may be influenced by the culture of the government institution as in whether or not they have used a policy instrument such as user fees previously (Linder and Peters 1989). Additionally, decisions to change methods of

financing public services may be viewed as incremental as the vast majority of expenditures from the previous year are allocated to the same place the next year (Good 2008); thus deputy heads may not be inclined to change the method of financing public services.

Operating expenditures as part of the budget are the responsibility of TBS (Good 2008). One of TBS's primary roles is to provide oversight of the financial management function within government organizations (Treasury Board of Canada Secretariat 2006). Operating expenditures within departments include services funded by user fees with the decision to implement user fees (or not) residing within the specific department (Treasury Board of Canada Secretariat 2009a). Hence, the deputy head as the senior management executive of the department, after obtaining ministerial approval, is responsible for the decision to implement user fees (Treasury Board of Canada Secretariat 2004a). However depending upon the policy agenda of the governing party, at times user fees may not be deemed appropriate if elected officials are attempting to win votes as user fees may not be popular with citizen-voters (WP2) while at other times user fees may be introduced if the government is trying to appear fiscally prudent (WP1). As government controls the appointment process of deputy heads and deputy heads hold office 'during pleasure' which means that the deputy head may be replaced or removed at the discretion of the prime minister (Privy Council Office 2008, 2009), deputy heads are inclined to financially manage their department within the policy direction as set out by government.

While deputy heads may be motivated to implement user fees as the government organization can retain the funds, deputy heads are unlikely to do so unless operating budgets are decreased as the process is complex (WP5) with the implementation of user fees taking two to three years. Deputy heads may be constrained in implementing user fees since the final decision

rests with elected officials who may not be in favour of user fees as user fees are not popular with citizen-voters (WP6).

By exploring these six working propositions through the Buchanan and Tullock model, we will seek to understand why user fees are implemented for some individually provided public services while others are financed through general taxation.

6.2 Research design

The aim of the study is to use Buchanan and Tullock's model as developed in the theoretical framework to interpret, analyze and understand the research issues. The study examines the application of government's policies and regulations related to user fees by scrutinizing the overall environment in the provision of four public services provided by the federal government. The four publicly provided services are passports, pardons, security clearances and Social Insurance Numbers (SINs). We first review the government's user fee regime in Chapter 7; then apply attributes related to the provision of services and their feasibility of analysis to the four cases in Chapter 8; followed by analyzing the cases through the six working propositions in Chapters 9, 10 and 11.

6.2.1 Rationale for case selection

The four cases are selected based on their variety of attributes for the provision of services and their feasibility of analysis (Yin 2003) as illustrated in Table 6.1. A detailed description of each case is provided in Chapter 8.

All cases directly target individuals living in Canada:

- Passports are required for traveling outside of Canada,
- Pardons are necessary for obtaining gainful employment,
- Security clearances are required for contracting with government, and
- SINs are a prerequisite for working in Canada and/or receiving government benefits.

The four cases 'indirectly' target business:

- Passports are necessary for employees traveling,
- For hiring of employees with past criminal records, pardoned individuals are desirable,
- To deliver on most contracts with government, employees need to be security cleared, and
- As employers are required to remit taxes and contributions to benefit programs on behalf of their employees, a SIN is necessary.

It will be desirable to compare the variety of cases to establish whether or not there is an attribute that is a contributor as to why some public services have a user fee while others do not.

We examine the following attributes relative to the variety of cases:

- Are user fees charged for the public service provided to individuals?
- Are user fees the only source for funding the service?
- Is the organization a separate entity or part of a larger government entity?
- What is the visibility of the service? Are the majority of Canadians aware of it?

We also examine the feasibility of analysis as we are trying to determine whether or not there is a particular attribute(s) which provides a rationale for choosing to finance publicly provided services through user fees. We examine the following attributes relative to the feasibility of analysis:

- Does the organization provide a single service or multiple services?
- What are the enabling legislation and regulations?
- What oversight bodies monitor and/or are responsible for the government organization providing the service?

6.2.1.1 Variety of cases

Decision-making process to implement user fees

User fees have always been charged to receive a passport, while user fees were first implemented in 1994-95 for pardons. Parliamentary approvals for user fee increases were recently authorized for passports in July 2013 and for pardons in February 2012. Security clearances and SINs do not have user fees associated with them.

Institutional form

The Canadian federal government, via the *Financial Administration Act*, provides a number of institutional forms (Treasury Board of Canada Secretariat 2013b). For this study, each case is administered by government organizations with different institutional forms. Passport Canada is categorized as a special operating agency; the Parole Board of Canada (PBC) is an independent administrative tribunal; the Canadian Industrial Security Directorate (CISD) is a directorate within a program (Industrial Security Sector) within a department (Public Works and Government Services Canada (PWGSC)); and SINs are issued as a service within Employment and Social Development Canada (ESDC). Passports, pardons and SINs are only issued by a single government organization (Passport Canada, PBC, and ESDC) whereas security clearances may be issued by government organizations other than CISD.

Financial authority

Passports are entirely funded by user fees. As of February 2012, pardons are also completely funded by user fees. Prior to February 2012, pardons were funded partially by user fees with the remainder of funding being derived from appropriations. Until April 2011, security clearances were funded entirely through appropriations. As of April 2011, security clearances are funded through inter-departmental cost recovery²⁷ plus departmental appropriations. SINs are funded through parliamentary appropriations.

Visibility by citizens

Passports are a highly visible service for individuals as passports are required by citizens to travel outside of Canada. Pardons are categorized as having low-to-medium visibility as the majority of pardons issued receive little attention by citizen-voters. The visibility of pardons by citizens increased in 2010 when a high-profile criminal applied for a pardon for a heinous crime.

²⁷ Inter-departmental cost recovery means funding is provided by government entities which use a service provided by another government organization. Inter-departmental cost recovery therefore utilizes appropriations.

Security clearances have medium-to-high visibility by citizens as security clearances are only required to work within the federal government or by the private sector in delivering on government contracts. The category of medium-to-high visibility has been selected as the protection of government information is important and when there has been a breach in security protocols, security lapses may become highly visible to citizens through the media. SINs have low visibility as individuals need one to work in Canada and/or collect government benefits.

Not only is the variety of cases important to try and determine why some government organizations charge user fees while others do not but also the feasibility of analysis is significant.

6.2.1.2 Feasibility of analysis

Single service by organization

For each of these cases there is more than one service provided by the government organization. Passport Canada provides multiple services, all with user fees. The PBC is responsible for multiple services but only the issuing of pardons has a user fee. The CISD delivers multiple services but none charge user fees to citizens. However the CISD is currently undergoing public consultation for the possibility of charging user fees for the Controlled Goods Program effective July 2015. ESDC delivers many services to citizen-voters; none have user fees except the ten dollar fee for the replacement of SIN cards. However in 2014 the issuing of SIN cards was discontinued; thus this fee is no longer applicable. Departmental publications such as Departmental Performance Reports (DPRs) and Reports on Plans and Priorities (RPPs) outline the various services provided by each government organization. These publications may be found on departmental websites.

Enabling legislation and regulations

All four cases have identity and security implications with each having different enabling legislation and regulations. Passports are enabled through the *Canadian Passport Order* with the user fee authorized by the *Passport Services Fees Regulations*. Pardons are authorized through the *Criminal Records Act*, *Criminal Records Regulations*, and the *Royal Prerogative of Mercy* with the user fee for pardons enabled by the *Pardon Services Fees Order*. The *Policy on Government Security* as part of the *Security of Information Act* mandates the issuance of security clearances. The *Canada Employment Insurance Commission* is the overarching legislation that provides for SINs. All legislation and regulations are public and available on the Department of Justice Canada website.

Oversight

Oversight for each of the cases is largely provided by the OAG plus various parliamentary committees. As OAG reports are public and parliamentary committees' proceedings are generally public, it is relatively easy to access the information for analysis purposes.

The selected cases have comparable attributes which will be used to apply the Buchanan and Tullock model to the six working propositions to attempt to understand government's decision-making process in financing public services that are provided to individuals.

Table 6.1 – Cases and attributes

	Passports	Pardons	Security clearances	Social Insurance Numbers
Implementation of user fees	Yes	Yes	No	No
Attributes - Case variety				
Institutional form	Special operating agency; reports to	Independent board, Reports to	Directorate within a program within a	Service delivered within a department

	the deputy minister of Citizenship and Immigration; reports to Parliament through the Minister of Foreign Affairs	Parliament through Minister of Public Safety Canada	department Public Works and Government Services Canada	Employment and Social Development Canada
Financial authority	Revolving fund; full cost recovery through applicant fees	Full cost recovery through applicant fees	Interdepartmental cost recovery	Parliamentary appropriations
High visibility by citizens	High	Low to medium	Medium to high	Low
Attributes - Feasibility of analysis				
Single service by organization	Multiple, all with user fees	Multiple, only pardons have fees	Multiple, none with user fees	Multiple, none with user fees
Enabling legislation and regulations	Passport Services Fees Regulations (pursuant to 19 & 19.2 of the Financial Administration Act); Canadian Passport Order	Criminal Records Act, Criminal Records Regulations, Royal Prerogative of Mercy, Pardon Services Fees Order	Policy on Government Security, Security of Information Act	Canada Employment Insurance Commission
Oversight bodies	OAG, Parliamentary Committees	OAG, Parliamentary Committees	OAG, Parliamentary Committees	OAG, Parliamentary Committees

The attributes described above will be analyzed by using various sources of information as explained next.

6.2.2 Sources of information

An explanatory method has been chosen for this study as the four cases focus on contemporary, real behavioural events that can be observed through the use of public records, access-to-information requests, and interviews with people who were involved with, or privy to, the decision-making process as to why some public services financed through user fees while others are not. The majority of public documentation is accessible through the Internet. However,

one must look at different government sources for interpretations of the same information as each government entity presents the information from the viewpoint of its mandate. Hence, it is important to have an understanding from all actors. For example, the OAG has an oversight role versus parliamentary committees whose members are comprised of elected officials from various political parties versus departmental organizations whose members consist of the bureaucracy. Given the role of each one, each may have a slightly different message that they convey using the same information. Access-to-information requests provide documents from the inner workings of government including emails, meetings, and internal reports thus providing documentation that reveals the how and why of decision-making. Access-to-information requests for this study are illustrated in Table 6.2. Interviews²⁸, as listed in Table 6.3, are used to complement public documents and access-to-information responses. Additionally, at times interviewees helped to fill in information gaps by mentioning a source document that had not been previously considered.

Table 6.2 – Access-to-information requests and responses

• A-2013-00040 - April 17, 2013 – PWGSC – cost recovery data for security – interim release (below)
• AI-2013-00004 – April 11, 2013 - Parole Board of Canada – Copy of A-2010-00048: Responses from the public consultation process regarding fee increase to \$631 and Cost Benefit Analysis (1213 pages released with some redactions) plus Cost Benefit Analysis by RIAS Inc. (193 pages with some redactions)
• A-2013-00040 – June 4, 2013 - Public Works and Government Services Canada – interim release – Security File Review of Contracts and Security File Review of Standing Offers and Supply Arrangements (42 pages released)
• A-2013-00011 - June 26, 2013 – Passport Canada – Obtain a copy of the cost-benefit analysis to support the cost benefits statement found in the Regulatory Impact Analysis Statement as published in the Canada Gazette (SOR/2012-253) to increase the cost of a passport (1 page - released)
• AI-2013-00021 – July 8, 2013 - Public Works and Government Services Canada - Copy of A-2010-00525: Records related to the cost recovery study report for the Industrial Security Sector that eventually lead to the Treasury Board allowing Public Works and Government Services Canada to

²⁸ Interviews were also requested from another assistant auditor general, two directors at Passport Canada, the chief financial officer at the Parole Board of Canada, the Parliamentary Budget Officer, a senator, a director and senior advisor at TBS, an additional ESDC director general, one former deputy minister, one former associate deputy minister, and an employee of a private sector organization that conducts cost-benefit analyses. All declined to participate with some providing names of others to contact.

charge for Industrial Security services (967 pages released with some redactions)
• A-2013-00186 - July 18, 2013 - Public Works and Government Services Canada - Internal audit of the Industrial Security Program (32 pages released)
• A-2013-00205 - July 22, 2013 - Treasury Board of Canada Secretariat of Canada – Copy of new directive on user fees (or a draft copy) plus the options and drafting of potential requirements, alignment of future guidance with the <i>User Fees Act</i> (S.C., 2004,c.6), and other relevant policies, and recommendation of draft policy instruments that were used in developing the new guidance on user fee management (as mentioned in the 2012 Report on the State of Comptrollership in the Government of Canada – (111 pages - withheld under section 69(1)(e))
• A-2013-00170 – August 19, 2013 – Employment and Social Development Canada – copy of the departmental review, completed in September 2007, regarding the fee of \$10 that is charged for the issuing of a replacement SIN card (0 pages - ESDC did not have the information requested)
• A-2013-00012 - August 30, 2013- Parole Board of Canada - Copy of the online consultation form which the Parole Board of Canada used for its public consultations between February 1-27, 2011 for the pardon increase to \$631 (15 pages released)

Table 6.3 - Interviews²⁹

• Director, Resource Management and Compliance, Passport Canada on March 1, 2013
• Director, Budget, Estimates and Reporting, Expenditure and Revenue Analysis, Library of Parliament on March 14, 2013
• Senior Advisor Centre of Regulatory Expertise, Treasury Board of Canada Secretariat on May 6, 2013
• Director, Clemency & Pardons, Parole Board of Canada on May 8, 2013
• Former Chair of Parole Board on May 9, 2013
• Manager, Corporate & Strategic Planning, Parole Board of Canada on May 14, 2013
• Assistant Auditor General, Office of the Auditor General on May 15, 2013
• Manager, Financial Planning and Reporting, Parole Board of Canada on May 21, 2013
• Senior Advisor Costing Strategies, Treasury Board of Canada Secretariat on May 21, 2013
• Director General, Industrial Security Sector, Public Works and Government Services Canada on July 2, 2013 (by phone and email)
• Director General, Identity Policy and Programs Directorate, Integrity Services Branch, Service Canada, Employment and Social Development Canada on December 23, 2013 (by phone and email)

Public documentation used for analysis for this study includes: Office of the Auditor General reports (Table 6.4); various parliamentary committees' reports and meeting evidence (including government responses) (Table 6.5); Treasury Board's User Fees and Costing Documents (Table 6.6); departmental reports (e.g. DPRs, RPPs, Annual Reports, Performance Monitoring Reports), and information from the websites of Passport Canada, PBC, PWGSC, and

²⁹ Interviewees agreed to not be anonymous for this study with the understanding that they could review and approve comments attributed to them. The consent form for this study as approved by the Office of Research Ethics and Integrity is attached as Appendix 1.

ESDC. Sources of information also include public consultation reports by Passport Canada and PBC for changes in public services and user fees. These reports offer original responses from pressure groups and citizen-voters on their reactions to proposed fee changes.

Table 6.4 – Office of the Auditor General Reports

• 2013 – Chapter 2 – Status Report on in Contracting
• 2009 – Chapter 5 – Passport Services – Passport Canada
• 2008 – Chapter 1 – Management of Fees in Selected Departments and Agencies
• 2007 – Chapter 5 – Passport Services – Passport Canada
• 2007 – Chapter 1 – Safeguarding Government Information and Assets in Contracting
• 2007 – Chapter 6 – The Management of the Social Insurance Number – Human Resources and Social Development Canada
• 2006 – Chapter 8 – Allocating Funds to Regulatory Programs – Health Canada
• 2005 – Chapter 3 – Passport Office – Passport Services
• 2002 – Chapter 1 – Human Resources Development Canada – The Integrity of the Social Insurance Number
• 1999 – Chapter 11- Agriculture Portfolio – User Charges
• 1998 – Chapter 16 – Management of the Social Insurance Number
• 1997 – Chapter 2 – Financial Management: Developing a Capability Model
• 1996 – Chapter 32 – Canadian Heritage – Parks Canada: Management of Historic Canals
• 1993 – Chapter 25 – Parliamentary Control over the Raising of Revenues by Fees
• 1991 – Chapter 9 – Financial Management and Control of Non-tax Revenue

OAG reports are useful as one of the roles of the OAG is to examine the implementation of policies and whether there are adequate monitoring mechanisms, such as TBS providing guidance and oversight to government organizations. The role of the OAG is not to question the merits of government policies but instead the OAG examines government's management practices based on the policies which have been set (Good 2008). The auditor general, according to Section 4(3) of the *Auditor General Act* (R.S.C., 1985, c.A-17), submits reports with findings and recommendations to the Speaker of the House of Commons. Once reports are tabled in the House of Commons, the reports are then made available to the media and publicized.

The broad mandate of parliamentary committees in covering various areas of government plus the output from committee work provides a rich field for gathering information for analysis.

Parliamentary committees exist to allow for a detailed examination of complex matters (e.g. OAG reports, review legislation); to provide elected officials a means to probe into the details of government policies and programs; and to offer an opportunity for elected officials to hear from citizen-voters, pressure groups and experts in a public forum on topics of national concern such as user fees or income inequality in Canada (House of Commons 2013).

If summoned a deputy head has a legal obligation to appear before a parliamentary committee to answer questions on management responsibilities (Privy-Council-Office, 2007). Management responsibilities include financial reporting and the implementation of user fees. Through examination of the details of government policies and programs such as DPRs, RPPs and user fees, parliamentary committees monitor departments' activities.

Parliamentary committees also provide a venue for witnesses or subject matter experts to present their views on a particular topic with witnesses generally being represented by non-governmental organizations such as pressure groups rather than individual citizen-voters (House of Commons 2013). Generally those appearing before a committee provide a written brief before the meeting, make a short statement outlining their main points to begin the meeting, followed by questions from committee members (House of Commons 2013). Hence, publicly available information provided from the work of parliamentary committees is a valuable source of information. Extensive use of parliamentary committees' meetings, testimony, reports, government responses, and pressure groups briefs were scrutinized for this study as illustrated in Table 6.5.

Table 6.5 – Parliamentary Committee Studies/Reports

Standing Committee on Public Accounts	<i>Study: Chapter 16 (Management of the Social Insurance Number) (36th Parliament, 1st Session (September 22, 1997 - September 18, 1999))</i>
Standing Committee on Finance	<i>Report 9 - Ninth Report - Challenge for Change. A Study of Cost Recovery (Adopted by the Committee on June 13, 2000; Presented to the House on June 15, 2000) (36th Parliament, 2nd Session (October</i>

	12, 1999 - October 22, 2000))
Standing Committee on Public Accounts	<i>Sixteenth Report: Chapter 1 of the September 2002 Report of the Auditor General of Canada (Human Resources Development Canada - The Integrity of the Social Insurance Number) (37th Parliament, 2nd Session (September 30, 2002 - November 12, 2003))</i>
Standing Committee on Public Accounts	<i>Study: Chapter 5, Passports Services – Passport Canada of February 2007 Report of the Auditor General of Canada (39th Parliament, 1st Session (April 3, 2006 - September 14, 2007))</i>
Standing Committee on Public Accounts	<i>Study: Chapter 1, Safeguarding Government Information and Assets in Contracting of the October 2007 Report of the Auditor General of Canada (39th Parliament, 2nd Session (October 16, 2007 - September 7, 2008))</i>
Standing Senate Committee on Legal and Constitutional Affairs	<i>Twelfth Report: National Parole Board User Fee Proposal, with observations (40th Parliament, 3rd Session (March 3, 2010 - March 26, 2011))</i>
Standing Senate Committee on National Finance	<i>The subject-matter of all of Bill C-38, An Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures, introduced in the House of Commons on April 26, 2012 Issue 19 - Evidence - May 15, 2012 - Morning meeting (41st Parliament, 1st Session (June 2, 2011 - September 13, 2013))</i>
Standing Senate Committee on Legal and Constitutional Affairs	<i>Fifth Report: Parole Board of Canada User Fees Proposal, with observations (41st Parliament, 1st Session (June 2, 2011 - September 13, 2013))</i>
Standing Committee on Foreign Affairs and International Development	<i>Study: Department of Foreign Affairs User Fee Proposal Relating to Passport Canada (41st Parliament, 1st Session (June 2, 2011 - September 13, 2013))</i>
Standing Senate Committee on Foreign Affairs and International Trade	<i>Passport Canada's Fee-for-Service Proposal to Parliament, User Fees (Passport), without amendment (41st Parliament, 1st Session (June 2, 2011 - September 13, 2013))</i>

The president of the Treasury Board Cabinet committee is responsible for “the management of the government by translating the policies and programs approved by Cabinet into operational reality and by providing departments with the resources and the administrative environment they need to do their work” (Treasury Board of Canada Secretariat 2007a). The administrative arm of the Treasury Board Cabinet committee is the Treasury Board of Canada Secretariat (TBS). TBS provides advice to Treasury Board on policies, directives, regulations, and program expenditure proposals; TBS also had responsibility for the general management of how these various initiatives are managed by government organizations (Treasury Board of Canada Secretariat 2006). As the administrative arm of Treasury Board, TBS plays an important role in ensuring that policies are adapted to reflect any management and implementation gaps

identified in OAG reports following the recommendations of parliamentary committees. TBS policies and reports used in this study are provided in Table 6.6.

Table 6.6 – Treasury Board’s user fees and costing documents

• Quality and Affordable Service for Canadians: Establishing Service Standards in the Federal Government - An Overview <u>(1996 – current)</u>
• User Charging in the Federal Government - A Background Document <u>(1997 – archived)</u>
• Cost Recovery and Charging Policy (1997 – archived)
• Cost Recovery <u>(1999 – archived)</u>
• Review of the Cost Recovery and User Fee Approval Process - Number 3 <u>(2001 – archived)</u>
• External Charging Policy <u>(2003 – archived)</u>
• Policy on Service Standards for External Fees <u>(2004 – current)</u>
• Report of the President of the Treasury Board on the Provisions and Operation of the User Fees Act
• Canadian Cost-Benefit Analysis Guide – Regulatory Proposals <u>Interim (2007 – current)</u>
• Guide to Establishing the Level of a Cost-Based User Fee or Regulatory Charge <u>(2009 - current)</u>
• Cabinet Directive on Regulatory Management <u>(2012 – current)</u>
• Guide to Costing <u>(2013 - current)</u>
• User Fees Implementation: - o User Fee Proposal Approval Process - o Complaint(s) Resolution Process Flowchart - o Template for Tabling User Fee Proposals in Parliament - o List of Tabled and Approved User Fee Proposals

The *Access to Information Act* (R.S.C., 1985, c.A-1) states that those in Canada have a right to access information that is contained in government records (Treasury Board of Canada Secretariat 2013a). Government records may include items such as emails, costing reports, meeting notes and other internal documents. The Office of the Information Commissioner of Canada provides an oversight role in addressing concerns by citizens and organizations that their right to information has been respected under the Act while ensuring that the rights of government organizations plus third-parties are respected (Office of the Information Commissioner of Canada 2013). Thus when access-to-information requests are submitted to government organizations, government organizations have an obligation to provide the requested information unless information is exempted (e.g. records used to brief ministers, draft legislation,

and matters related to national interest) according to the *Access to Information Act* (R.S.C., 1985, c.A-1). Access-to-information requests and responses for this study are listed in Table 6.2.

For this research design, one-hour semi-structured interviews were conducted using open-ended questions to allow participants to expand on responses and perhaps provide information beyond the question posed (Aberbach and Rockman 2002). The use of multiple interviews allows the researcher to corroborate information being provided as it is not “the obligation of a subject to be objective and to tell us the truth” (Berry 2002, 680). Beyond verifying the ‘truth,’ one would want multiple interviews as participants provide their perception of events, with no malcontent likely intended, but rather their understanding of how events unfolded. Data collection using open-ended questions provides high fidelity and little structure allowing a free-flow of conversation and information, while the use of public documentation and access-to-information requests provides high fidelity and high structure (Rudestam and Newton 2007). Interviewees for this study are listed in Table 6.3.

Using multiple sources of information allows us to triangulate evidence and converge on facts as public documentation and access-to-information requests provide a method of cross-checking and corroborating information gathered from the interviews (Yin 2003; Stake 2005). Conversely, interviews helped to clarify the written word found in public documentation and access-to-information requests and perhaps provide context for gaps in documentation. However, even with the well-meaning intent of corroborating evidence, in reality, data sources such as public records may be limited and/or participants may not necessarily be completely informed, or participants may provide different views of the same event, but by examining as many sources of information as feasible we further our understanding of the research problem (Wolcott 1990).

Utilizing multiple sources of information provided us data to answer the questions posed in Table 6.7. The data relates to the various attributes of this study: single or multiple services within a government organization, enabling legislation and regulations, oversight bodies, funding model, type of institutional form or a program within a government organization, plus whether or not the service has high visibility among citizen-voters.

Table 6.7 – Cases and attributes linked to working propositions

		Working proposition
Unit of analysis		
Decision-making process to implement user fees	How was the decision made to (or to not) implement user fees? Was there a specific event that triggered this decision? What policy(ies) led to this decision? Who were the influencers (e.g. elected officials, citizen-voters, and pressure groups)? Has there always been a fee or when was it introduced; why? How did citizen-voters and pressure groups react to the introduction of a fee?	WP1, WP2, WP3, WP4, WP5, WP6
Attributes – Case variety		
Institutional form	What type of organizational structure is the service provided through (e.g. section of <i>Financial Administration Act</i> , governance structure, use of revolving fund)? Does the type of structure influence whether or not user fees are implemented? What types of authorities are required to make these decisions? What type of governance structure does this organization have? Who does it report to (e.g. department)? What other governance implications are considered?	WP2, WP3, WP4, WP5, WP6
Financial authority	How is the service funded? If through appropriations does it have long-term stable funding? If through user fees, are funds deposited to a revolving fund or the Consolidated Revenue Fund?	WP3, WP4, WP5
High visibility by citizens	What is the level of visibility of service (e.g. passports high international visibility, pardons low-to-medium visibility, security clearances medium visibility, social insurance numbers low visibility)?	WP1, WP2, WP3, WP4, WP5, WP6
Attributes – Feasibility of analysis		
Single service by organization	Is this the only program within the organization that charges/not charges user fees? What other programs? Why or why not are user fees charged? How were the decisions to charge/not charge user fees	WP1, WP2, WP3, WP4, WP5, WP6

	reached?	
Enabling legislation and regulations	What legislation and regulations directly authorizes the use of user fees? How are these changed? What else influences the charging/not charging of fees? What is the process to implement user fees through the <i>User Fees Act</i> (S.C., 2004, c.6)?	WP2, WP3, WP5, WP6
Oversight	Who has oversight for this organization and whether or not user fees are charged? Is there a requirement for more or less oversight? (e.g. part of Public Safety portfolio has several influencers that may overlap such as <i>Tough on Crime</i> agenda versus allowing released inmates to attempt to fit back into society by obtaining a pardon)	WP2, WP3, WP5, WP6

Data analysis considers whether the decision to implement user fees or not, for individually provided public services, through four cases relies upon the attributes found in Table 6.7. Or is the decision to implement user fees or not, a random event and if so, are there systematic characteristics that may be identified which can be further developed in subsequent research?

6.2.3 Strengths and limitations of study

We apply the Buchanan and Tullock model to six working propositions through four case studies to interpret, analyze and understand what is happening in government in regards to the financing of services through user fees. It is difficult to draw extensive conclusions on political decision-making processes regarding the research question posed from a small sample of case studies but we can describe the area of concern and attempt to explain what is happening. What guides the research is to follow the working propositions, which are derived from the Buchanan and Tullock model, systematically through each case. Overall, what is gained from in-depth analysis by exploring cases is lost in generality (King, Keohane, and Verba 1994).

A cross-sectional analysis of multiple cases is used with the primary focus being the decision-making process involved in deciding whether to finance publicly provided services delivered to individual citizens either through general taxation or user fees in the federal government. Through the use of inferences relating to our area of focus we analyze and interpret

our working propositions by using observations from data collection (King, Keohane, and Verba 1994).

The research design utilized Mill's Method of Agreement and Method of Difference as by combining these two comparative logics we have a mechanism to examine the similarities and differences across the four cases (Skocpol 1979; Ragin 1987; Little 1991). Mill's Method of Agreement examines all instances of a phenomenon then through elimination looks for patterns of invariance to identify an attribute which is constant (Ragin 1987). With Mill's Method of Difference the outcome is not the same for all cases and for it we examine all possible attributes that may influence the outcome to search for a pattern in which all but one of the attributes does not systematically vary along with the outcome (Lieberson 1992). The Method of Difference is utilized through a three phase approach as described by Ragin (1987). Phase One and Two include applying Mill's Method of Agreement in which we cross-tabulate attributes with the outcome searching for an attribute which is constant. Phase Three is the rejection of competing single explanation attributes through paired comparisons.

We need to be realistic in using Mill's methods in that while we have attempted to consider all possible attributes (Nichols 1986) as illustrated in Table 6.8, there may be unidentified attributes that could also have an impact (Lieberson 1992). Additionally, one of the shortcomings of Mill's methods is the assumption that there are no interaction effects between multiple attributes (Lieberson 1992; Ragin 1987), as in there may be more than one attribute that impacts the outcome. While it is very difficult to define inclusive cases in which all attributes have been considered, Mill's methods are useful in pinpointing patterns of constant association between attributes and the outcome (Ragin 1987). Additionally, simply because these cases determine that an attribute is not a factor in the outcome, it does not mean that the attribute could

not be a factor in other cases if one was to attempt to replicate the study (Lieberson 1992) by applying the Buchanan and Tullock model to other cases.

Table 6.8 – Comparison of cases

	Passports	Pardons	Security clearances	Social Insurance Numbers
Outcome				
Implementation of user fees	Yes	Yes	No	No
Attributes – Case variety				
Institutional form	Yes	Yes	Yes	No
Financial authority	Yes	Yes	No	No
High visibility by citizens	Yes	No	No	No
Attributes – Feasibility of analysis				
Single service by organization	No	No	No	No
Enabling legislation and regulations	Yes	Yes	Yes	Yes
Oversight	Yes	Yes	Yes	Yes

In order to increase the reliability of the study, there is a compilation of a case study database so that this researcher, or other researchers, can review the evidence that comprises the case study report in the event that this study is duplicated. The case study database includes: case study notes from interviews, observations and document analysis, a bibliography of case study documents and narratives documenting connections between specific pieces of evidence and pertinent issues in the case study in order to build the case study report (Yin 2003).

By creating a case study database, a chain of evidence is formed with explicit links between the model and working propositions, data collected, and the conclusions drawn in the resulting case study report (Yin 2003; Rudestam and Newton 2007). A solid chain of evidence

helps to increase validity as one can trace research steps from the beginning to the end or from the end to the beginning (Yin 2003).

6.3 Summary

In this chapter using the actors from the Buchanan and Tullock model, we developed our working propositions which include: the relationship between elected officials, citizen-voters and pressure groups; the relationship between elected officials and bureaucracy; and the legislative environment these actors operate in. We then developed our research design including: the rationale for case selection by examining attributes related to the provision of services and the feasibility of analysis; the sources of information to be examined to seek an understanding of the research problem; and then considered the strengths and limitations of our proposed model.

The next chapter helps to provide context as we examine the evolution of user fees within the federal government. Chapter 8 provides a description of each case by looking at the various attributes related to case variety and feasibility of analysis including: type of institutional form, financial authority, high visibility by citizens and single service by organization, enabling legislation and regulations, and oversight bodies. Chapter 9 examines the relationships between our three sets of actors: elected officials, citizen-voters and pressure groups. Chapter 10 investigates the legislative environment in which user fees reside as the environment is complex with numerous pieces of legislation and ensuing policies introduced in government. Chapter 11 looks at the complex relationship between elected officials and the bureaucracy. In analyzing the various relationships we may be able to determine if the relationships between actors is a relevant factor in deciding whether or not to implement user fees for some public services. In Chapter 12, we provide an analysis of our findings.

Chapter 7

Overview of government's user fees journey

7.0 Introduction

Information related to cost recovery through user fees is of interest for this study to provide context when analyzing findings through our working propositions as we shall see in subsequent chapters. In addition the historical context of user fees within the Government of Canada has not been previously documented; hence this becomes an important contribution to the literature.

Government recognized over the years that for those public services which provide a disproportionate benefit to particular individuals (e.g. citizens, businesses), rather than all of society that a cost recovery approach is a more efficient and effective method of delivering these public services (Finance Canada 1985, 1989a, 1995, 2003a). Government made numerous announcements through annual budgets (e.g. 1985, 1989, 1995 and 2003) regarding cost recovery. Government struck various committees to study cost recovery such as the Ministerial Task Force on Program Review in 1984 (Finance Canada 1985) and the Standing Committee on Finance's study *Challenge for Change, A Study on Cost Recovery* in 2000 (Standing Committee on Finance 2000c). Government also instructed TBS to review departmental policies related to cost recovery (Standing Committee on Finance 2000c; Finance Canada 2003a). Yet with all of this targeted activity government still struggles with the implementation of cost recovery through user fees.

Over the years, pressure groups³⁰ formed by frustrated businesses lobbied government for changes in the implementation of user fees including setting service delivery expectations,

³⁰ Pressure groups who testified in front of the Standing Committee on Finance's *Challenge for Change: a Study of Cost Recovery* included: Alliance of Manufacturers & Exporters Canada, Canada's Research-Based Pharmaceutical Companies, Canadian Animal Health Institute, Canadian Drug Manufacturers Association, Canadian Federation of Independent Business, Canadian Shipowners Association, Chamber of Maritime Commerce, National Affairs Canadian Federation of Independent Business, Shipping Federation of Canada, St. Lawrence Economic Development Council, and St. Lawrence Shipoperators' Association.

holding public consultations on user fees, the requirement for central agency guidance, plus annual public reporting (Standing Committee on Finance 2000b, 2000c). In 2004, the *User Fees Act* (S.C., 2004, c.6) (UFA) was passed as legislation and addressed many of the requests made by pressure groups including TBS updating policies and providing guidance documents to departments for implementing user fees. In other words, the UFA provided a window of opportunity to align government actions with pressure groups' expectations.

This chapter first examines cost recovery through user fees prior to the UFA by looking at budget announcements, the influence of pressure groups, and a TBS policy review. We then look at the UFA and some of the changes it instilled in government including updated TBS policies and guidance documents for government organizations. We conclude the chapter by examining various oversight bodies' reports and findings.

Oversight bodies' reports and findings are of interest as the OAG and the Office of the Parliamentary Budget Officer (PBO) use different methodologies to review fees within government organizations resulting in varied findings. The Office of the Auditor General (2008) stated that government organizations reported \$1.9 billion in fee collection in the 2006-2007 departmental performance reports. The PBO (2012) reported that depending upon how user fees were defined in the 2010-2011 Public Accounts, government yielded \$8 billion in revenues from the collection of fees. This is not an inconsequential number. This is not say that revenue collection through user fees increased by almost \$6 billion from 2006 to 2010 but rather it illustrates the difference between what may be reported by government organizations as 'user fees' in departmental performance reports versus the reporting of 'external sales' in Public Accounts. Hence within government organizations there is inconsistency in not only the

reporting of user fees in annual reports but also in defining what is considered a user fee (Office of the Parliamentary Budget Officer 2012).

7.1 Budget announcements

Budget announcements provide the direction of government in addressing the economic and fiscal realities of the country (Shepherd 2013). The budget generally states, among other matters, government's intent to initiate tax expenditures and/or tax incentives based upon government priorities. While many budgets are about spending increases, some budgets such as those in the 1980s to the mid-1990s and in more recent years, have been about across-the-board spending reductions (Savoie 2013; Good 2014). In announcing spending reductions at times government may announce decreases in program spending with an expectation of financing certain programs through cost recovery rather than appropriations. Over the decades, the Canadian federal government has announced in several budgets (Finance Canada 1985, 1989a, 1995, 2003a) the implementation of charging user fees for government services which disproportionately benefit some individuals versus providing a public benefit to all citizen-voters.

7.1.1 Budget 1985

The 1980s were a period when Canada was faced with a massive and unsustainable deficit (Hale 2002). In November 1984 the finance minister announced in Parliament that "in each of the past 10 years the expenditures of the federal government have exceeded its revenues" (Parliament of Canada 1984). The finance minister further outlined that Canada's deficit in 1985 would be \$37.1 billion if nothing was done to curb it with net federal debt climbing to \$190 billion (Mulroney 2007). He stressed that Canada was close to the tipping point in that government may soon have to start borrowing money just to pay the interest on the federal debt

(Mulroney 2007). The finance minister stated “almost 50 per cent of government borrowing is required just to cover interest costs and, if we do not take action, this will rise to more than 76 per cent by 1990” (Parliament of Canada 1984). After setting the stage with the dire economic and fiscal reality Canada was experiencing, the “finance minister then announced \$4.2 billion in expenditure cuts and tax increases” (Mulroney 2007, 334) in the November 1984 economic statement.

In tabling Budget 1985, the finance minister delivered the initial results of the Ministerial Task Force on Program Review which had been convened in September 1984 to do a “comprehensive and probing review of federal government programs” (Finance Canada 1985). One section of the task force’s report was called *Cost Reductions Due to Better Management* that outlined strategies, cost recovery savings (estimated to be \$65 million in 1986-87 and to reach \$215 million by 1990-91), and specific initiatives related to increased cost recovery (Finance Canada 1985). Strategies included a more business-like approach to budgeting with ministers given more discretion and flexibility in the use of budgets, plus a “fair but firm policy on cost recovery” to enforce the notion of user-pay for certain public services (Finance Canada 1985) as had been stated in TBS’s Expenditure and Program Review report. TBS’s (1984, 11) Expenditure and Program Review report outlined that

“In most cases, these services are provided well below their cost. It is only fair that those who benefit from these services should bear a significant share of the cost.”

Given the fiscal realities during the 1980s, Budget 1985 appeared to be a fortuitous time to introduce cost recovery measures for certain public services which disproportionately benefited individuals. Theoretically though cost recovery through user fees is not about generating revenues but rather about delivering public services more efficiently (Bird and Tsiopoulos 1997a). Examples of targeted areas for fees included dry dock and dredging fees,

research service fees, fees for grain inspection, plus costs related to the federal regulation of telecommunications companies (Finance Canada 1985).

7.1.2 Budget 1989

Government's efforts to reduce Canada's deficit significantly through 1984-1989 met with limited success as the electorate opposed cuts to benefits eroding "government's political will to engage in further spending reductions" (Hale 2002, 186). In his memoirs, Brian Mulroney describes 1989 as "the start of the last good year" (Mulroney 2007, 647) with officials from the Department of Finance and the Clerk of the Privy Council advising the prime minister that Canada appeared to be heading into a recession. The Clerk wrote that

"reducing the deficit next year will require a combination of revenue increases and spending cuts as high as \$7 billion. Any large fiscal restraint package will have to include expenditure cuts. There are, however, no easy expenditure cuts left – these were made in your first mandate" (Mulroney 2007, 647).

Budget 1989 was the first budget of the government's second mandate. In the budget speech the finance minister again stressed the unsustainability of Canada's large and growing public debt which continued to grow more rapidly than national income (Finance Canada 1989b). In an effort to control the debt, the finance minister announced in Budget 1989 debt control actions of \$5 billion in 1989 and \$9 billion in 1990 (Finance Canada 1989b). Budget 1989 also delivered a progress report on government's 1984 implementation of cost recovery initiatives:

"In November 1984, the government undertook to increase the level of cost recovery for government services. The policy change was based on the realization that the taxpayer was often bearing the cost of services even when they...conferred specific benefits or rights on particular users or organizations...The government views this initiative as an important element of its management philosophy as it provides a mechanism for promoting greater fairness and equity in the financing of activities. At the same time, it fosters a more business-like approach to the provision of these services, making them more responsive to the willingness of users to pay" (Finance Canada 1989a, 74).

The wording in Budget 1989 indicates that government had not abandoned the notion of cost recovery as it sought to track government's progress since the announcement in Budget 1985. Whereas in Budget 1985 government had forecasted cost recovery savings to reach \$215 million by 1990-91 (Finance Canada 1985), Budget 1989 stated that cost recovery initiatives had generated over \$300 million by 1989-90 (Finance Canada 1989a), a substantial increase over initial forecasts. Budget 1989 announced that government would continue to pursue cost recovery objectives by introducing user fees in other areas as a means of controlling government expenditures (Finance Canada 1989a).

7.1.3 Budget 1995

In the early 1990s Canada experienced a recession forcing budgetary deficit levels even higher rising from “\$29 billion in 1988-89 and 1989-90 to \$41 billion in 1992-93” (Hale 2002, 190). Canada's combined federal-provincial debt problem in 1992 resulted in it being the most indebted country in the OECD (Canadian Council of Chief Executives 1993).

In November 1993 Canada experienced a change in government with the Liberal Party of Canada taking the helm. The series of tax increases and structural tax changes previously introduced by the Conservative government would accrue to the benefit of the new government with:

“transition to North American free trade, a more sustainable level of government spending, and the technological revolution that was transforming the Canadian economy...laid the foundation that made possible the balancing of the federal budget and Canada's return to prosperity during the late 1990s” (Hale 2002, 201).

As deficit reduction was the new government's top priority, the finance minister was given unprecedented control over the fiscal agenda (Hale 2002). The prime minister fully supported the finance minister's efforts with there rarely being any serious policy disagreements between them about what needed to be done (Chretien 2008). The prime minister made it crystal

clear to reluctant ministers that the finance minister had his “complete support in setting the country on course for balanced budgets” (Goldenberg 2006, 106).

The previous government had not experienced a supportive relationship between the prime minister and the finance minister with the prime minister shifting policy priorities thus undermining the finance minister’s efforts to reduce the deficit (Hale 2002). The inability to maintain the support of the prime minister may have been one reason that the finance minister was not as successful with deficit reduction as the Liberal government (Hale 2002). Targeted efforts by the prime minister, through support of the finance minister plus Program Review, resulted in the government eliminating the deficit between 1993 and 1997 thus providing Canada with its first fiscal surplus in 23 years (Hale 2002, 226). Program Review was a major cost reduction exercise that required strong political will and power to reduce the unwieldy federal deficit through means such as revenue-raising in the form of user fees (Doern 2009).

Budget 1995 announced the results of Program Review including cost recovery through additional or increased user fees for approximately 65 per cent of departments with cost recovery revenue projections expecting to generate nearly “\$450 million in the first year, rising to \$600 million when fully mature” (Finance Canada 1995, 41). Elected officials were serious about altering methods of financing public services as announced in Budget 1995:

“It is appropriate that certain programs be financed at least partly through increased cost recovery and user fees, especially for those services that confer a private benefit...A number of departments will therefore be introducing new cost-recovery initiatives or increasing existing fees to cover a greater proportion of the costs of certain programs” (Finance Canada 1995, 40).

Examples of areas targeted for user fees included food and meat inspection, drug approvals, fisheries’ inspections, fishing licences and marine services (Finance Canada 1995, 41). As we shall explain below it was some of these fees that drove intense industry lobbying and

resulted in BCCR being created to demonstrate a united front in meeting with government to demand service standards that aligned with increased fees.

Budget 1995 stated that as cost recovery projections had not always materialized in the past that going forward a department's spending allocations would be linked to cost recovery projections (Finance Canada 1995). Spending allocations linked to cost recovery projections meant that if a department fell short of revenues projected from cost recovery, spending would need to be cut in other areas by the department to make up the difference versus the department being allowed to request additional funds to make up the shortfall (Finance Canada 1995). Cost recovery projections had not always materialized in the past as it was difficult to gauge demand for services. Hence, if deputy heads of government organizations put forward areas in which they thought cost recovery would be appropriate, they needed to get cost recovery projections 'right' or deal with budget shortfalls within their department.

Budget 1995 with its massive cuts to government spending was one of the most important budgets in Canadian history as it turned around decades of debt financing and laid the groundwork for a decade of balanced budgets (Goldenberg 2006; Savoie 2013). Results from the implementation of Program Review plus renewed growth in the economy meant that the \$43 billion deficit was almost completely eliminated by the late 1990s (Shepherd 2013, 104).

7.1.4 Budget 2003

The early 2000s was a time of economic and fiscal prosperity with a growing economy, 40-year low interest rates and with running a budget surplus, the ability to drive down Canada's foreign indebtedness (Finance Canada 2003b). In presenting Budget 2003, the finance minister stated that it was "this government's sixth consecutive balanced budget, and our sixth in a row that will reduce the nation's debt burden" (Finance Canada 2003b).

In addition to tax incentives, tax expenditures, and the announcement of a five-year cycle of strategic reviews, Budget 2003 announced that TBS would be introducing a revised policy on cost recovery (Finance Canada 2003a). The revised policy set out principles for improved management practices to address recommendations from the Standing Committee on Finance's study called *Challenge for Change, A Study on Cost Recovery* (Finance Canada 2003a). Recommendations from the study and business sector pressure groups "called for a more open, transparent and accountable approach to user charging and cost recovery" (Finance Canada 2003a). The revised TBS policy was to include the importance of public consultation and service delivery standards plus the requirement for annual reporting to stakeholders and Parliament, "to underscore the significance of parliamentary oversight and ministerial accountability" (Finance Canada 2003a, 189). TBS's revised policy on cost recovery and the Standing Committee on Finance's study are addressed later in this chapter.

As citizen-voters want more public services but don't want to pay more taxes or user fees, when government makes announcements of user fees, citizen-voters often via pressure groups lobby government to not implement the fees. We shall examine this idea in the next section.

7.2 Influence of pressure groups

As the introduction of user fees to generate revenues became more prevalent through budget announcements, pressure groups appealed to elected officials through individual ministers and parliamentary committees for 'fairness' in being charged user fees. As noted by an elected official of the governing party at the time

"Companies in my former riding...came to visit me sometime in 1999 and argued that user fees were seriously eroding their competitiveness because the fees were increasing with no corresponding increase in service or performance. The timelines for

drug and chemical approvals were way out of line with countries like the USA and the United Kingdom.” (Cullen 2011, 71-72).

Elected officials do not always agree on the implementation of user fees and may lobby cabinet members in support of an industry:

“Mazankowski wanted to apply user fees for transportation services. I [Tobin] argued that the fees would be hurtful and unfair to certain groups, and we managed to have it expunged there in the committee room” (Tobin 2002, 61, Tobin's name added in brackets).

The unpopularity of user fees was demonstrated through testimony by pressure groups during meetings for the Standing Committee on Finance’s study *Challenge for Change, A Study on Cost Recovery*. Business-focused pressure groups testified that while they were willing to pay user fees, they felt that this also entitled them to being consulted regarding changes in fees, to have service delivery expectations, to remain competitive internationally and to have access to a formal dispute settlement mechanism (Standing Committee on Finance 2000c, 2000b; Treasury Board of Canada Secretariat 2001). In other words, similar to a private market-setting scenario, business-focused pressure groups felt that if they paid for a service they should have some say in the provision of the service especially as most government services are a monopoly and these groups could not obtain a similar service from another provider unless they exited the Canadian market (Standing Committee on Finance 2000a).

Additionally, pressure groups representing consumers were concerned that cost recovery for some services such as the drug review process focused on the client (e.g. pharmaceutical industry) rather than protecting the health of the public (Standing Committee on Finance 2000b). Hence, we see that government needs to be aware of both sides of an issue as voiced by a senior public servant:

“While **industry asserts the right to demand** improved service levels according to its definition of service, **other parties have expressed fear** that a user say, user pay approach would co-opt government programs and undermine their public interest foundations” (Standing Committee on Finance 2000b, bold added).

In particular one business-focused pressure group called the Business Coalition on Cost Recovery (BCCR) made a significant impact on government's implementation of user fees during meetings of the Standing Committee on Finance's study *Challenge for Change, A Study on Cost Recovery*. BCCR testified to the committee that their pressure group included many of Canada's leading business organizations generating about \$330 billion worth of economic activity every year and providing over two million jobs for Canadians thus demonstrating the breadth of concern about Canada's cost-recovery policy (Standing Committee on Finance 2000a). While BCCR testified that they understood and accepted the need to pay reasonable fees for federal government services, the pressure group found that when these fees were initially implemented the government had committed to making them fair, accountable, and transparent, but in reality experiences fell far short of expectations (Standing Committee on Finance 2000a).

To quantify the problems with cost recovery implementation, BCCR commissioned a study which found that between 1994-95 and 1996-97 regulatory fees charged to businesses increased by 47 per cent with the federal government overall charging approximately \$1.7 billion in fees to business by 1996-97 (Business Coalition on Cost Recovery 1999). The study also found that with the fee increases, the delivery of services received in return for these fees were not improved with service performance lagging significantly behind international competitors and deemed far worse than what was promised when cost recovery was implemented in the first place (Business Coalition on Cost Recovery 1999). The BCCR study stated that because of the administrative costs incurred to government to charge these fees and other jurisdictional problems, the government received only 20¢ of revenue for every \$1 charged in user fees (Business Coalition on Cost Recovery 1999). In other words, BCCR's conclusion was that the overall user fee process was inefficient and there was room for improvement.

Rather than simply outlining the problem with user fee implementation during testimony to the committee, BCCR provided recommendations for improvement to the system as outlined in Table 7.1.

Table 7.1 – Cost recovery recommendations

BCCR’s Recommendation	Standing Committee on Finance’s Recommendation
“We received a written promise from the Treasury Board President in 1999 that the board would conduct an official review of the cost-recovery policy with a view to improving it. That promise was made close to 18 months ago, and we have seen nothing happen yet.”	1. That a Committee of Parliament conduct a government-wide study of the Treasury Board Cost Recovery and User Charge Policy to evaluate both its benefits and costs to serve as the basis of any policy reform.
“The importance of accountability and scrutiny within mandatory cost-recovery programs has to be enhanced. Too often, departments and agencies see their clients as a captive market that must simply accept their unilateral decisions about fees and performance.”	2. That information on user charges be made easily available to all interested parties including the formula used to determine the user charge, an indication as to whether it is a mandatory charge, whether it is a business charge, the amount of revenue it generates, and the performance promised by each user-charge program. The estimated public/private benefit split should be included, as well as its justification.
“We believe that every department should provide an annual report to Parliament and business clients on their adherence to these standards.”	3. Fee revenues should be published annually.
“Central agencies need to show leadership in helping departments implement cost recovery to ensure consistency and adherence to the implementation standards.”	4. More central agency guidance is needed including stricter guidelines for determining the public/private benefit of a service.
“The coalition has developed an implementation standard for federal cost recovery. This standard is a benchmark, a checklist against which we think old, new, and existing cost recoveries should be assessed.”	5. Uniform standards should be established by Treasury Board to be applied by all departments and agencies.
“Establish appropriate dispute resolution mechanisms.”	6. That government create an explicit appeal process to deal with user-fee complaints.
“Most importantly, we believe there has to be more accountability, both to Parliament as well as to business clients, for the implementation of cost recovery to Canadians across the board.”	7. All new user fees, and changes to user fees, should be subject to scrutiny by a parliamentary committee.
“Conduct business impact test assessments before new fees are set or when existing fees are changed.”	8. That Treasury Board state explicitly what is required in business impact assessments, including international comparisons and verify that they are being conducted by the departments.
“Assess the effects of the fees on competitiveness	9. That the government-wide review of user fees

and productivity and take steps to reduce any undue negative impacts on the economy.”	examines how well user fees approximate efficient pricing.
“Implement appropriate and enforceable redress mechanisms where performance standards are not being met.”	10. Fees should be reduced if service commitments are not met.
“Set performance standards on par with comparable international organizations or competitors.”	11. Other enforcement mechanisms should also be considered such as alternative service providers and the use of international standards.
“Ensure the cost-recovery programs are run efficiently by minimizing fees and increasing cooperation with other regulatory bodies through harmonization or other mutual recognition agreements.”	12. That government set up a red-tape commission to evaluate and streamline regulations.
Source: Standing-Committee-on-Finance. <i>Evidence: Meeting No. 54, Tuesday, May 9, 2000</i> (36th Parliament, 2nd Session) quotes are as presented by the Business Coalition of Cost Recovery during testimony	Source: Standing-Committee-on-Finance. Ninth Report - Challenge for Change. A Study of Cost Recovery - Recommendations

While the Standing Committee on Finance heard from numerous pressure groups representing both businesses and consumers, the committee’s twelve recommendations closely align to BCCR’s recommendations. The committee’s Recommendation #2 appears to be the only recommendation that takes into account the notion of consulting with all interested parties plus providing justification as to the public versus private benefit, both which address the concerns voiced by non-business pressure groups. Clearly as demanded by business-focused pressure groups, the committee’s recommendations were targeted to the users of the services and subsequent payers of fees. This demonstrates the impact that business-focused pressure groups may have on government. It also demonstrates as we shall see later in this chapter, that business-focused pressure groups not only influenced the committee’s study but that the subsequent legislation, the UFA, applies to all user fees whether for businesses or individual citizen-voters. Hence, individual citizen-voters are subjected to the same requirements as businesses when being charged user fees.

We shall see in the next two sections how the Standing Committee on Finance's recommendations, which mirrored recommendations from business-focused pressure groups, were implemented through a TBS policy review and new legislation.

7.3 TBS policy review

As illustrated in Table 7.1, Recommendation #1 of the Standing Committee on Finance's study, TBS was instructed to examine its *Cost Recovery and User Charge Policy* to evaluate both its benefits and costs when considering policy reform. Hence, TBS (2001)

“initiated a broad based review of the cost recovery and user fee program...in direct response to concerns expressed by departments that the regulatory process required to obtain government approval to establish user fees is bureaucratic and slow.”

As views of parliamentarians and pressure groups had been voiced during testimony through meetings of the committee's study, the purpose of TBS's (2001) review was to examine the government's user fee approval process from a departmental perspective. TBS (2001) findings included that while some departments were adept at implementing user fees through the regulatory process, others had little experience in doing so, and still other departments used alternative authorities to establish fees as they found that the regulatory process did not allow the flexibility required to efficiently deliver programs. In other words, there was inconsistency in the implementation of user fees across government organizations. According to a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013, inconsistency in implementation may relate to the fact that some fees are not established through regulations.

Thus we have both parliamentarians and external stakeholders through the study *Challenge for Change. Study of Cost Recovery*, plus public servants within departments through TBS's *Review of the Cost Recovery and User Fee Approval Process*, identifying opportunities for improvement in the implementing of user fees. However, the review by TBS (2001) also

established that while departments found the process cumbersome and slow, central agency bureaucrats from TBS and Justice Canada plus the Standing Joint Committee for the Scrutiny of Regulations³¹ had a different view:

“the regulatory process is long and complicated because the executive is performing a legislative function delegated under statute - regulations establish rules, the violation of which are punishable offences.”

Consequently we have the Standing Committee on Finance (2000c) recommending in their study changes to enhance the user fee process which supported citizen-voters and pressure groups versus the TBS (2001) review justifying the user fee process to protect elected officials as ministers and central agency public servants. There was a need to balance between elected officials meeting citizen-voters and pressure group demands versus elected officials and public servants appropriately managing user fees.

As mentioned above, Budget 2003 announced, following the recommendations of the study *Challenge for Change: A Study of Cost Recovery*, that the president of the Treasury Board would be issuing a revised policy on external charging which would highlight the importance of consultation with users, service delivery standards, and annual reporting for all user charging activities (Finance Canada 2003a). In 2003, TBS subsequently issued the new policy called the *External Charging Policy* which replaced the 1997 *Cost Recovery and Charging Policy* (Treasury Board of Canada Secretariat 2003a). The 1997 *Cost Recovery and Charging Policy* had replaced the 1989 *External User Charges for Goods, Services, Property, Rights and Privileges* (Treasury Board of Canada Secretariat 1997). The 1997 policy revised the 1989 policy by providing a procedure for implementing user fees which included notification of proposed fees, consultation with stakeholders, and a mechanism to address disputes (Bird and Tsiopoulos 1997b). The 2003 *External Charging Policy* did not change the principles of the

³¹ a committee comprised of elected officials and appointed senators

1997 policy but rather increased the accountability and management rigour to the user fee process by emphasizing open, transparent and on-going stakeholder consultation, in addition to a more comprehensive monitoring and reporting regime for departments (Treasury Board of Canada Secretariat 2003a). The *External Charging Policy* aligned with recommendations from the study *Challenge for Change: A Study of Cost Recover*; thus some of pressure groups' demands had been acted upon.

Next we examine the UFA and then in the subsequent section look at how the passing of the UFA as legislation led TBS to again alter its policy framework.

7.4 User Fees Act

After TBS updated its 2003 *External Charging Policy* related to cost recovery, the UFA was introduced in Parliament and received Royal Assent on March 31, 2004. It is interesting to note that the UFA which originated in the House of Commons as Bill C-212 – *An act respecting user fees*, was not the only private member's bill related to user fees introduced in the House of Commons.

Monte Solberg as a member of the Reform Party of Canada, twice tabled a private member's bill related to user fees (Parliament of Canada 1997, 1999).³² Both times that these bills were tabled they did not go beyond the first reading so they did not make it to the report stage as bills must pass second reading to be referred to the relevant parliamentary committee (Cullen 2011). When Monte Solberg tabled his private member's bills, he was the vice-chair of the Standing Committee on Finance in 1997 and a member of the Standing Committee on Finance in 1999.

³² The full title of the bill was 'An Act to provide for parliamentary scrutiny and approval of user fees set by federal authority and to require public disclosure of the amount collected as user fees.' The short title was User Fees Act (Parliament of Canada 1997, 1999).

Roy Cullen, a member of the governing Liberal Party of Canada, tabled private members' bills related to user fees three times. The first time in 2001 as Bill C-455 with a short title of *User Fees Act* (Parliament of Canada 2001) with the bill not going beyond the first reading. Mr. Cullen tabled the *User Fees Act* again in 2002 as Bill C-212 (Parliament of Canada 2002). This time the bill passed through the House of Commons and to second reading in the Senate before Parliament was dissolved on November 12, 2003. When Parliament resumed on February 2, 2004, Bill C-212 was reinstated from the previous session and received Royal Assent on March 31, 2004 (Parliament of Canada 2004). When Roy Cullen's private member's bill was reinstated, he was the chair of the Standing Committee on Finance in 2004. Previously in 2001 and 2002 when he tabled the bills, he was a regular member of the Standing Committee on Finance. Both Roy Cullen and Monte Solberg were members of the Standing Committee on Finance in 1999 when the committee conducted its study *Challenge for Change: A Study of Cost Recovery*.

The wording of the bills evolved over time but the substance for both Solberg's bills and Cullen's bills are similar. While beyond the scope of this study, it would be interesting to know if these two men worked together on these bills or if Cullen picked up the theme and reignited it in 2001 as he saw a need. Mr. Cullen states that he:

“introduced this Bill because of a certain amount of frustration with the lack of progress on this issue. The House of Commons Standing Committee on Finance in 2000 (*Challenge for Change – A Study of Cost Recovery*) recommended significant changes to the cost recovery/user fee policy, but progress by our Liberal government had been slow to non-existent” (Cullen 2011, 72).

Thus while TBS had issued an updated policy in 2003 to deal with user fee implementation by departments, elected officials decided to enact formal legislation providing 'rights' for users of services. The UFA applies to all user fees provided by a regulating authority charged to an external client that is fixed pursuant to the authority of an Act of Parliament in which the:

“‘direct benefit or advantage’ means a benefit to the client paying the user fee with that benefit being either unique to that client or distinct from and greater than benefits that could also accrue to any other person or business as a result of that user fee being paid.”

After the second reading of Bill C-212 in the House of Commons, the bill was sent to the Standing Committee on Finance to be studied. According to a former member of Parliament, interviewed in Ottawa, 15 July 2010, as pressure groups appearing before the committee were mostly from regulated industries which would normally be primarily affiliated with Industry Canada, we may have expected the bill to be studied through the Standing Committee on Industry, Science and Technology rather than the Standing Committee on Finance. The Standing Committee on Finance generally deals with money matters such as the budget process and tax measures, not regulatory matters such as the implementation of user fees (Good 2008). However, as mentioned by a former member of Parliament, interviewed in Ottawa, 15 July 2010, there were two elected officials at the time that had many businesses of regulated industries in their ridings and supported the notion of the UFA; these same two elected officials were on the Standing Committee on Finance. These two elected officials on the committee may be one of the reasons that the bill was studied through the Standing Committee on Finance and not the Standing Committee on Industry, Science and Technology. The former member of Parliament also mentioned that as it was studied by the Standing Committee on Finance, the bill had a higher profile and became a money concern versus if it went through the Standing Committee on Industry, Science and Technology where it would have been viewed through a regulatory lens and more likely to have thought about users – all users, not only regulated pressure groups. Table 7.2 provides an overview of the UFA and how it aligns to recommendations from the Standing Committee on Finance’s study *Challenge for Change: A Study of Cost Recovery*. Another possible reason in determining why the Standing Committee on Finance reviewed the UFA and

not the Standing Committee on Industry, Science and Technology, is that the Standing Committee on Finance had conducted the study *Challenge for Change: A Study of Cost Recovery* and would be familiar with the issues raised.

According to a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013, the UFA is a very prescriptive piece of legislation and is more detailed than most legislation. As noted by the elected official who introduced the bill in Parliament:

“the Clerk of the House of Commons for some 25 years, told me that the bill was the most comprehensive and complicated private members bill that he had ever seen adopted by Canada’s Parliament” (Cullen 2011, 71).

Table 7.2 illustrates that the UFA includes requirements for public consultation,³³ approval by a parliamentary committee, a complaints process for proposed fees, a penalty for not meeting service standards,³⁴ comparisons with other countries, an annual report to Parliament by the minister, and a requirement for the president of Treasury Board to review the provision and operation of the Act three years following Royal Assent.³⁵ Parliamentary review of a fee proposal may be done by either the Senate or the House of Commons (or both) with the appropriate committee submitting its resolution approving, rejecting or amending the recommendation for the user fee proposal (Bernhardt and Dewing 2012).

³³ According to the *User Fees Act* (S.C., 2004, c.6), consultations are to be with clients (direct users of service) and other regulating authorities with a similar clientele. Consultations are to provide the opportunity for clients to submit ideas or proposals for ways to improve services. Government organizations are to explain during the consultation process how the user fee is determined including costs and revenue elements.

³⁴ “Where a regulating authority’s performance in a particular fiscal year in respect of a user fee does not meet the standards established by it for that fiscal year by a percentage greater than ten per cent, the user fee shall be reduced by a percentage equivalent to the unachieved performance, to a maximum of fifty per cent of the user fee. The reduced user fee applies from the day on which the annual report for the fiscal year is tabled under subsection 7(1) until the day on which the next annual report is tabled” *User Fees Act* (S.C., 2004, c.6).

³⁵ In 2007, three years after the passing of the *User Fees Act* (S.C., 2004, c.6), the President of Treasury Board tabled a report on the provisions and operations of the *User Fees Act* (S.C., 2004, c.6) (Treasury Board of Canada Secretariat 2007c).

Table 7.2 – Cost recovery recommendations and User Fees Act

Standing Committee on Finance Recommendation:	Legislation: User Fees Act (UFA) Section:
1. That a Committee of Parliament conduct a government-wide study of the Treasury Board Cost Recovery and User Charge Policy to evaluate both its benefits and costs to serve as the basis of any policy reform.	N/A
2. That information on user charges be made easily available to all interested parties including the formula used to determine the user charge, an indication as to whether it is a mandatory charge, whether it is a business charge, the amount of revenue it generates, and the performance promised by each user-charge program. The estimated public/private benefit split should be included, as well as its justification.	4.1 (b) give all clients or service users a reasonable opportunity to provide ideas or proposals for ways to improve the services to which the user fee relates; 4.1 (d) explain to clients clearly how the user fee is determined and identify the cost and revenue elements of the user fee;
3. Fee revenues should be published annually.	7. (1) Every Minister shall cause to be laid before each House of Parliament, on or before December 31 following the end of each fiscal year, a report setting out all the user fees in effect, including the information referred to in subsection 4(2).
4. More central agency guidance is needed including stricter guidelines for determining the public/private benefit of a service.	N/A
5. Uniform standards should be established by Treasury Board to be applied by all departments and agencies.	N/A
6. That government create an explicit appeal process to deal with user-fee complaints.	4.1 (e) establish an independent advisory panel to address a complaint submitted by a client regarding the user fee or change;
7. All new user fees, and changes to user fees, should be subject to scrutiny by a parliamentary committee.	5. The Committee may review a proposal for a user fee referred to it pursuant to subsection 4(4) and submit to the Senate or the House of Commons, as the case may be, a report containing its recommendation as to the appropriate user fee, subject to the provisions of section 5.1.
8. That Treasury Board state explicitly what is required in business impact assessments, including international comparisons and verify that they are being conducted.	4.1 (c) conduct an impact assessment to identify relevant factors, and take into account its findings in a decision to fix or change the user fee;
9. That the government-wide review of user fees examines how well user fees approximate efficient pricing.	8. A review of the provisions and operation of this Act shall be completed by the President of the Treasury Board during the third year after this Act is assented to. The Minister shall cause a report of the results of the review to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report

	is completed.
10. Fees should be reduced if service commitments are not met.	5.1 Where a regulating authority's performance in a particular fiscal year in respect of a user fee does not meet the standards established by it for that fiscal year by a percentage greater than 10%, the user fee shall be reduced by a percentage equivalent to the unachieved performance, to a maximum of 50% of the user fee. The reduced user fee applies from the day on which the annual report for the fiscal year is tabled under subsection 7(1) until the day on which the next annual report is tabled.
11. Other enforcement mechanisms should also be considered such as alternative service providers and the use of international standards.	4.1 (f) establish standards which are comparable to those established by other countries with which a comparison is relevant and against which the performance of the regulating authority can be measured.
12. That government set up a red-tape commission to evaluate and streamline regulations.	N/A
Source: Standing-Committee-on-Finance. Ninth Report - Challenge for Change. A Study of Cost Recovery - Recommendations	Source: Justice Canada – User Fees Act

The UFA only applies to new or amended fees, and not to fees that were set before the Act was passed resulting in departments having different requirements to meet depending on when the fee was set (Office of the Auditor General of Canada 2008). For example, according to the UFA, new or amended fees must publicly disclose costs, performance standards, and performance information whereas fees prior to the Act only need to publicly report a list of fees through departmental performance reports resulting in inconsistencies in the treatment of fees (Office of the Auditor General of Canada 2008).

In the same time period (1997-2004) as the private members' bills related to user fees were introduced in the House of Commons, and the Standing Committee on Finance conducted its study on cost recovery, as mentioned in the previous section TBS issued revised policies on cost recovery and user fees in 1997 and 2003. Mr. Cullen states in his book:

“My private member's Bill C-212 – An act respecting user fees, which ultimately was passed...is an example of how a backbench MP can initiate the passage of legislation in Canada – even when his own government opposes it. In fairness, our government

supported the elements of greater accountability and transparency that my bill brought to the treatment of user fees, but the president of the treasury board at the time was concerned about the fiscal impact of my bill as federal departments and agencies attempted to meet the more stringent performance standards demanded by the bill” (Cullen 2011, 71).

Hence we see that the president of Treasury Board was concerned about how departments would fare with the new legislation. We shall see in the next section how TBS was required to alter its management policies to align with the UFA following recommendations from the OAG.

7.5 TBS user fees implementation

As elected officials introduce legislation, TBS may be required to adapt its policy suite so that management policies complement new legislation. At times it is when the OAG conducts a review which examines legislation and the resulting policy suite that gaps are identified. The OAG’s 2008 chapter on *Management of Fees in Selected Departments and Agencies* made the recommendation that TBS’s policy called the *Policy on Service Standards for External Fees* effective November 2004, should be linked to the UFA (Office of the Auditor General of Canada 2008).

7.5.1 Aligning with the User Fees Act

TBS complied with the OAG’s recommendation linking the policy to the UFA. When the 2004 *Policy on Service Standards for External Fees* was issued, TBS (2004b) rescinded its 2003 *External Charging Policy*. While the *External Charging Policy* had addressed all aspects of user fees, TBS rescinded the policy as its analysis determined that the *External Charging Policy* conflicted with certain provisions of the UFA (Office of the Auditor General of Canada 2008).

The *External Charging Policy* had provided very clear direction on government’s intent in regards to user fees and cost recovery:

“to promote an equitable approach to the funding of government programs by fairly charging those who derive benefits beyond those enjoyed by the general taxpayer ...to

promote the efficient allocation of resources by subjecting programs to a market test of supply and demand, thereby reducing or eliminating the demand for products or services that are perceived as ‘free’” (Treasury Board of Canada Secretariat 2003a).

With the rescinding of the *External Charging Policy*, the *Policy on Service Standards for External Fees* while addressing service standards, in addition to linking to the UFA as recommended by the OAG, removed the requirement for implementing user fees for government services that provide a disproportionate benefit to individuals. Additionally, while the UFA clearly defines what is considered a user fee, and how user fees should be administered and/or amended, there is no legislation or policy that enforces that user fees are to be considered as a method of financing government services which provide a disproportionate benefit to particular individuals.

The OAG (2008) also recommended that as TBS had rescinded its policy on external charging, which had seen several modifications over the years (e.g.1989, 1997, 2003), as it conflicted with certain provisions of the UFA, that TBS should provide more general guidance such as setting the fee, the requirement for regular review and updating the fee when circumstances change, beyond the current guide issued. In response to the OAG’s recommendation in 2009 TBS issued the *Guide to Establishing the Level of a Cost-Based User Fee or Regulatory Charge*. While TBS (2009a) issued the *Guide to Establishing the Level of a Cost-Based User Fee or Regulatory Charge* to assist departments in implementing user fees, it was issued as a guideline not as a policy. The difference is that a policy such as the *External Charging Policy* is the

“formal direction that imposes specific responsibilities on departments. Policies explain **what** deputy heads and their officials are expected to achieve” (Treasury Board of Canada Secretariat 2012b, bold in original).

A guideline is voluntary for a department to follow and consists of a “document providing guidance, advice or explanation to managers or functional area-specialists” (Treasury Board of

Canada Secretariat 2012b). By issuing a guideline rather than a policy, the government may have lessened its means of enforcing the implementation of user fees. The weakening of this enforcement may mean that government services which provide a disproportionate individual benefit may continue to be financed through general taxation rather than be considered for user fees. However to be considered is that even though TBS guidelines may be voluntary, according to a senior TBS advisor of costing strategies, interviewed in Ottawa, 21 May 2013, it is risky for departments to not follow them as during management reviews, TBS will want to know why particular guidelines are not being implemented.

In 2012 TBS announced in its *Report on the State of Comptrollership in the Government of Canada* that it had completed three sub-activities: “analysis of options and drafting of potential requirements, alignment of future guidance with the *UFA* and other relevant policies, and recommendation of draft policy instruments” which would be used in developing new guidance on user fee management (Treasury Board of Canada Secretariat 2012d). As mentioned by a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013, to address gaps in the *UFA* and the OAG report, TBS is expecting to issue a draft directive on user fees in 2014.³⁶ According to the senior advisor, the directive on user fees is expected to describe identifiable stakeholders; benefits above and beyond what taxpayers pay; and provide grounds for charging, plus provide the requirement for fees to be reviewed every five years. In other words, it appears that the expected directive on user fees will strengthen the current policy suite.

³⁶ An access-to-information request was submitted to Treasury Board of Canada Secretariat of Canada (TBS) on May 27, 2013 requesting a draft copy of this directive plus the decision-making behind it (TBS File number A-2013-00205). On July 22, 2013, TBS issued a letter indicating that all relevant records for this request are entirely withheld under section 69(1)(e) of the Access to Information Act which permits withholding of information that is used to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in section 69(1)(d). Section 69(1)(d) states that records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy may be withheld from public disclosure.

7.5.2 Lack of requirement to review services for private versus public benefit

Another observation from comparing the rescinded 2003 *External Charging Policy*³⁷ and the current 2009 *Guide to Establishing the Level of a Cost-Based User Fee or Regulatory Charge* is that the *External Charging Policy* stated:

“External charging is a sound management tool that can foster good governance. By **making** departments and stakeholders aware of the full costs of products and services... departments can promote more effective and responsive service delivery and encourage sound stewardship of resources” (Treasury Board of Canada Secretariat 2003a, bold added).

The *Guide to Establishing the Level of a Cost-Based User Fee or Regulatory Charge* provides the direction that:

“Individual departments and agencies are responsible for establishing and revising fee levels within their respective fee environments. Fee level consistency on a government-wide basis (i.e. as might be measured as a standardized rate of cost recovery) is not an objective because every pricing exercise requires due consideration for its particular, and potentially unique, set of factors. Similarly, in light of the need for judgment in assessing such pricing factors as the mix of public and private benefit or contextual analysis, it is foreseeable for conclusions drawn from a single set of pricing factors to vary and that one pricing result could be as reasonable and defensible as another” (Treasury Board of Canada Secretariat 2009a).

Neither the rescinded *External Charging Policy* nor the current *Guide to Establishing the Level of a Cost-Based User Fee or Regulatory Charge* encourages departments to examine each service they provide to individuals to determine if there is a disproportionate benefit provided on an individual basis versus providing an overall public benefit. And if there is a private benefit bestowed, that departments conduct a cost-benefit analysis to determine whether or not a user fee should be considered. The current *Policy on Service Standards for External Fees* which replaced the *External Charging Policy*, focuses on service quality and “represent the government's commitment to those who use its services, in a framework of transparency and accountability” (Treasury Board of Canada Secretariat 2004b), not whether or not the service provides a

³⁷ The 2004 *Policy on Service Standards for External Fees* which replaced the 2003 *External Charging Policy* only addresses the requirement for service standards including mechanisms to monitor services “to ensure that fee-related activities are subject to audit and evaluation practices” (Treasury Board of Canada Secretariat 2004b).

disproportionate private benefit to individuals or whether a fee should be charged. It will be interesting to examine the expected directive on user fees when it is released to see if it addresses government organizations reviewing services with a public versus private lens.

If the user fee is amended by a regulatory act, the regulatory affairs process requires a cost-benefit analysis to determine the public versus private benefit (Treasury Board of Canada Secretariat 2012a). Hence for some fees there is an assessment of the public versus private benefit.

7.5.3 Complexity of user fee implementation process

Lack of experience and the complexity of the cost recovery process was articulated to TBS in 2001 during its *Review of the Cost Recovery and User Fee Approval Process*. Findings indicated that

“Virtually all officials interviewed find the regulatory process **long and complicated**. Many of those with **limited experience** find it confusing, while those with more experience find that **significant resources are required** to support it. Most of the departmental officials interviewed identified a **need for up-to-date manuals, relevant training, better access to TBS officials, and access to best practice models**” (Treasury Board of Canada Secretariat 2001, bold added).

In accordance with the Standing Committee of Finance’s Recommendation #4 as noted in Table 7.2, more central agency guidance was required for the implementation of user fees by departments. The OAG (2008) report on the management of user fees issued the recommendation that TBS needed to improve its guidance to departments on the implementation of user fees. TBS developed several tools as guidance to assist departments with the user fee process including the *User Fee Proposal Approval Process*, a *Complaint Resolution Process Flowchart*, and a four-page template for *Tabling User Fee Proposals in Parliament* (Treasury Board of Canada Secretariat 2011c). The *User Fee Proposal Approval Process* (Figure 7.1) and the *Complaint Resolution Process Flowchart* (Figure 7.2) can be found at the end of this chapter.

The publishing of the *List of Tabled and Approved User Fee Proposals* on TBS's website provides visibility of fees to all stakeholders (Treasury Board of Canada Secretariat 2011c).

TBS's *User Fee Proposal Approval Process* guidance document (Figure 7.1) outlines the four phases of the user fee process. All of these steps take considerable time to work through depending upon the complexity of the user fee proposal. Additionally if there are challenges through the public consultation process, a government organization needs to go through the six phases of the *User Fee Complaint Process Flowchart* (Figure 7.2). Consistent with the UFA, when a government organization receives a formal complaint(s) about a proposed user fee, the authority must try to resolve the complaint(s) including a written statement as to how it will resolve the complaint(s). If the complaint(s) is not resolved within thirty days to the satisfaction of the complainant(s), the complainant(s) may request that an independent advisory board be convened. The independent advisory board is established within 40 days with the authority submitting one committee member's name, the complainant(s) submitting another name, then these two committee members agree on the third member of the committee. Thirty days after selection of the committee, the committee must send a written report of its findings and recommendations to resolve the dispute. All this to say, that Phase 2, Step 2(a) of the *User Fee Proposal Approval Process* (Figure 7.1) may cause a considerable time delay in the user fee process hence government organizations will likely want to endeavour to resolve client complaints prior to this measure being invoked.

Parliament must be sitting in accordance with Phase 3 of the *User Fee Proposal Approval Process* (Figure 7.1) in order for a government organization to table its proposal in both Houses of Parliament. User fee proposals are tabled in both Houses of Parliament to comply with Sections 5 and 6 of the UFA which states that the appropriate parliamentary committees must be

given the opportunity to review the proposal, make recommendations, and then pass a resolution for each user fee.

While the UFA added public consultation, a mechanism for dispute resolution, and the need for an impact assessment, the UFA is only applicable to new or amended fees. As mentioned by a senior advisor of costing strategies at the Treasury Board of Canada Secretariat, interviewed in Ottawa, 21 May 2013, it is anticipated that the draft directive on user fees will cover all user fees plus provide guidance regarding the ongoing management of user fees. Accordingly, if all fees need to have parliamentary review, we could find that there is a delay in the implementation of fees as user fee proposals are only approved when Parliament is sitting.

As a central agency, the role of TBS is to provide policy leadership and advise departments on the application of policy principles such as the implementation of user fees including emphasizing the need to manage legal risks by conferring with departmental legal counsel to manage obligations pursuant to the legal framework of the UFA (Treasury Board of Canada Secretariat 2007c). In providing policy leadership beyond the user fee guidance documents, TBS also provided a *Guide to Establishing the Level of a Cost-Based User Fee or Regulatory Charge* (Treasury Board of Canada Secretariat 2009a) and a *Policy on Service Standards for External Fees* (Treasury Board of Canada Secretariat 2004b) for departments.

In keeping with the requirements within the UFA, annual reports to Parliament by the minister of each department on the usage of user fees from external sources are adhered to through RPPs and DPRs (Treasury Board of Canada Secretariat 2012e). Additionally from a government-wide perspective, TBS provides an overview of all departmental reported user fee usage through supplementary information links for both RPPs and DPRs.

According to a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013 departments are slow in moving to user fees as the requirement is too burdensome. For example, the senior advisor stated, Section 5.1 of the UFA, provides a penalty if service standards³⁸ are not met thus providing a reason for departments to drag their feet in updating fees as departments may determine that they cannot meet the service standards due to constraints. Further the senior advisor provided that prior to the UFA, there were 8 to 12 fee changes per year; therefore departments were actively reviewing and if necessary altering fee structures. Post-UFA, according to the senior advisor, there have only been 12 fee proposals in total (2004 to 2013). Additionally there is no TBS direction or mechanism making departments review and set fees to the appropriate level. The lack of fees being reviewed has resulted in some fees staying the same for the past 15 to 20 years. Hence taxpayers may be picking up a larger portion of the cost as costs may have increased but fees have not. According to the senior advisor of costing strategies at TBS, some of these concerns may be resolved with the issuing of the expected draft directive on user fees.

7.6 Oversight

From an oversight perspective, beyond reviewing user fees within specific departments (Office of the Auditor General of Canada 2002, 2005, 2006, 2007a, 2007b, 2007c, 2009, 2013a) the OAG has on occasion conducted overall audits/reviews/studies of the application of user fees such as the following four reports.

³⁸ In line with the *User Fees Act* (S.C. 2004, c. 6), “Where a regulating authority’s performance in a particular fiscal year in respect of a user fee does not meet the standards established by it for that fiscal year by a percentage greater than ten per cent, the user fee shall be reduced by a percentage equivalent to the unachieved performance, to a maximum of fifty per cent of the user fee. The reduced user fee applies from the day on which the annual report for the fiscal year is tabled under subsection 7(1) until the day on which the next annual report is tabled.”

7.6.1 Financial Management and Control of Non-tax Revenue

The objective of the 1991 audit was to review financial management by departments in identifying and recovering non-tax revenues including user fees. With central agencies shifting roles from one of examining transactions to one of policy leadership and providing advice to departments on the application of policy principles, the extent to which central agencies are expected to monitor non-tax revenue was identified as needing to be clarified and communicated to departments (Office of the Auditor General of Canada 1991). Hence, the OAG found that before the 1989 *External User Charges for Goods, Services, Property, Rights and Privileges* could be successfully implemented by departments, the changing role of central agencies (e.g. TBS and Justice Canada) needed to be clarified and communicated (Office of the Auditor General of Canada 1991). The OAG reported that the implementation of user fees was challenging for departments as determining the public versus private benefit is difficult, costing data is inconsistent or incomplete, and that departments are inconsistent in their approach to utilizing the guide to costing (Office of the Auditor General of Canada 1991). In addition improved disclosure by departments regarding non-tax revenue activities and performance would permit Parliament to better exercise its scrutiny role (Office of the Auditor General of Canada 1991).

7.6.2 Parliamentary Control over the Raising of Revenues by Fees

In 1992 government estimated that user fees would exceed \$3 billion annually. User fees were established by departmental legislation and the *Financial Administration Act* or by departments issuing contracts with users. The OAG (1993) was concerned that Parliament could not readily scrutinize user fees established by contracts and other non-regulatory means as there was no government-wide summary of fees. The OAG found in its report that at times departments were using technical legal reasons to issue contracts to avoid the user fee regulatory

process. The OAG recommended that “Treasury Board review and report to Parliament on the adequacy of the current legislative and administrative framework for establishing user fees, and provide Parliament with government-wide summary information on fees being charged” (Office of the Auditor General of Canada 1993).

7.6.3 Financial Management: Developing a Capability Model

As provided in this 1997 report, in previous reports the OAG had identified significant problems across government operations due to weaknesses of financial management such as inadequate activity-based management information to support the determination of user fees. Ministers were increasingly frustrated over the lack of appropriate financial information to support strategic decision-making. In conjunction with TBS, the OAG initiated a study which resulted in an agreed-upon framework used to assess financial management capabilities and to improve the effectiveness of financial management overall in the federal government. Recommendations included the need for more financial and performance information to support the implementation of user fees (Office of the Auditor General of Canada 1997).

7.6.4 Management of Fees in Selected Departments and Agencies

In this 2008 report, the OAG examined user fees in six federal organizations to assess how fees were established, the amount charged for the fee, and how fees were measured, monitored, and reported on. The OAG scrutinized related TBS management policies or guidance on fees, plus the scope and application of the UFA as passed in 2004. One of the OAG’s findings included that fee payers were challenging the validity of fees and “courts have held that where a reasonable relationship could not be demonstrated between the fee and the cost or value of the fee, the fee represented an unlawful tax and had to be repaid” (Office of the Auditor General of Canada 2008).

7.6.5 Federal User Charges

In addition to the OAG reports, the PBO (2012) prepared a report entitled *Federal User Charges*. This report found that the practice of user fees was growing within the federal government and highlighted the importance of continued parliamentary scrutiny for this type of revenue. The PBO reported that user fees, due to substantial growth in its usage, have become a material source of financial revenues within the federal government. In its analysis, the PBO found reporting inconsistencies and lack of detail within DPRs, resulting in an inability to reconcile information provided within the DPRs with the content of the Public Accounts of Canada.³⁹ The PBO suggested that Parliament could benefit from having detailed data on actual-to-forecast user fees performance presented either within DPRs or RPPs as parliamentarians would be better informed to areas of specific interest that charge user fees.

Not only are departments required to adhere to TBS management policies and recommendations from OAG reports but user fees are often linked to regulatory acts which departments must also follow. Fees are linked to regulatory acts as fees for public services can be set either by “enabling statute or by regulation when the enabling statute⁴⁰ provides authority to the Governor-in-Council or minister to set fees by regulation” (Office of the Auditor General of Canada 2008).

When user fees are linked to regulatory acts, the *Cabinet Directive on Regulatory Management* must be followed plus the *User Fee Proposal Approval Process* (Figure 7.1). As corroborated by a senior advisor from the centre of regulatory expertise at the Treasury Board of

³⁹ The Public Accounts of Canada is the annual report prepared by the federal government which summarizes financial transactions presented in the Accounts of Canada, and detailed records that are maintained by departments and agencies. <http://www.tpsgc-pwgsc.gc.ca/recgen/cpc-pac/index-eng.html>

⁴⁰ For fees that are set through an enabling statute, the statute provides the Parliamentary authority to levy either a fee or a tax (Office of the Auditor General of Canada 2008).

Canada Secretariat, interviewed in Ottawa, 06 May 2013, in line with the *Cabinet Directive on Regulatory Management*, if user fees are linked to a regulatory act, the Regulatory Affairs branch at TBS may need to be consulted when user fees are amended or newly implemented. The regulatory affairs branch at TBS is in effect an ‘oversight’ body or challenge function in how user fees, as a result of regulations, are implemented though at times this requirement may be waived.

In addition to responding to the requirements of the *Cabinet Directive on Regulatory Management* as it relates to regulatory acts which have user fees associated with them, government organizations must obtain agreement or sign-off from a number of authorities including:

- the Regulatory Affairs Sector of TBS ensuring that the proposal is consistent with the *Cabinet Directive on Regulatory Management* and that the analysis supports ministerial decision-making;
- the Department of Justice provides legal advice on the legality of proposals;
- the Privy Council Office assesses memoranda to Cabinet and legislative proposals; and
- the Department of Public Works and Government Services is responsible for publishing the *Canada Gazette*⁴¹ (Treasury Board of Canada Secretariat 2012a).

Not only is there a complex process to follow in implementing user fees, whether associated with a regulatory act or not, but there is also a complexity of legislation, regulation and TBS management policies to follow (to be further considered in Chapter 10).

7.7 Summary

This chapter provides the historical context of user fees within the Canadian federal government which is an important contribution to knowledge as it has not been previously

⁴¹ “The *Canada Gazette* is the official newspaper of the Government of Canada for formal public notices, official appointments, proposed regulations, regulations, and public Acts of Parliament. It is published under the authority of the *Statutory Instruments Act* and the *Statutory Instruments Regulations*” (Treasury Board of Canada Secretariat 2012a).

documented. In documenting the historical context of user fees, we examined various budget announcements related to user fees, task forces and parliamentary committee studies, plus the influence of pressure groups, leading to the tabling of legislation; specifically, the *User Fees Act*. From a management perspective, we examined TBS's response to parliamentary committees' recommendations and the resulting policy changes affecting departments related to the implementation of user fees. We also explored the impact of oversight bodies on changes to the implementation of user fees, including: the Office of the Auditor General of Canada and the Office of the Parliamentary Budget Officer, along with considering the various regulatory acts which may impact government organizations.

We shall see in Chapter 11 that the rigour required by departments to implement user fees has not altered significantly as a result of the policy and legislative changes mentioned above and today still remains a time intensive, thorough process.

Figure 7.1 – User fee proposal approval process

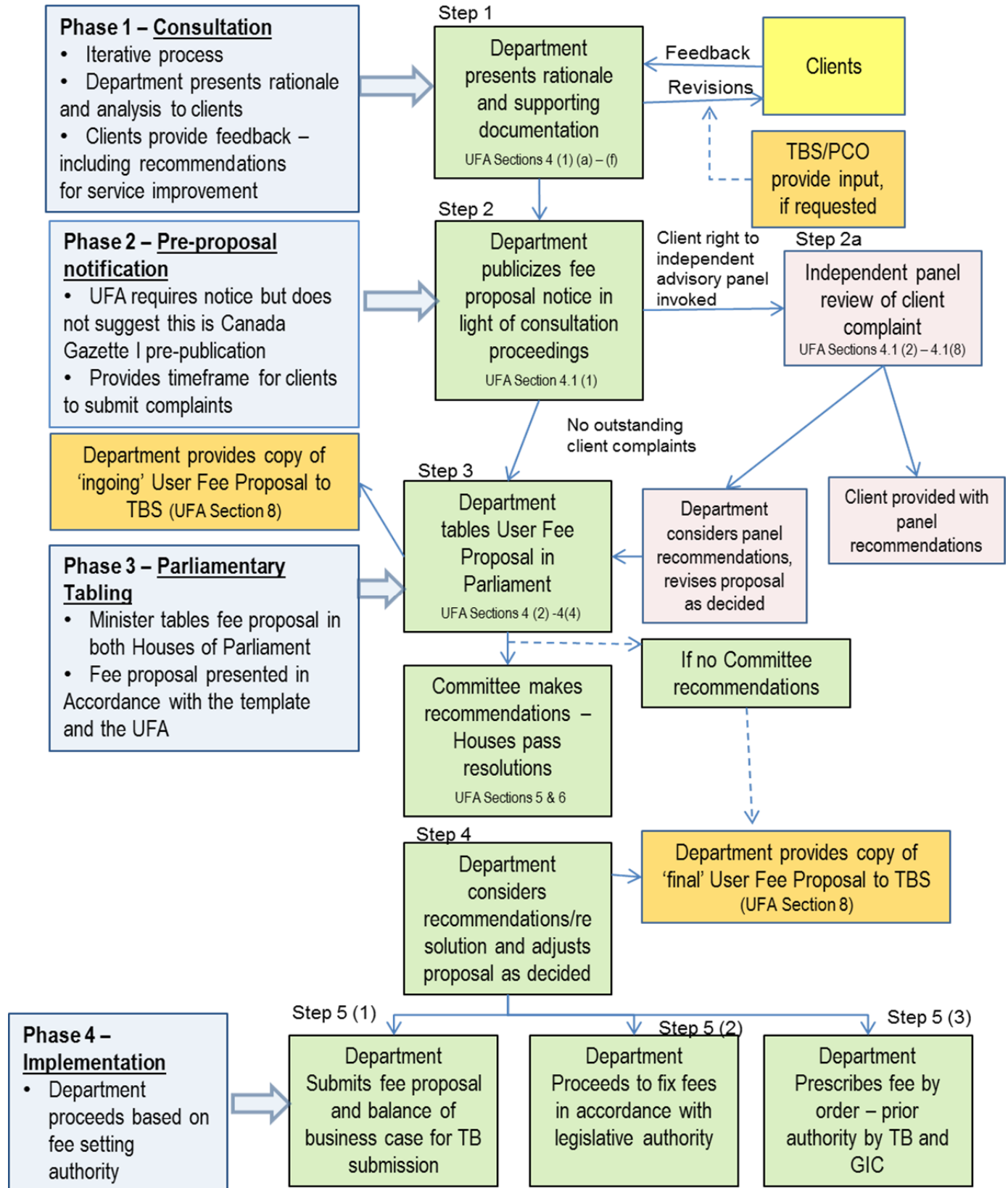
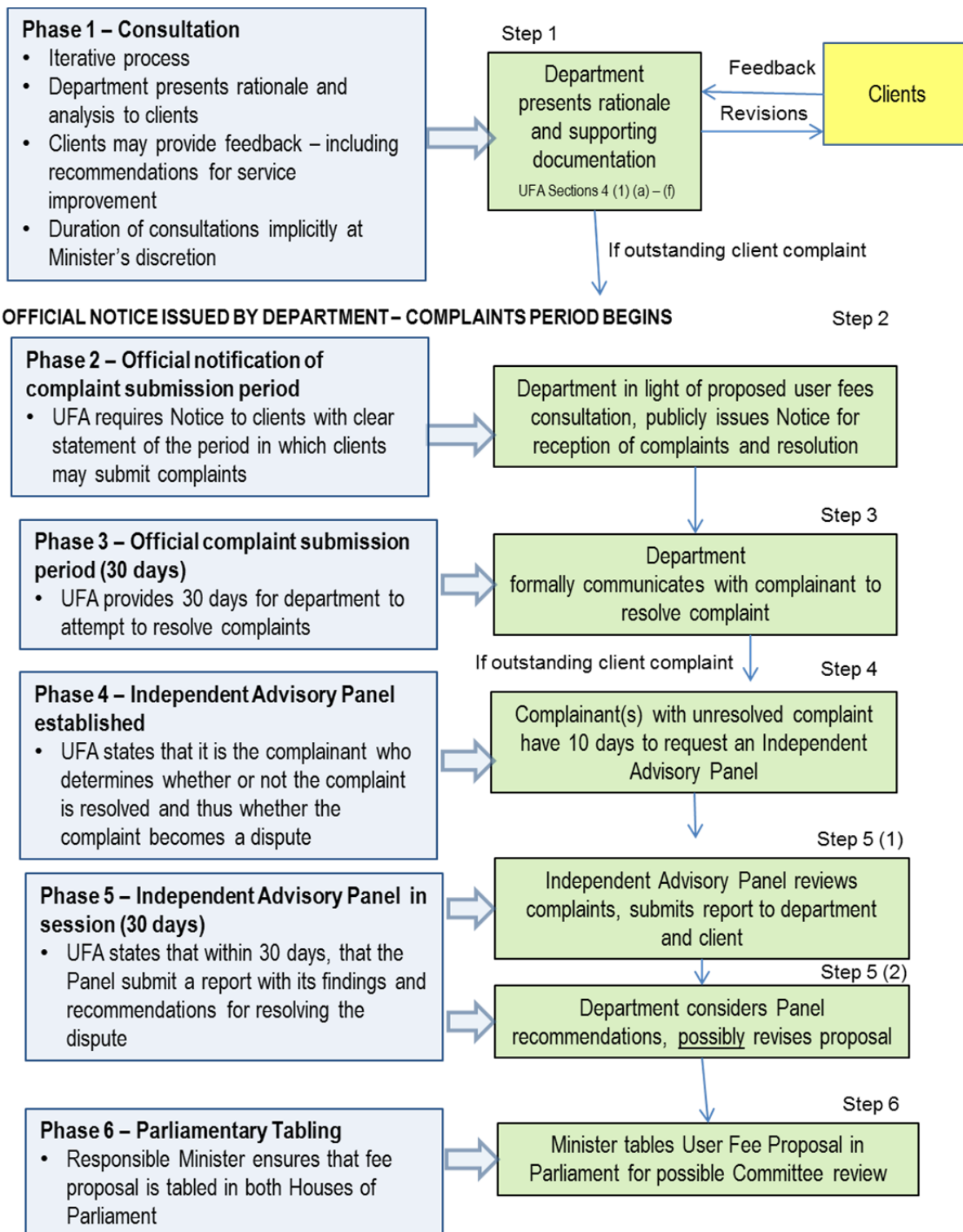


Figure 7.2 - User fee complaint(s) resolution process flowchart



Chapter 8

Case descriptions

8.0 Introduction

There are many representative examples of public services provided to individuals within the Canadian federal government; some levy user fees while others do not. In Chapter 6 we briefly explained the rationale behind the selection of the four cases which are passports, pardons, security clearances, and SINs. In this chapter, we provide descriptions for each of our cases.

While all cases directly affect individual citizen-voters, the cases indirectly affect business too. Citizen-voters require passports to travel outside of Canadian borders; sometimes this is for personal travel; at other times travel may be for business purposes. Citizen-voters need a pardon if convicted of a criminal offence if they wish to obtain meaningful employment while businesses seek trustworthy employees. Security clearances are required for employment with government or for citizen-voters to either contract government work individually or through employment with a business. Citizen-voters and others need a SIN to work in Canada or to receive government benefits while businesses must remit employees' payment of taxes to government and contributions to benefit programs through the use of the SIN.

In order to compare and contrast the cases in subsequent chapters, we have used attributes related to the variety of cases and feasibility of analysis. Attributes related to the variety of cases include what type of institutional form provides the public service, what is the financial authority to deliver the service, and visibility by citizens. Attributes related to feasibility of analysis are whether this is the only service provided by the government organization, what are the enabling legislation and regulations, and who are the oversight bodies responsible for monitoring the government organization. These attributes will contribute to our analysis in subsequent chapters as to why government decides to levy user fees for some public services such as passports and pardons, but not for others such as security clearances and SINs.

8.1 Passports

Passports were selected as a case as Passport Canada operates as a self-contained business unit financed solely by user fees. Passport Canada is responsible for issuing, revoking, withholding, recovering and providing instructions on the use of Canadian passports (Library of Parliament 2009; Passport Canada 2012e, 2013a).

8.1.1 Decision-making process to implement user fees

While the issuing of passports began in 1867 with the commencement of Confederation, it is unclear whether or not a fee was charged initially, as it was not until 1878 that the practice began of including a statement of departmental revenue within the annual report (Department of External Affairs 1960). According to the 1878 annual report, the recorded fee for a passport was one dollar⁴² with 50 passports being produced for the year (Department of External Affairs 1960). Hence we understand that it was decided from almost the beginning that there would be a charge for a citizen-voter to receive a passport. Whether or not it has ever been considered to stop charging a fee, or to question why a fee is charged, is not clear in the literature. The literature makes several references to the passport fee but only in the matter of what the fee was at the time not whether there should be a fee charged (Department of External Affairs 1960, 1972; Civil Service Commission 1963; External Affairs and International Trade Canada 1989).

8.1.2 Institutional form

As the monopoly service provider of passports, Passport Canada was transformed from a traditional operating bureau within the Department of Foreign Affairs and International Trade⁴³ to a Special Operating Agency (SOA) in 1990 (External Affairs and International Trade Canada 1990; Kernaghan, Borins, and Marson 2000; Passport Canada 2012a). SOAs are not independent

⁴² According to the Bank of Canada's inflation calculator which starts in 1914, a \$1 in 1914 would be worth \$20.22 in 2013 <http://www.bankofcanada.ca/rates/related/inflation-calculator/>

⁴³ In 1990, Department of Foreign Affairs and International Trade was known as External Affairs and International Trade Canada

legal entities but rather remain as a part of their departmental organization, in this case as a part of Citizenship and Immigration,⁴⁴ reporting directly to the deputy minister (Dingwall 1996; Treasury Board of Canada Secretariat 1998; Passport Canada 2012e). SOAs with increased authority and flexibility for financial and program management, operate under a separate framework agreement and business plan which encapsulates the results and service levels expected, any granted flexibilities, and resources required to operate the SOA (Dingwall 1996; Treasury Board of Canada Secretariat 1998; Kernaghan, Borins, and Marson 2000). The director of resource management and compliance at Passport Canada, interviewed in Ottawa, 01 March 2013, confirmed that a SOA operates under a separate framework agreement and business plan. The collection of revenue is not a requirement of a SOA⁴⁵ though some, such as Passport Canada, operate commercially on a full cost recovery basis (Treasury Board of Canada Secretariat 1998).

8.1.3 Financial authority

Passport Canada operates on a full cost recovery basis, receiving no funding through parliamentary appropriations (Passport Canada 2013a). Passport Canada works under a revolving fund meaning that it can incur deficits and carry forward any surpluses over the course of its business cycle allowing it to operate in a profit or loss type situation much like a private business (Dingwall 1996; Kernaghan, Borins, and Marson 2000). According to the director of resource management and compliance at Passport Canada, interviewed in Ottawa, 01 March 2013,

⁴⁴ The government announced that effective July 2, 2013, Citizenship and Immigration Canada, rather than the Department of Foreign Affairs and International Trade, would be primarily responsible for Passport Canada as CIC already performs similar duties such as determining Canadian citizenship (Citizenship and Immigration Canada 2013; Passport Canada 2013a).

⁴⁵ As of June 30, 2013 there are 15 SOAs within the Government of Canada including: Canadian Coast Guard, Canadian Conservation Institute, Canadian Forces Housing Agency, Canadian Heritage Information Network, Canadian Intellectual Property Office, Canadian Pari-Mutuel Agency, Consulting and Audit Canada Revolving Fund, CORCAN, Defence Research and Development Canada, Indian Oil and Gas Canada, Industrial Technologies Office, Measurement Canada, Passport Canada, Physical Resources Bureau and Translation Bureau. <http://www.tbs-sct.gc.ca/gov-gouv/tools-outils/org-eng.asp>

operating in a profit or loss type situation is not the norm for a federal government organization as most fall under Schedule 1 of the Main Estimates thus are not permitted to carry forward any unspent funds except for 5 per cent past one year, with three organizations falling under Schedule 2, with a two-year appropriation. A revolving fund which is similar to a bank account is a means by which Parliament provides continuing authorization through non-lapsing appropriations to make payments out of the Consolidated Revenue Fund⁴⁶ for specified purposes up to a certain limit⁴⁷ (Dingwall 1996; Treasury Board of Canada Secretariat 2000; Passport Canada 2012c, 2013a). According to Treasury Board Secretariat's (2000) *Policy on Special Revenue Spending Authorities*:

“a revolving fund may be appropriate for activities which have a stable mandate, an identifiable client group, and operations financed in whole or in part from user fees with revenues and expenditures being closely related.”

With a stable mandate and identifiable client group, such as is the case with Passport Canada and the issuing of passports, a revolving fund is appropriate. The *Revolving Fund Act* (R.S.C., 1985, c. R-8) provides that it is the minister of Foreign Affairs⁴⁸ who may authorize expenditures from any revenues received in respect to passport services out of the Consolidated Revenue Fund for the purpose of operating passport offices. Hence it is the minister who has the clear legal authority for revenues and expenditures associated with Passport Canada's revolving fund.

An important aspect of operating under a revolving fund is that revenues and expenditures are closely aligned, as an organization is not allowed to collect more in revenues

⁴⁶ This is not a segregation of cash within the Consolidated Revenue Fund. The Consolidated Revenue Fund pursuant to the *Constitution Act, 1867*, (R.S.C. 1985, Appendix II, No. 5, s. 103), is the “account into which the government deposits taxes, tariffs, excises and other revenues, once collected, and from which it withdraws the money it requires to cover its expenditures.”

<http://www.parl.gc.ca/marleaumontpetit/DocumentViewer.aspx?DocId=1001&Sec=Ch18&Seq=1&Language=E#fnB7>

⁴⁷ Called the drawdown authority

⁴⁸ As of November 26, 2013 the *Revolving Fund Act* (R.S.C., 1985, c. R-8) continues to state that it is the minister of Foreign Affairs who has the authority to request expenditures from the Consolidated Revenue Fund. It is unclear as to whether or not this will be updated to reflect the minister of Citizenship and Immigration to align with Passport Canada's new reporting structure.

than what it costs to provide services (Dingwall 1996; Treasury Board of Canada Secretariat 2000). One of the methods that entities use to assess their costs is through activity-based costing. According to Treasury Board Secretariat's (2009a) *Guide to Establishing the Level of a Cost-Based User Fee or Regulatory Charge*,⁴⁹ activity-based costing is derived by totalling the costs of all functions that support the primary activity including direct and indirect costs. Further the guide provides that indirect costs include such items as departmental support costs and the costs of other government departments for any material services they provide. Passport Canada utilizes activity-based management and costing for all functional areas (Standing Senate Committee on Foreign Affairs and International Trade 2012a).

8.1.4 Visibility by citizens

Passports have a high visibility amongst citizen-voters when there are delays in obtaining a passport as was the case in 2007 when it was taking ten weeks at times to obtain a passport (Yaffe 2007). Following the events of September 11, 2001 when the US passed legislation called the *Western Hemisphere Travel Initiative* (WHTI), the demand for passports rose significantly as all persons required a passport when traveling by air through U.S. airports. In 2005, approximately 35 per cent of Canadians held a valid passport (Ontario Ministry of Tourism 2005). In 2006-2007, Passport Canada anticipated a 6.6 per cent increase in passport applications; however they experienced a 22 per cent increase as it was unclear to Canadians when and how the new passport requirements took effect (Cossette 2010). Initially in January 2007 when the legislation took effect, Passport Canada experienced a 47 per cent increase in applications over the previous month, resulting in approximately 23,000 applications per day (Office of the Auditor General of Canada 2009). As Passport Canada could not keep up with the

⁴⁹ While TBS does provide a guide on establishing costs, guides are voluntary for government organizations to follow versus policies which are mandatory (Treasury Board of Canada Secretariat 2012b).

increased demand, citizen-voters became irate at the delay in issuing passports as it was impacting their travel plans. News media articles included: “Passport office mess incites citizen rage”...“want Gerald Cossette’s⁵⁰ head on a platter”...“embarrassed to be Canadian”...“what's happening here is subhuman” (Yaffe 2007). At times the delay in issuing passports meant that citizen-voters’ travel plans had to be delayed or cancelled (Office of the Auditor General of Canada 2009). In 2013 Passport Canada forecasted that 70 per cent of Canadians would hold a valid passport, bringing the total number of passports in circulation to 23 million (Passport Canada 2013a).

8.1.5 Single service by organization

Passport Canada (2012d) issues regular passports to Canadian citizens, diplomatic passports, special passports,⁵¹ temporary passports, certificate of identity and travel documents.⁵² All products have user fees (Passport Canada 2013b). The director of resource management and compliance at Passport Canada, interviewed in Ottawa, 01 March 2013, corroborated that diplomatic and special passports are cost recovered through inter-departmental charging, therefore are not subject to the UFA. While Passport Canada offers a variety of products, it has only one program and that “program's main business is issuing secure travel documents to Canadians” (Passport Canada 2013a).

8.1.6 Enabling legislation and regulations

Passport Canada is mandated by the *Canadian Passport Order* (SI/81-86), an Order issued by the Executive through the Royal Prerogative thus is changed by Governor-in-Council announcements in the Canada Gazette, rather than through an Act of Parliament; therefore

⁵⁰ Gerald Cossette was the Chief Executive Officer of Passport Canada in 2007

⁵¹ Special passports may be issued to members of Parliament and government employees

⁵² Certificate of identity and travel documents are issued for convention refugees, protected persons, stateless persons, and permanent residents in Canada for less than three years

changes are not subject to parliamentary oversight or review but rather are subject to judicial review (Library of Parliament 2009). As Passport Canada operates under a revolving fund, it is also subject to the *Revolving Funds Act* (R.S.C., 1985, c. R-8). The *Revolving Funds Act* (R.S.C., 1985, c. R-8) provides the authority for the Minister of Foreign Affairs to make expenditures out of the Consolidated Revenue Fund for the purpose of operating passport offices.

8.1.7 Oversight bodies

Oversight bodies of Passport Canada include the Office of the Auditor General (OAG). The OAG has issued several reports on passports and Passport Canada including:

- *2005 – Chapter 3 – Passport Office – Passport Services* – focused on how Passport Canada was addressing increased demands for passports, the rising costs of production, identity authentication issues, and the pressures in adopting new technologies to include increased security features plus identified gaps in meeting the requirements of the *User Fees Act* (S.C., 2004, c.6) (Office of the Auditor General of Canada 2005);
- *2007 – Chapter 5 – Passport Services – Passport Canada* – examined Passport Canada’s progress in addressing concerns raised in the OAG’s 2005 audit including progress in complying with the UFA (Office of the Auditor General of Canada 2007b); and
- *2009 – Chapter 5 – Passport Services – Passport Canada* – conducted a further audit on Passport Canada’s readiness to respond to increased demands for passports as a result of new legislation with findings including that Passport Canada had made satisfactory progress in implementing passport processing improvements to address increased demands (Office of the Auditor General of Canada 2009).

Additionally, various parliamentary committees may hold meetings and issue reports regarding Passport Canada thus acting as oversight bodies. For example, the Standing Senate Committee on Banking, Trade and Commerce conducted a study called *Passports and PASS Cards, Identity and Citizenship: Implementing the Western Hemisphere Travel Initiative* which included witnesses from Passport Canada (Standing Senate Committee on Banking 2006). The

Standing Committee on Public Accounts in 2007 issued a report criticizing Passport Canada's lack of readiness for WHTI legislation and asked for a detailed plan on how Passport Canada would manage a second expected surge in 2009 when the requirement for a passport would extend to entry to the US by land and sea (Office of the Auditor General of Canada 2009). In line with the UFA, both the Standing Committee on Foreign Affairs and International Development and the Standing Senate Committee on Foreign Affairs and International Development reviewed Passport Canada's user fee proposal in 2012 (Standing Committee on Foreign Affairs and International Development 2012; Standing Senate Committee on Foreign Affairs and International Trade 2012b).

8.2 Pardons

The second case examines pardons as granted by the Parole Board of Canada⁵³ (PBC) which due to recent legislative changes has experienced an increase in interest and notoriety for its pardon services. A pardon is evidence that a criminal conviction for a federal offence should no longer reflect negatively on a person (for Canadians or non-Canadians) who has demonstrated being a law-abiding citizen (Parole Board of Canada 2012a, 2011a).

The notion of a pardon was first established in Canada in 1899 through the *Ticket of Leave Act* and while "there was no reference to the *purpose* of conditional release, the ticket of leave was generally understood to be a form of pardon." (Parole Board of Canada 2009a). According to a former chair of PBC, interviewed in Ottawa, 09 May 2013, while public perception may be that a pardon 'erases' a criminal record, this is not the case. A pardon does not erase a conviction and it does not allow a person to say that they do not have a criminal record but rather a person can say that they have received a pardon for a particular offence (Library of

⁵³ PBC's name changed from the National Parole Board on December 13, 2012. [The two terms will be used interchangeably.](#)

Parliament 2010). The *Criminal Records Act* (CRA) (R.S.C., 1985, c. C-47) stipulates that information relating to a pardoned offence cannot be sought in an employment application for organizations under federal jurisdiction; plus the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6) prohibits federal organizations to discriminate against an individual who has received a pardon (Parole Board of Canada 2012a; Library of Parliament 2010, 2012).

Receiving a pardon is not automatic and is determined on a case-by-case basis by PBC (Standing Senate Committee on Legal and Constitutional Affairs 2010a). The PBC may grant a pardon if it is convinced of the meritorious nature of the request that includes, but is not limited to, good conduct; that is, behaviour that is consistent with and demonstrates a law-abiding lifestyle (Library of Parliament 2012). If a pardon is refused, an individual must wait one year before applying again⁵⁴ (Standing Senate Committee on Legal and Constitutional Affairs 2011c; Library of Parliament 2012).

The term ‘pardon’ recently changed to ‘record suspension.’⁵⁵ The change was made as the word ‘pardon’ appeared to imply that the state had forgiven the offence while in reality, it is the victims of the crime who provide the notion of forgiveness as presented by the Minister of Public Safety⁵⁶ on June 22, 2010 in testimony to the Senate and Legal Constitutional Affairs Committee (2010a):

“I happen to agree...that the issue of personal forgiveness is not something for the state to do on behalf of victims...that is something victims do. The state has certain roles in assisting the rehabilitation of convicted individuals, and I believe the term ‘record suspension’ more appropriately reflects the role of the state in that process.”

⁵⁴ Refusal of a pardon is based on the conduct of the individual, not that forms were not completed properly as forms etc. are vetted prior to being reviewed by PBC (Library of Parliament 2012; Standing Senate Committee on Legal and Constitutional Affairs 2011c).

⁵⁵ The name change was included in Bill C-10 (An Act to Enact the Justice for Victims of Terrorism Act and to Amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and Other Acts, 41st Parliament, 1st Session, 2012). The terms ‘pardon’ and ‘record suspension’ will be used interchangeably in this study.

⁵⁶ PBC is a part of the Public Safety portfolio (Treasury Board of Canada Secretariat 2011b)

8.2.1 Decision-making process to implement user fees

Initially in 1994-95 a user fee of fifty dollars was introduced for a pardon application as a method to reduce the overall costs to government by having those individuals that use the pardon service pay a portion of the cost; however, the \$50 fee only covered approximately 50 per cent of PBC's direct costs (Parole Board of Canada 2011d). Since the introduction of the initial user fee, the cost to the PBC to process a pardon application has risen substantially. The estimated cost to process a pardon before the CRA was modified by Bill C-23A (An Act to Amend the Criminal Records Act, 40th Parliament, 3rd Session, 2010) was \$231,⁵⁷ with Bill C-23A resulting in cost increases to \$631 (\$616 to PBC and \$15 to RCMP) (Parole Board of Canada 2011d). Subsequently, the government decided that the pardon program should operate on a full cost recovery basis; thus the cost of a pardon application rose to \$631 (Standing Senate Committee on Legal and Constitutional Affairs 2011a).

8.2.2 Institutional form

In the beginning, the application process for a pardon included a full investigation by Department of Justice officials with administrators being allowed considerable latitude in granting or denying a pardon as there were no guidelines (Parole Board of Canada 2009a). While the notion of a parole board was first raised in 1922, it was not acted upon until 1939 with the creation of a three-person administrative board which reported directly to a minister of the Crown thus was not independent of potential government influence (Parole Board of Canada 2009a). It was not until 1959, with the passing of the *Parole Act*,⁵⁸ that the National Parole Board was created as a quasi-judicial body with complete independent decision-making authority

⁵⁷ Prior to the costing exercise that determined that pardon applications were costing PBC \$231 to process, PBC was absorbing the cost by using appropriated funds from other programs and only charging \$50 then \$150 starting in December 2010.

⁵⁸ The *Parole Act* replaced the *Ticket of Leave Act*. The *Parole Act* was rescinded in 1992 when the *Corrections and Conditional Release Act* (S.C. 1992,c.20) was introduced (Parole Board of Canada 2009a).

(Parole Board of Canada 2009a, 2009b). An independent administrative tribunal is “an independent decision-making body created by law that makes decisions free from outside influence that affect an individual’s rights and liberties” (Parole Board of Canada 2009b). Hence, while PBC is a part of the Public Safety portfolio (Treasury Board of Canada Secretariat 2011b), the minister does not have statutory authority to give direction to the PBC related to decision-making associated with the release of offenders providing PBC with a governance structure that permits impartiality (Parole Board of Canada 2011a, 2013). The PBC’s (2013) primary objective is the long-term protection of society contributing to the government’s strategic outcome of a safe and secure nation. Though the PBC is an independent administrative tribunal, one needs to be cognizant that board members are Governor-in-Council appointments.⁵⁹

8.2.3 Financial authority

As of February 2012, PBC operates under a full cost-recovery approach for pardon applications (Standing Senate Committee on Legal and Constitutional Affairs 2011b; Parole Board of Canada 2011c, 2011d, 2012b, 2013). In February 2011 the government announced that criminals should be held fully accountable for their actions and as such declared that individuals would now pay the full administrative costs of processing a pardon application (Public Safety Canada 2011). As provided by the manager of corporate and strategic planning of PBC,

⁵⁹“A Governor-in-Council appointment is one made by the Governor General, on the advice of the Queen’s Privy Council of Canada (i.e., the Cabinet)” (Governor in Council Appointments 2013a). The Cabinet is comprised of elected officials, one of which is the Minister of Public Safety. Salaries for full-time board members range between \$121,700 and 143,100 annually with part-time members earning \$605 to \$710 per diem (Parole Board of Canada 2010). PBC is comprised of 43 full-time members and numerous part-time members depending upon demand, with approximately 400 employees supporting board members (Treasury Board of Canada Secretariat 2011b; Governor in Council Appointments 2013b; Justice Canada 1992). The *Corrections and Conditional Release Act* (S.C. 1992, c. 20) provides that PBC may consist of not more than 60 full-time members and a number of part-time members. PBC board members are assigned by regional representation (Atlantic, Quebec, Ontario, Prairie or Pacific) plus one member being appointed as chairperson and another as executive vice-chairperson (Governor in Council Appointments 2013b). The chairperson reports to Parliament through the Minister of Public Safety Canada (Parole Board of Canada 2012a, 2013).

interviewed in Ottawa, 14 May 2013, the public announcement by the minister was in accordance with Section 4(2) of the UFA.

8.2.4 Visibility by citizens

Pardons have a low to medium level of visibility amongst citizen-voters except at times when high profile legal cases such as those of Karla Homolka a convicted serial killer, and Graham James a convicted pedophile, are featured in the media. These cases were the catalyst for not only making significant changes to the CRA in regards to eligibility for a pardon but also in increasing the visibility of pardons to citizen-voters. This is demonstrated by the fact that once the government decided to move to a full cost recovery model for the pardon program, during the two-week public consultation process for the proposed increase to \$631, PBC received 1,074 responses (Parole Board of Canada 2011b). The number of responses during the two-week public consultation process indicates that citizen-voters and pressure groups were aware of and felt the need to express an opinion concerning the increase to pardon fees.

8.2.5 Single service by organization

As part of the criminal justice system, PBC (2012a) balances decisions between overall public safety and providing public services to individuals in the following three areas:

1. Exclusive authority to grant, deny, cancel, terminate or revoke day parole and full parole as legislated under the *Corrections and Conditional Release Act* (S.C. 1992, c. 20) for offenders in prisons,⁶⁰ and on behalf of provinces and territories that do not have their own parole boards;⁶¹
2. Responsibility for making decisions to order, refuse to order and revoke record suspensions under the *Criminal Records Act* (R.S.C., 1985, c. C-47) subsections 4(1- 4), sections 4.1, 4.2, 7, 7.1, and 7.2, and *Criminal Records Regulations* (SOR/2000-303)

⁶⁰ When incarcerations are greater than two years, a person is housed in a federal prison.

⁶¹ Only Ontario and Quebec have their own parole boards

section 1.1 related to federal acts and regulations; including providing recommendations for the exercise of clemency;⁶² and

3. Provides information to victims of crime.

As only the issuing of record suspensions has a user fee associated with it, according to the *Pardon Services Fees Order* (SOR/95-210) made pursuant to Section 19 (1) (b) of the *Financial Administration Act* and in compliance with the requirements of the UFA, it is record suspensions that will be the focus of this study.

8.2.6 Enabling legislation and regulations

Pardons⁶³ were selected for this study as the process and complexity of issuing pardons has been impacted by legislation affecting PBC as passed by the government of Canada. On March 13th, 2012 Royal Assent of Bill C-10 (An Act to Enact the Justice for Victims of Terrorism Act and to Amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and Other Acts, 41st Parliament, 1st Session, 2012) made significant changes to the eligibility of receiving a record suspension including:

- increasing the eligibility period from three to five years for summary convictions⁶⁴ and from five to ten years for indictable offences;⁶⁵ and
- individuals who have been convicted of sexual offences against minors or been convicted of more than three indictable offences tried by indictment for which each received a sentence of two years or more are now ineligible for a record suspension (Library of Parliament 2012).

⁶² Clemency is not the forgiveness of the crime when a pardon is not obtained. There are many forms of clemency and it is used to enact remedies when no other recourse exists in law when an injustice is deemed to have occurred.

⁶³ As a part of [Bill C-10](#), the term ‘pardon’ was changed to ‘record suspension. The terms ‘pardon’ and ‘record suspension’ will be used interchangeably throughout this study.

⁶⁴ Summary offences are generally for less serious crimes such as Driving Under the Influence

⁶⁵ Indictable offences generally correspond to felony convictions such as manslaughter

Bill C-10 added Section 9.01 to the CRA providing that PBC may now disclose pardon decisions either granted or denied to interested parties⁶⁶ (Library of Parliament 2012).

Previously in 2010-2011, the government of Canada had passed numerous pieces of legislation⁶⁷ impacting PBC (2011b) with most of these bills increasing PBC's workload due to additional requirements, some of which impacted pardon applications. In particular, the impact of Bill C-23A (An Act to Amend the Criminal Records Act, 40th Parliament, 3rd Session, 2010) significantly increased the workload and costs required to process a pardon application due to the additional time required for PBC employees to review applications and for board members to write a report for every pardon application accepted whether granted or denied (Parole Board of Canada 2011d). Bill C-23A amended the CRA to not only increase the ineligibility period for certain offences but it also provided PBC authority to make inquiries related to pardon applications for all types of offences; provided PBC the discretion to consider additional factors in decision-making; it established factors that PBC may consider related to whether the granting of a pardon would bring the administration of justice into disrepute;⁶⁸ and implemented the

⁶⁶ PBC may not disclose information which identifies the individual unless the individual has provided written authorization

⁶⁷ Legislation included Bill C-23A (An Act to Amend the Criminal Records Act, 40th Parliament, 3rd Session, 2010), C-59 (An Act to Amend the Corrections and Conditional Release Act (Accelerated Parole Review) and to Make Consequential Amendments to Other Acts, 40th Parliament, 3rd Session, 2011), S-2 (An Act to Amend the Criminal Code and Other Acts, 40th Parliament, 3rd Session, 2010), C-21 (An Act to Amend the Criminal Code (Sentencing for Fraud), 40th Parliament, 3rd Session, 2011), C-22 (An Act Respecting the Mandatory Reporting of Internet Child Pornography by Persons who Provide an Internet Service, 40th Parliament, 3rd Session, 2011), C-30 (An Act to Amend the Criminal Code, 40th Parliament, 3rd Session, 2011), C-31 (An Act to Amend the Old Age Security Act, 40th Parliament, 3rd Session, 2010), C-48 (An Act to Amend the Criminal Code and to Make Consequential Amendments to the National Defence Act, 40th Parliament, 3rd Session, 2011), S-6 (An Act to Amend the Criminal Code and Another Act, 40th Parliament, 3rd Session, 2011), S-9 (An Act to Amend the Criminal Code (Auto Theft and Trafficking in Property Obtained by Crime), 40th Parliament, 3rd Session, 2010), C-268 (An Act to Amend the Criminal Code (Minimum Sentence for Offences Involving Trafficking of Persons Under the Age of Eighteen Years), 40th Parliament, 3rd Session, 2010), C-475 (An Act to Amend the Controlled Drugs and Substances Act (Methamphetamine and Ecstasy), 40th Parliament, 3rd Session, 2011), and S-215 (An Act to Amend the Criminal Code (Suicide Bombings), 40th Parliament, 3rd Session, 2010)

⁶⁸ The term "shock the conscience of Canadians or bring the administration of justice into disrepute" was orated by the NDP in the House of Commons when a motion was made to divide Bill C-23 (An Act to Amend the Criminal Records Act and to Make Consequential Amendments to Other Acts, 40th Parliament, 3rd Session, 2010) into two bills (Parliament of Canada 2010). Dividing the legislation into two separate bills as agreed upon so that legislation

assessment of good conduct in all cases (RIAS-Inc. 2011, pp. 5-6). According to the director of clemency and pardons of PBC, interviewed in Ottawa, 08 May 2013, these changes not only increased the legislative authority of PBC but also shifted the role of employees from performing relatively simple administrative tasks to responsibility for executing more complex investigative and analytical roles. The director commented that board members now require additional effort as a written report is required for each pardon granted, denied or revoked.

Prior to Bill C-23A and Bill C-10, PBC received approximately 37,000 applications per year of which 75 per cent were deemed complete and accepted for processing; after Bill C-23A and Bill C-10 it anticipated the receipt of only 25,000 applications with an estimated acceptance rate of 60 per cent or 15,000 applications (Parole Board of Canada 2011d; RIAS-Inc. 2011). The manager of corporate and strategic planning of PBC, interviewed in Ottawa, 14, 2013, confirmed that the number of applications received prior to Bill C-23A and Bill C-10 were greater than the anticipated applications post Bill C-23A and Bill C-10.⁶⁹

As stated by the director of clemency and pardons of PBC, interviewed in Ottawa, 08 May 2013, as there is currently a backlog in processing pardon applications, board members and staff need to be very aware of which legislation applies to a specific applicant since a board member and staff may be processing an application which falls under the \$50 or \$150 or \$631 fee structure, each of which has different legislation applied to it.

(Bill C-23A (An Act to Amend the Criminal Records Act, 40th Parliament, 3rd Session, 2010)) could be passed prior to Karla Homolka (a convicted serial killer) becoming eligible to apply for a pardon. Elements in Bill C-23B (An Act to Amend the Criminal Records Act and to Make Consequential Amendments to Other Acts, 40th Parliament, 3rd Session, 2010) required further review and debate by the House and Senate.

⁶⁹ According to the director of clemency and pardons of the Parole Board of Canada, interviewed in Ottawa, 08 May 2013, record suspensions are processed by part-time board members through the national office with regional offices being used to respond to inquiries. There are approximately fifty PBC employees who support board members with processing record suspensions (Parole Board of Canada 2013). As mentioned by the director of clemency and pardons of the Parole Board of Canada, interviewed in Ottawa, 08 May 2013, since the record suspension process is electronic, in order to gain efficiencies (e.g. savings on travel, office space) part-time board members work from their homes using a secure key permitting the cost of the applications to be processed within the \$631 user fee charged. Pardon application fees have increased from \$50 in 1994 to \$150 in 2010 to \$631 in 2012 (Parole Board of Canada 2011d).

8.2.7 Oversight bodies

Oversight bodies of PBC include the OAG. The OAG has issued several reports related to pardons and PBC including:

- *1994 – Chapter 17 – National Parole Board* – the report focused on assessing the risk to public safety and to whether the Board had sufficient members and information and management systems to carry out its mandate (Office of the Auditor General of Canada 1994);
- *1998 – Chapter 10 – Canadian Human Rights Commission – Human Rights Tribunal Panel* – the audit reviewed accountability and independence frameworks related to the Tribunal’s governance model in addition to the process to handle complaints regarding discrimination including conviction for an offence for which a pardon has been granted (Office of the Auditor General of Canada 1998a); and
- *2003 – Chapter 1 – Rating Departmental Performance Reports* – this report focused on the overall quality of departmental performance reports with the National Parole Board being one of the government organizations selected to be reviewed (Office of the Auditor General of Canada 2003).

Various parliamentary committees may hold meetings and issue reports regarding PBC thus acting as oversight bodies. For example, PBC tabled two user fee proposals, one in 2010 to increase the fee to \$150 as an interim measure and the other in 2012 to increase the fee to \$631 through the UFA process and has been granted approval each time for the requested increase by the Standing Senate Committee on Legal and Constitutional Affairs (2010b, 2011a).

8.3 Security clearances

Our third case examines security clearances⁷⁰ as provided through Canadian Industrial Security Directorate (CISD) in which user fees are not charged to the private sector (Public Works and Government Services Canada 2013a) but rather are financed through general

⁷⁰ The term ‘security clearance’ and ‘personnel security screening’ are used interchangeably.

taxation. CISC is a directorate within the Industrial Security Sector (ISS) of PWGSC. Security clearances, as granted by the federal government can provide Canadian private sector organizations access to contracting opportunities worth billions of dollars both in Canada and abroad (Office of the Auditor General of Canada 2007a). Though private sector organizations have access to contracting opportunities worth billions of dollars, security clearances belong to individuals, not private sector organizations. A private sector organization holds an individual's security clearance but when an individual moves to another private sector organization, the security clearance is transferred to the new organization. Hence the security clearance belongs to the individual. As the security clearance belongs to the individual, there is an argument to be made that this makes it a public service provided on an individual basis by a government organization. Even though a security clearance is provided on an individual basis, there is no user fee charged for the service to the individual or the registered private sector organization.

The security of government information and assets is an “integral part of maintaining public trust in government institutions” (Standing Committee on Public Accounts 2010a, 1). The *Government Security Policy* is intended to support the national interest⁷¹ and the achievement of government's objectives with each department being responsible for “protecting sensitive information and assets under its control—not only in its own operations but throughout the bidding, negotiating, awarding, carrying out, and terminating of any contracts it manages” with private sector organizations (Office of the Auditor General of Canada 2007a). The 2009 *Policy on Government Security*⁷² provides the direction in how government

⁷¹ National interest is defined by the Office of the Auditor General as “concerning the defence and maintenance of the social, political, and economic stability of Canada” (Office of the Auditor General of Canada 2007a)

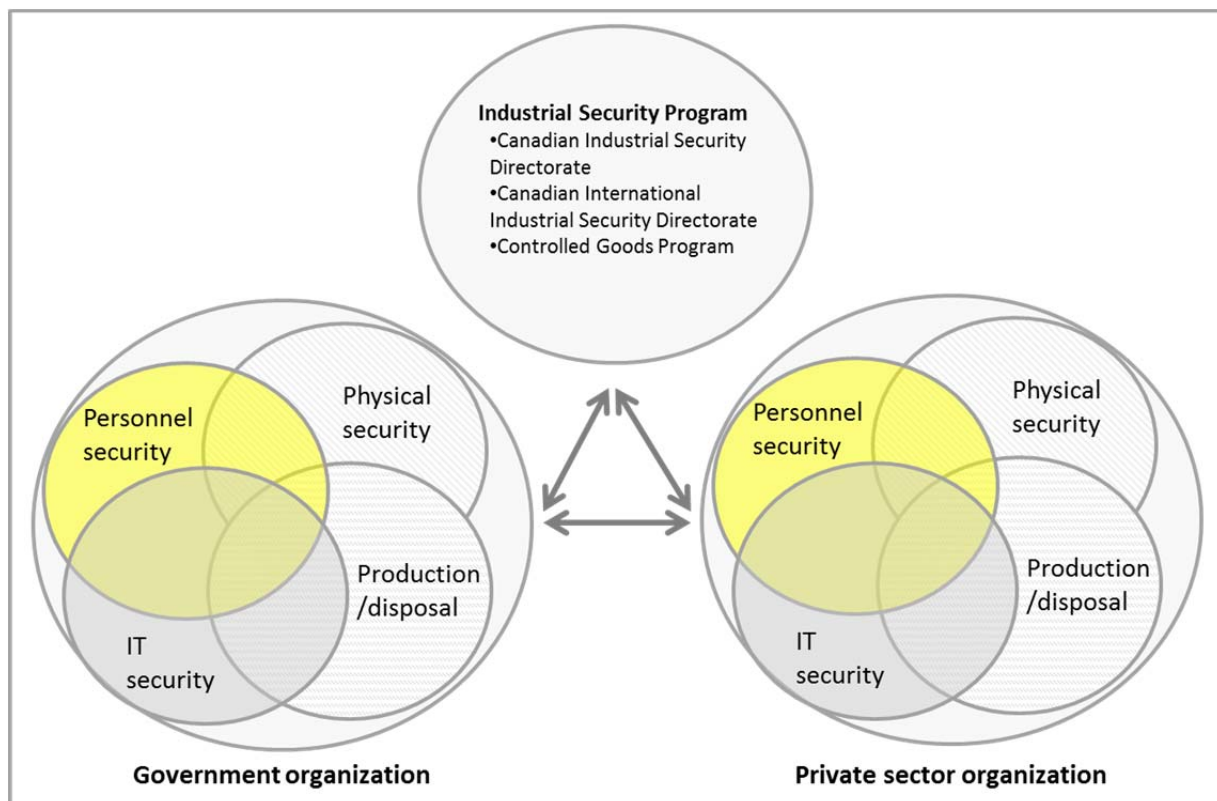
⁷² The *Policy on Government Security* replaced the 2002 *Government Security Policy* (Office of the Auditor General of Canada 2013a). The *Policy on Government Security* supports legislation such as the *Security of Information Act* and the *Defence Production Act* (Treasury Board of Canada Secretariat 2009b).

“must manage sensitive assets and information held within its own departments and entrusted to external parties to ensure that they are protected from unauthorized access, disclosure, removal, modification, use, or interruption”

in order to assist the government in achieving its objectives related to security and to safeguard the health, safety, security, and economic well-being of Canadians (Office of the Auditor General of Canada 2013a).

As illustrated in Figure 8.1, safeguarding government information entrusted to the private sector is multifaceted as it involves directing the efforts of many government departments, agencies, Crown corporations, and private sector companies (Office of the Auditor General of Canada 2007a). It is the responsibility of each department to identify the level of security requirements for each federal government contract and then departments may ask CISC to execute on security requirements such as personnel screening, IT security, and physical security (Standing Committee on Public Accounts 2008). Subsequently CISC provides the department with the security clause that is required in order to cover the security requirement that is identified in the contract by the Security Requirements Check List (SRCL) (Standing Committee on Public Accounts 2008). The significance of the SRCL process, according to the 2007 OAG report, highlights the increased importance of CISC by providing them an enforcement mechanism to carry out security related matters within both government organizations and private sector organizations as provided by the required SRCL (Standing Committee on Public Accounts 2008). The SRCL is important as it links the security requirements of the contract issued to the private sector organization to the federal government department thus providing accountability in the event of a security breach.

Figure 8.1 – Security model



Source: As adapted from a 2010 PWGSC's CISD's Security in Contracting presentation

Figure 8.2 provides a summary of the personnel security screening types required to access various levels of government information. Reliability Status personnel security screenings are required to access information that is not of national interest or what is termed Protected government information. The level of Confidential, Secret or Top Secret is required to access Classified government information or information related to the national interest.

Figure 8.2 – Types of information and personnel screening

	Levels of information and assets	Security Risks	Personnel security screening types and levels
Information related to national interest	Classified		Security clearance
	Top Secret	Grave injury	Level III
	Secret	Serious injury	Level II
	Confidential	Injury	Level I
Information not of national interest	Protected		
	Protected C	Loss of life	Reliability status
	Protected B	Loss of reputation	Reliability status
	Protected A	Loss of privacy	Reliability status

Source: Office of the Auditor General, 2013 Spring Report, Chapter 2 – Status Report on Security in Contracting, Pg 51

8.3.1 Decision-making process to implement user fees

In February 2008 a Treasury Board decision was made directing PWGSC to provide adequate resources to the ISP by financing the program either through internal reallocation of funds and/or cost recovery from client departments.⁷³ As had been previously demonstrated and commented on by the OAG, PWGSC’s latitude to fund ISP through internal reallocation of funds was severely constrained. On the basis of a 2009 business case, it was recommended and approved by TBS that ISP would be funded through a combination of cost recovery and appropriations.⁷⁴ The total cost to run ISP is approximately \$30.7 million of which \$18.2 million was expected to be cost recovered.⁷⁵ On June 10, 2010, TBS approved a submission to cost recover for contract-related security services provided to other government departments and

⁷³ ATI PWGSC File number A-2013-00021, pages 00174 and 00501 (08 July 2013)

⁷⁴ ATI PWGSC File number A-2013-00021, page 00174 (08 July 2013)

⁷⁵ ATI PWGSC File number A-2013-00021, page 00174 (08 July 2013)

agencies starting April 1, 2011.⁷⁶ In 2008, Finance Canada provided direction to PWGSC not to charge private sector organizations.⁷⁷ Hence, inter-departmental cost recovery was implemented⁷⁸ rather than the private sector paying user fees.

8.3.2 Institutional form

The ISS fulfills Canada's public, domestic and national security obligations through the ISP (Public Works and Government Services Canada 2012c). The role of the ISP is to protect sensitive government assets and controlled goods which are in the hands of private sector organizations through, among other roles, providing screening of private sector organizations and their employees (Office of the Auditor General of Canada 2007a; Public Works and Government Services Canada 2012c). ISP has approximately 230 employees (Public Works and Government Services Canada 2012b). ISP is responsible for providing leadership and coordinating activities to help ensure the application of security safeguards in contracting when PWGSC is the contracting authority⁷⁹ or upon departmental request (Office of the Auditor General of Canada 2013a).

⁷⁶ ATI PWGSC File number A-2013-00021, pages 00953 -00968 (08 July 2013)

⁷⁷ ATI PWGSC File number A-2013-00021, page 00220 (08 July 2013)

⁷⁸ The inter-department cost recovery charging methodology is based on a government organization's proportion of all contract security provisions averaged over a two-year timeframe with an adjustment for contract complexity (Office of the Auditor General of Canada 2013a). Of the 53 departments that used ISP in 2011-2012, 47 signed a Memoranda of Understanding and paid their share of the \$18.2 million cost representing 97% of total cost recovery⁷⁸ (Office of the Auditor General of Canada 2013a). However, the OAG (2013a) also found that PWGSC was unable to demonstrate whether the charging methodology for cost recovery is appropriate resulting in client departments not understanding whether the services provided are commensurate with the fees being charged. At issue is that PWGSC's ISS has no formal process to track, monitor or report on departments that actually receive ISS services. Hence, the short term charging methodology is considered unfair by departments as it treats all contracts as being relatively equal. PWGSC is undergoing a business transformation which may be identified as an increase in cost to government due to the requirement to develop an infrastructure for tracking, billings, reporting and verifications; however, the system will provide a mechanism for more accurately charging departments for usage.

⁷⁹ PWGSC's Acquisitions Branch provides advice and support to help federal government departments and agencies achieve their procurement objectives. The Acquisitions Branch also acts as the contracting authority for certain departments and agencies depending upon various statutes and regulations (Public Works and Government Services Canada 2013f).

The ISP is comprised of three external facing directorates all of which support the *Policy on Government Security* including: CISC, the Canadian International Industrial Security Directorate (CIISD) and the Controlled Goods Directorate (Public Works and Government Services Canada 2013c). CISC, first created in 1941, monitors 8,700 registered private sector organizations that have approximately 340,000 security screened employees (Public Works and Government Services Canada 2013c). CISC services, consistent with the *Policy on Government Security*, cover four different areas of security including: personnel security screening, private sector organizational screening, contract security between government and private sector, and related inspections and investigations (Public Works and Government Services Canada 2013c). CISC liaisons with private sector organizations through an appointed private sector official called the Company Security Officer (CSO). The CSO is responsible for ensuring the private sector organization adheres to security policy requirements as provided in ISP's Industrial Security Manual.

CIISD, which became a separate directorate from CISC in 2007 is responsible for assisting Canadian private sector organizations in doing business abroad and for encouraging foreign investment within Canada, according to North Atlantic Treaty Organization (NATO) industrial security obligations and the Multinational Industrial Security Working Group (Public Works and Government Services Canada 2012f). CIISD works with foreign nationals and negotiates industrial security arrangements including the verification and authorization of foreign security clearances and the issuance of NATO personnel security certificates for Canadians (Public Works and Government Services Canada 2012e, 2012f).

The Controlled Goods Directorate, created in 2001, administers the Controlled Goods Program (CGP) as provided for within the *Defence Production Act* (R.S.C., 1985, c.D-1) and

Controlled Goods Regulations (SOR/2001-32) (Public Works and Government Services Canada 2012f). The role of the CGP is to protect \$16.5 billion in annual trade between Canada and the U.S. through the *International Traffic in Arms Regulations*⁸⁰ (ITAR) exemption which is related to defence trade controls (Public Works and Government Services Canada 2012f). The Controlled Goods Directorate, among other measures, administers a process that involves training and certifying private sector organizational officials known as Designated Officials to conduct security assessments of employees who will be in contact with controlled goods (Public Works and Government Services Canada 2012a, 2012f). CGP uses a risk-based approach for doing inspections: as in whether or not a private sector organization holds controlled goods on their premises, for example a manufacturer, versus accessing controlled goods at another site, for example people who may do equipment repairs at the premises of a manufacturer who holds controlled goods (Public Works and Government Services Canada 2013e).

Each of these three directorates (CISD, CIISD, and CGP) provide personnel security screening in some type of form to private sector individuals with none of the directorates charging a user fee to private sector organizations for their services. Of interest is that CGP has been directed to move to cost recovery through user fees as of April 1, 2015 and is currently undergoing public consultations (Public Works and Government Services Canada 2013d).

8.3.3 Financial authority

One of the findings from the OAG (2007a) report was that PWGSC needed to obtain stable funding for the ISP as annual funding only covered about 70 per cent for full-time equivalents, with the other 30 per cent being funded through departmental reserves. PWGSC has been internally reallocating funds to the ISP since 1998 as workloads increased to meet

⁸⁰ ITAR is a U.S regulation that controls international traffic in arms
http://pmddtc.state.gov/regulations_laws/itar_official.html

mandated policy objections.⁸¹ Additionally, the volume of work related to security through ISP has steadily increased since 9/11 when the government decided to raise the security level for all government organizations.⁸² ISP processed approximately 16,000 personnel security related actions in 1995⁸³, increasing to 39,310 in 1998, then to 127,000 in 2008-2009, then to 145,731 in 2009-2010, and anticipated to be more than 200,000 in 2012-2013.⁸⁴ As noted by the OAG, without stable funding it is difficult to attract and retain qualified security professionals to carry out ISP's responsibilities. The deputy minister of PWGSC testified at a Standing Committee on Public Accounts' meeting that in 2008 an additional \$11.2 million had been allocated for that year for contract security-related activities and that he was working with TBS and the Privy Council Office to secure an increase in the permanent funding base for the ISP (Standing Committee on Public Accounts 2008). In February 2008, a Treasury Board decision was made directing PWGSC to provide adequate resources to the ISP by financing the program through internal reallocation and/or cost recovery from client departments.⁸⁵

8.3.4 Visibility by citizens

Unless citizen-voters are either employed by, or contract with, the federal government there is little visibility to security clearances. However at times the lack of a security clearance makes the front page news as in 2009 with the Afghan detainee controversy in Parliament which highlighted security clearances as members of Parliament⁸⁶ wanted access to documents but in order to do so they had to sign a letter of confidentiality and have a Secret level security

⁸¹ ATI PWGSC File number A-2013-00021, page 00174 (08 July 2013)

⁸² ATI PWGSC File number A-2013-00021, page 00501 (08 July 2013)

⁸³ ATI PWGSC File number A-2013-00021, page 00174 (08 July 2013)

⁸⁴ ATI PWGSC File number A-2013-00021, page 00966 (08 July 2013)

⁸⁵ ATI PWGSC File number A-2013-00021, pages 00174 and 00501 (08 July 2013)

⁸⁶ The Afghan detainee matter brought visibility to the lack of security clearances for both members of Parliament and their staff. As of January 2011, all individuals who work in or for a minister must now have a security clearance at the level of Secret (Treasury Board of Canada Secretariat 2011a). In 2008, following a security breach by a minister, the prime minister ordered that security clearances were to be conducted and reviewed every two years for elected officials (CBC News 2011b).

clearance as the documents were considered a matter of national security (Government of Canada 2010). Access to sensitive information such as the information related to the Afghan detainee controversy, even with the proper level of security clearance, is always restricted based on the need-to-know principle. “Personnel are not entitled to access information merely because it would be convenient for them to know or because of status, rank, office or level of clearance.” (Treasury Board of Canada Secretariat 1995). Hence, there was some wrangling within Parliament and party leaders as to who actually had the need-to-know to access the information providing interesting reading and visibility in the media by citizen-voters.

8.3.5 Single service by organization

The CISC monitors 8,700 registered private sector organizations that have approximately 340,000 security screened employees (Public Works and Government Services Canada 2013c). CISC services, in keeping with the *Policy on Government Security*, cover four different areas of security including: personnel security screening, private sector organizational screening, contract security between government and private sector, and related inspections and investigations (Public Works and Government Services Canada 2013c).

Security clearances are issued to individuals through, but not by, a private sector organization⁸⁷ registered with CISC in order to comply with the SRCL of a government contract. Whereas the registered private sector organization assists the individual with obtaining the security clearance and technically ‘holds’ the clearance, the security clearance belongs to the individual and moves with the individual in the event that he leaves the registered private sector organization⁸⁸ (Public Works and Government Services Canada 2012d). Security clearances may

⁸⁷ In contrast, the Controlled Goods Directorate permits private sector organizations to complete and issue security assessments of individuals.

⁸⁸ An individual’s security clearance may be transferred to another private sector organization or government organization

be issued to Canadian citizens, permanent residents, temporary residents and individuals who are in Canada on a work visa (Public Works and Government Services Canada 2012d).

8.3.6 Enabling legislation and regulations

The role of ISP is to assist private sector organizations to participate in federal government contracts by providing security screening services for contractors prior to them being entrusted with Protected and Classified information and assets (Public Works and Government Services Canada 2012c). Every private sector organization and individual provided with a security clearance under the ISP is to be familiar with the contents of the *Security of Information Act* (R.S.C., 1985, c. O-5) (Public Works and Government Services Canada 2013b). The *Security of Information Act*, among other things, addresses the prejudice to the safety of the state so that any individual who “impairs or threatens the capabilities of the Government of Canada in relation to security and intelligence” may be liable to life imprisonment. The 2009 *Policy on Government Security* applies to any department, which PWGSC is one of, within the meaning of Schedules I, I.1, II, IV and V, of the *Financial Administration Act* (R.S.C., 1985, c. F-11). The *Policy on Government Security* provides that government security is the assurance that information, assets and services are protected against compromise (Treasury Board of Canada Secretariat 2009b). Hence ISP fulfills its mandate through the *Security of Information Act* and the *Policy on Government Security*.

8.3.7 Oversight bodies

Oversight bodies of government security in contracting include the OAG. The OAG has issued several reports on security in contracting which impacts the ISP within PWGSC including:

- *2007 – Chapter 1 – Safeguarding Government Information and Assets in Contracting* - examined how government ensures the security of sensitive information that it makes available to private sector organizations through contracting as prescribed by the *Government Security Policy*⁸⁹ through safeguards to preserve the “confidentiality, integrity, availability, and value of information and assets, and to assure the continued delivery of services” (Office of the Auditor General of Canada 2007a); and
- *2013 – Chapter 2 – Status Report on Security in Contracting* – was a follow-up to the 2007 audit to determine if satisfactory progress had been made in addressing issues raised. With a focus on policies and processes, the OAG found that progress was unsatisfactory and significant weaknesses remained including a gap in policies. While PWGSC had secured funding for the ISP through inter-departmental cost recovery, PWGSC is not able to demonstrate that the charging methodology is appropriate (Office of the Auditor General of Canada 2013a).

Also various parliamentary committees may hold meetings and issue reports regarding ISP within PWGSC thus acting as oversight bodies. For example, the Standing Committee on Public Accounts issued a report in response to the OAG’s 2007 report which resulted in PWGSC and TBS issuing a government response outlining how government was planning on addressing the recommendations within the OAG’s report (Treasury Board of Canada Secretariat and Public Works and Government Services 2010; Standing Committee on Public Accounts 2010b). The Standing Committee on Public Accounts held a meeting to discuss the OAG’s 2013 report where the OAG testified that of the three follow-up audits and the seven new audits in the report, the status report on security in contracting contained some serious concerns and would be one of the most urgent chapters in the overall report as significant weaknesses remained a critical area (Standing Committee on Public Accounts 2013).

⁸⁹ The 2002 Government Security Policy was replaced by the *Policy on Government Security* in 2009 (Office of the Auditor General of Canada 2013a).

8.4 Social insurance numbers

The fourth case focuses on SINs as issued by Service Canada as a part of ESDC. SINs were first introduced in 1964 to replace the national unemployment insurance number (Library of Parliament 1997). Legislation for SINs provided no controls as to its usage resulting in it being used within personal databases by federal, provincial and private sector organizations as it was easier and more cost effective than establishing a different numbering system for each database (Library of Parliament 1997). Federally SINs are used as a file number, or account number, for data-processing purposes in the administration of specific Canadian government programs as defined in the *Employment Insurance Act* (S.C. 1996, c. 23). As a personal identification number issued to individual citizen-voters, SINs are used for specific legislative purposes such as registering for employment insurance, filing income tax forms, and applying for national pensions such as the Canada Pension Plan and Old Age Security plus other federal programs (Service Canada 2012). SINs are issued to Canadian citizens, permanent residents, and temporary residents who are authorized to work in Canada with a person only legitimately having one SIN at a time (Office of the Auditor General of Canada 2007c). The director general of the identity policy and programs directorate at Service Canada, interviewed in Ottawa, 23 December 2013, provided that Service Canada receives approximately 1.56 million SIN requests annually.

8.4.1 Decision-making process to implement user fees

Having a SIN is mandatory to work in Canada and collect benefits but there is no fee charged for the application and processing of SINs (Service Canada 2011). The director general of the identity policy and programs directorate at Service Canada, interviewed in Ottawa, 23 December 2013 provided that with the creation of the SIN in 1964, government decided not to charge a user fee as the SIN is a legal requirement. In 1984, the president of the Treasury Board

announced that as a part of Expenditure and Program Review that “the cost of...and replacement of SIN cards will be recovered through fees” (Treasury Board of Canada Secretariat 1984, Annex F.2). The director general of the identity policy and programs directorate at Service Canada, interviewed in Ottawa, 23 December 2013 indicated that while the decision was made to recover the costs associated with the re-issuance of SIN cards (not the number but the cards) in 1984, that it was not until 1988 that the government began charging \$10 to replace a SIN card.

The director general of the identity policy and programs directorate at Service Canada, interviewed in Ottawa, 23 December 2013 stated that as part of the 2011-2012 Strategic Review exercise, ESDC committed to discontinue issuing the SIN card. Bill C-38 (An Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 29, 2012 and Other Measures, 41st Parliament, 1st Session, 2012) was the formal legislation which announced changes to the SIN including that a SIN card, not the number but the card itself, ‘may’ be issued rather than ‘shall’ be issued moving the dispensing of the SIN card from a mandatory service to a discretionary service. As of March 31, 2014, SINs are issued in letter format only.⁹⁰ As cards will no longer be issued the \$10 replacement card fee is no longer applicable. The decision to not charge for the issuing of SINs as it is a legal requirement has not been altered over the years.

8.4.2 Institutional form

One of three business lines within the department of ESDC is Service Canada which helps individuals access various government programs, including the issuing of SINs through more than 600 points of service across Canada (Human Resources and Skills Development

⁹⁰ A director general of the strategic projects office at HRSDC, estimated not producing SIN cards but rather only issuing a letter, will save ESDC approximately \$1.5 million annually (Standing Senate Committee on National Finance 2012). In its 2010-2011 Departmental Performance Report, ESDC reported that the department collected \$1.8 million in user fee revenue for the replacement of SIN cards with the full cost to provide the service being \$2.9 million (Human Resources and Skills Development Canada 2011). Due to the administrative nature only of no longer issuing SIN cards, and no expected business impacts, it was deemed that public consultations were not required, though the matter was subject to Parliamentary debate (Human Resources and Skills Development Canada 2013b).

Canada 2013a). Within Service Canada, the Social Insurance Registration Office is responsible for maintaining the Social Insurance Register⁹¹ plus limiting access to the Register to only authorized federal employees (Human Resources and Skills Development Canada 2013c). Integrity Services Investigators located within each Service Canada Centre, assist the Social Insurance Registration Office with administering and controlling the SIN program through prevention, detection and deterring of improper use of the Social Insurance Register (Human Resources and Skills Development Canada 2013c).

8.4.3 Financial authority

Bill C-38 maintained the power to charge the costs of the Social Insurance Register and Social Insurance Numbers to the Employment Insurance Operating Account as established by the *Employment Insurance Act* (S.C. 1996, c.23). The director general of the identity policy and programs directorate at Service Canada, interviewed in Ottawa, 23 December 2013, stated that Service Canada does not specifically track the cost of operating the SIN program.

8.4.4 Visibility by citizens

Once a SIN has been applied for and issued, SINs have low visibility by citizen-voters. While SINs are important, they have low visibility as the SIN is only required for certain transactions such as employment, accessing government programs, and filing income tax. The visibility of SINs tends to be higher when the OAG issues reports as it did in 1998, 2002, and 2007 in which the OAG expressed concerns regarding the issuing of SINs and the lack of visibility as to which SINs were still active.

⁹¹ “The Social Insurance Register (the Register) is the electronic register that stores the personal information people provide when they apply for a SIN. It contains every SIN issued since 1964, as well as basic personal information necessary to identify SIN holders – a person's name, date of birth, place of birth, and parents' names, as well as the date when a SIN holder dies” (Human Resources and Skills Development Canada 2013c).

SINs are treated as personal information as SINs connect to various government databases and could provide detailed information about individuals that could not only breach their privacy but could also be used for fraudulent purposes by others (Office of the Auditor General of Canada 2007c; Office of the Privacy Commissioner 2008; Human Resources and Skills Development Canada 2013c). Hence if a citizen-voter's SIN is has been put at risk by disclosing it to an untrustworthy individual or organization, the SIN becomes highly visible as a citizen-voter needs to do risk mitigation by contacting the police, *The Canadian Anti-fraud Call Centre*, Service Canada, and two national credit bureaus⁹² (Human Resources and Skills Development Canada 2013c). The citizen-voter must also inform their bank and creditors by phone and in writing to try to reduce the financial risk of fraudulent use of the SIN (Human Resources and Skills Development Canada 2013c). Thus we see that if a SIN is inadvertently provided to untrustworthy sources, the SIN becomes highly visible as a citizen-voter must invest considerable time and effort to mitigate the risk of fraudulent behaviour.

8.4.5 Single service by organization

Issuing SINs is one of the many services offered by Service Canada. Service Canada is the delivery arm of ESDC. Service Canada provides access to various programs, services and benefits such as Employment Insurance, Canada Pension Plan, Old Age Security and Canada Student Loans Program. None of the programs administered by Service Canada have user fees.

Service Canada is the 'face' that citizen-voters recognize as the delivery arm of ESDC's many programs and services through the Service Canada web portal, offices and phone. Service Canada provides citizen-voters with a My Service Canada Account to deliver "one-stop personalized access" to federal government program and services (Human Resources and Skills Development Canada 2013a). Service Canada also pursues agreements with other federal

⁹² The two national credit bureaus are Equifax and TransUnion

government organizations for service delivery of additional programs to continue to build the capacity and functionality of web services (Human Resources and Skills Development Canada 2013a). This aligns with the federal government's plans and priorities to increase the delivery of services available via the Internet (Human Resources and Skills Development Canada 2013a).

8.4.6 Enabling legislation and regulations

The SIN program is governed by sections 28.1 to 28.4 of the *Department of Human Resources and Skills Development Act* (S.C. 2005, c. 34); sections 138, 139 and 140 of the *Employment Insurance Act* (S.C. 1996, c. 23); sections 1 to 14 of the *Social Insurance Number Regulations* (SOR/2013-82); and subsections 89(1) to 89(6) of the *Employment Insurance Regulations* (SOR/96-332).

Section 138 of the *Employment Insurance Act* provides that every person employed in insurable employment must have a SIN. Subsection 28.2(4)a of the *Department of Human Resources and Skills Development Act* and section 140c of the *Employment Insurance Act* authorizes the Canada Employment Insurance Commission, chaired by the deputy minister of ESDC, to make amendments to the *Social Insurance Number Regulations*. The Canada Employment Insurance Commission has the authority to assign SINs, maintain the Social Insurance Register, and to disclose SIN information for identity purposes (Human Resources and Skills Development Canada 2013c).

Service Canada, on behalf of the Canada Employment Insurance Commission, in conjunction with TBS, have the responsibility of developing policies related to the uses of the SIN (Human Resources and Skills Development Canada 2013c). The use of the SIN for administering various government programs such as remitting contributions or payment of benefits is legislated through various Acts. For example, the *Employment Insurance Regulations*

authorizes the use of the SIN for submitting contributions and collecting Employment Insurance benefits. In addition, the *Canada Pension Plan* (R.S.C., 1985, c. C-8) and the *Old Age Security Act* (R.S.C., 1985, c. O-9) provide that a SIN may be issued to applicants and beneficiaries if a SIN has not been previously assigned.

Legislation has also provided use of the SIN for income tax identification; banks, trust companies, *caisses populaires* and for stock brokers who sell individuals financial products or provide services such as bank accounts that generate interest; various Veterans Affairs benefit programs; Canada Student Loans or Canada Student Financial Assistance; Canada Education Savings Grants; Gasoline and Aviation Gasoline Excise Tax Applications; Canadian Wheat Board Act; Labour Adjustment Benefits Act; Tax Rebate Discounting Regulations; Race Track Supervision Regulations; Garnishment Regulations (Family Orders and Agreements Enforcement Assistance Act); Canada Elections Act; Canadian Labour Standards Regulations (Canada Labour Code); and Farm Income Protection (Office of the Privacy Commissioner 2008).

8.4.7 Oversight bodies

Oversight bodies of ESDC include the OAG. The OAG has issued several reports on SINs which impacts ESDC including:

- *1998 – Chapter 16 – Management of the Social Insurance Number* – examined the management and control of the SIN; the role and use of the SIN in managing social programs and revenue collection; and the investigation of fraud and abuse. Findings included that no proof of identity was required prior to 1976 so of the 11.8 million SINs issued prior to 1976, some could be duplicates resulting in the opportunity for misrepresentation by individuals (Office of the Auditor General of Canada 1998b);
- *2002 – Chapter 1 – Human Resources Development Canada - The Integrity of the Social Insurance Number* – focused on whether the federal government was safeguarding and

strengthening the integrity of the SIN, on top of following-up recommendations from the 1998 audit. Recommendations from the previous report included that SINs have no expiry date, except for temporary residents, which has added to weaknesses in administrative processes as ESDC has difficulty tracking births and deaths resulting in the possibility that cards may be used fraudulently (Office of the Auditor General of Canada 2002); and

- 2007 – Chapter 6 – *The Management of the Social Insurance Number - Human Resources and Social Development Canada* – assessed the progress ESDC and TBS had made in responding to recommendations in the 2002 audit including the appropriate use of the SIN, the process for issuing new SINs and replacement cards, the Social Insurance Register, and SIN related fraud (Office of the Auditor General of Canada 2007c). The OAG (2007c) reported that little progress had been made in recommendations by HRSDC regarding the Social Insurance Registry in that there is no reliability or measurement of the data resulting in the department having limited assurance that the “accuracy, completeness, and reliability of Register data are adequate, a concern we first raised in 1998.”

In addition to OAG reports there have been several parliamentary committee reports and meetings held in regard to SINs. The Standing Committee on Human Resources Development and the Status of Persons with Disabilities (1999) issued a report called *Beyond the Numbers: The Future of the Social Insurance Number System in Canada*. The report was in response to the OAG’s 1998 report which raised concerns related to the management and control of the SIN system plus recommending the government should address longer term broader public-policy issues such as issues related to privacy and data-matching (Standing Committee on Human Resources Development and the Status of Persons and Disabilities 1999). The Standing Committee on Human Resources Development and the Status of Persons with Disabilities also held a meeting (no report was issued) in response to the OAG’s 2002 report with HRSDC responding they were continuing to implement the action plan developed to address the concerns

raised in the 1998 report which would address the same concerns in the 2002 report (Standing Committee on Human Resources Development and the Status of Persons and Disabilities 2002).

The Standing Committee on Public Accounts (1998, 2002) held meetings and issued a report to address the 1998 and 2002 OAG audits. No committee hearings were held to specifically address the 2007 OAG audit report.

8.5 Summary

There are many examples of public services within the Canadian federal government which are provided to individuals, some which charge user fees while others do not. In this chapter we examined attributes as described in Chapter 6 related to the variety of the cases in addition to the feasibility of analysis for each of the four cases: passports, pardons, security clearances, and SINs. Attributes related to the variety of cases included whether a separate organization provides the public service, what is the financial authority to deliver the service, and visibility by citizens. Attributes related to feasibility of analysis included whether this is the only service provided by the government organization, what are the enabling legislation and regulations, and who are the oversight bodies responsible for monitoring the government organization. We determined that based on the attributes, each case was relevant to the study. In Chapters 9, 10 and 11, we explore the relationship of our actors utilizing the information related to the attributes from our cases.

Chapter 9

Relationships between
elected officials,
citizen-voters and
pressure groups

9.0 Introduction

In our theoretical framework we developed three main actors: government, citizen-voters and pressure groups plus senators as minor actors. We then postulated that each actor plays a role in, or influencing, the federal government and how it makes decisions. We next used these actors to develop our six working propositions found in the methodology. In developing the working propositions we considered various attributes and whether or not they were contributors to the decision to charge user fees or to use general taxation to finance public services provided to disproportionately to individuals. Over the next three chapters we turn to whether or not our actors behaved the way we thought they would by analyzing our findings through the working propositions.

As previously discussed government may leverage a variety of policy instruments in providing public services. Buchanan and Tullock (1974) argue that government may use general taxation to finance pressure group preferences and/or government may use discriminatory taxation to finance general benefits to all citizens. Government may also decide to introduce user fees as a policy instrument to draw attention to certain segments of the population who disproportionately benefit from a government service. In order to make an informed decision regarding funding a public service government may want to consider the benefit an individual receives versus the benefit received by all citizen-voters. If there is a disproportionate private benefit versus an overall public benefit, government may decide a user fee is appropriate.

In this chapter we present our findings and analysis regarding the relationship between elected officials, citizen-voters and pressure groups through WP1, WP2 and WP3. Relative to our theoretical framework, WP1 is appropriate as elected officials operate within a budget constraint thus it may benefit them to be seen as fiscally responsible by citizen-voters since

elected officials maximize their utility by attaining enough votes from citizen-voters to form government. According to WP1, at times elected-officials may want to appear to be fiscally prudent by charging user fees for services that provide a disproportionate private benefit but elected officials need to be aware that citizen-voters may not be supportive.

WP2 is applicable to our theoretical framework since citizen-voters will continue to ask for more benefits or tax breaks from government even though government operates within a budget constraint, as citizen-voters maximize their utility by obtaining more public services than what they pay for through general taxation. As we shall demonstrate in our analysis of WP2 it may be difficult to determine the private versus public benefit of a service hence citizen-voters may try to obtain more public services that are funded through general taxation.

As government operates within a budget constraint, pressure groups may be motivated to pursue government at the expense of others as outlined in WP3, as pressure groups maximize their utility by spending resources to obtain more benefits and/or lower costs for their citizen-voter members. In our analysis of WP3 we examine the distributional effects of user fees and how pressure groups may impact elected officials' decisions even when a private versus public benefit exists.

9.1 Working proposition one (WP1)

When elected officials decide to implement user fees as a means of cost recovery to finance public services that were previously provided through general taxation, elected officials require a persuasive argument in communicating the decision to citizen-voters. Elected officials require a persuasive argument as the visibility of user fees may be not be popular with citizen-voters especially if the service was previously provided through general taxation, as user fees

may appear to be a revenue grab if general taxation is not reduced with the introduction of the fee (Bird and Tsiopoulos 1997a, 1997b).

In order to make an informed decision regarding funding a public service the government may want to consider the private benefit versus the public benefit through a costing methodology. As provided by a senior advisor from the centre of regulatory expertise at TBS, interviewed in Ottawa, 06 May 2013, when you are doing costing of a service one looks at the cost to provide the service, then the upper limit of cost per user, then consider the positive and negative externalities. The information from the cost-benefit analysis aids decision-makers in deciding what proportion of cost, if any, an individual should pay for. According to this senior advisor, the cost-benefit analysis may make recommendations as to the proportion of costs which may be paid for by an individual, but it is the minister who has the delegated authority to make the formal decision as there may be other factors outside the actual cost and benefit of the public service which plays a role in the decision such as the direction of government. TBS's 2009 *Guide to Establishing the Level of a Cost-Based User Fee or Regulatory Charge* states that a range of broader environmental factors will influence any decision to actually proceed with user fee level changes (Treasury Board of Canada Secretariat 2009a).

The following is an analysis of our findings related to how government attempts to contain costs during times of fiscal restraint through the introduction of user fees.

9.1.1 Passports

Even though the issuing of passports has always had a user fee, elected officials are still aware that changes to fees need to be communicated appropriately to citizen-voters. This is demonstrated in testimony by an elected official when reviewing Passport Canada's user fee proposal for an increase in fees for a passport:

“I’d ask that when this rolls out, you also provide a good rationale...for all members of Parliament as to why the costs are what they are” (Standing Committee on Foreign Affairs and International Development 2012, 10).

Not only is it important to have a good communication plan, but government also needs to ensure that they calculate an accurate cost for the service in order to charge the appropriate user fee. The OAG (2008) found that citizen-voters may challenge the validity of a fee,⁹³ hence it is important that there is a reasonable relationship between the user fee and the cost to provide the service or the user fee may be deemed an unlawful tax if the fee is found to be greater than the cost to the government. We found that Passport Canada utilizes activity-based costing to ensure that the cost to provide a passport does not exceed the user fee charged (Standing Senate Committee on Foreign Affairs and International Trade 2012a).

We determined that passports have always had a user fee associated with them hence citizen-voters expect to pay a fee when applying for a passport. Passport Canada’s *Passport Demand Survey* results indicated that for 51 per cent of non-passport holders and 59 per cent of current passport holders, price was not an issue at all (Passport Canada 2012b). We found that in regards to passport user fees, the influence of price did not appear to be an issue with citizen-voters as to whether or not someone would obtain a passport.

Through public documents and an interview with the director of resource management and compliance at Passport Canada, interviewed in Ottawa, 01 March 2013, we determined that elected officials have not considered not charging a user fee for obtaining a passport.

Hence, for WP1 elected officials may appear fiscally prudent to citizen-voters as a user fee has always been charged for passports resulting in citizen-voters accepting paying the user fee.

⁹³ In 2008 there was a Supreme Court of Canada decision which provided that a fee charged for certain services was an unlawful tax and needed to be repaid (Office of the Auditor General of Canada 2008). [Re: Eurig Estate [1998] 2 S.C.R. 565.] and [Connaught 620 Ltd. Vs. Canada [Attorney General], 2008 S.C.C.7.]

9.1.2 Pardons

Through research we determined that PBC calculated the \$631 pardon fee by “identifying work activities directly linked to the processing of a pardon application and identifying the level of effort required to complete the work.”⁹⁴ Hence PBC has a method to link the user fee charged for the service to the costs of providing the service so addresses the concern raised by the OAG as stated above.

Through public documentation we found that during the 1994-95 program review exercise elected officials introduced a \$50 user fee for a pardon “to reduce the overall costs to government by having citizens who use government services pay a portion for those services” (Parole Board of Canada 2011d). The 2008 strategic review exercise initiated the process to increase the pardon user fee to \$150. After the passing of Bill C-10 and Bill C23A, elected officials then decided to move to a full cost recovery model, hence increased the pardon fee to \$631. The introduction of a user fee during program review, then increasing the fee as a part of a strategic review exercise, and then finally moving to full cost recovery, demonstrates that government was being fiscally prudent in the provision of pardons with those that disproportionately benefit from the service, paying for the service.

However in accordance with WP1, the increased user fee to \$631 was not popular with a segment of citizen-voters as demonstrated by the submittals to PBC during the public consultation process. When we examined citizen-voters’ responses as attained through an access-to-information request, we found that there were numerous submittals which referred to the increased user fee to \$631 as a ‘cash’ grab as indicated by:

- “it is a nasty cash grab”
- “really just another way for our government to make more money”
- “I believe such a high administrative fee would be just another cash grab”

⁹⁴ ATI Parole Board of Canada File number A-2013-00012 (30 August 2013)

- “raising the fee for getting a pardon is just yet another greedy cash grab.”⁹⁵

Additionally PBC provided an overall comment summarizing public consultation input with the following: “some of them also felt that the proposed fee would represent an additional tax by the Government” (Parole Board of Canada 2011b). As mentioned by a former chair of the Parole Board of Canada, interviewed in Ottawa, 09 May 2013, in his opinion the \$631 fee is considerable especially for someone who may be underemployed due to not having a pardon or for someone who may be relying on social assistance.

The pardon case confirms WP1 by demonstrating that at times user fees are initiated during times of fiscal restraint and that citizen-voters are not supportive of paying a user fee for a service that was previously provided through general taxation.

9.1.3 Security clearances

In regards to inter-departmental cost recovery for security clearances issued to private sector individuals, PWGSC bases their inter-departmental charges on historical usage, as the security directorate “has no formal process to track, monitor or report on departments that actually receive services.”⁹⁶ Hence PWGSC cannot demonstrate to client departments that “the charging methodology is appropriate for the services being provided” (Office of the Auditor General of Canada 2013a, 49).

The cost reduction exercise of program review also impacted the delivery of security clearance services by PWGSC as demonstrated by the “program was fully funded via appropriations at one time, but significant program review cuts that were previously accommodated...resulted in the under-funding.”⁹⁷ Rather than charge user fees to the private sector to compensate for the under-funding, elected officials opted to increase funding to

⁹⁵ ATI Parole Board of Canada File number A-2013-00004 (11, April 2013)

⁹⁶ ATI PWGSC File number AI-2013-00186 (18 July 2013)

⁹⁷ ATI PWGSC File number A-2013-00021, page 00220 (08 July 2013)

PWGSC through interdepartmental charging.⁹⁸ We found through an access-to-information response that even though government organizations operate with public money through appropriations that they too in their self-interest do not want to pay, through cost recovery, for services which were previously provided for ‘free’ by another government organization. A comment by a departmental security officer from a department commented that “this is another download of financial burden from PWGSC to client departments.”⁹⁹

In regards to a question posed by a government department as to how funding would be provided for the processing of security clearances, PWGSC provided the following response:

“Clearing Canadian industry does allow Canada to remain competitive and to maintain the confidence of Canadians and allies. However, client departments benefit by having access to secured contractors in that their sites and protected/classified/sensitive information and assets are protected. The methodology used to allocate this benefit cannot be directly attributed to the first user...therefore the most equitable methodology of allocating total unfunded costs by number of contracts issues is a proxy...Finance Canada provided direction not to charge industry.”¹⁰⁰

Hence although it is recognized that citizen-voters benefit from having a security clearance, elected officials made the decision that security clearances would be financed through inter-departmental cost recovery (general taxation) rather than individuals paying a user fee.

Relative to WP1, elected officials appear to be fiscally prudent in not providing more funding from general taxation to issue private industry security clearances but rather to realign costs within government.

9.1.4 Social insurance numbers

As noted by the director general of the identity policy and programs directorate at Service Canada interviewed in Ottawa, 23 December 2013, when the SIN was first created in 1964, a

⁹⁸ ATI PWGSC File number A-2013-00021, page 00220 (08 July 2013)

⁹⁹ ATI PWGSC File number A-2013-00021, page 00233 (08 July 2013)

¹⁰⁰ ATI PWGSC File number A-2013-00021, page 00220 (08 July 2013)

decision was made by the government of Canada not to charge user fees, as the SIN card is a legal government requirement.

While government does not charge a user fee for issuing a social insurance number (or card), during the 1984 expenditure and program review, as indicated by the director general, the federal government proceeded with an expenditure reduction exercise which included a plan to recover the costs associated with the re-issuance of SIN cards. The director general also stated that as a part of the 2011 strategic and operating review, ESDC committed to no longer issue SIN cards effective March 31, 2014. Hence while government had previously charged a \$10 fee for the reissuance of a SIN card, as of March 31, 2014 the issuance of SIN card has stopped thus there is no user fee associated with SINS. As government does not track the costs of the SIN program, it is unknown whether or not it would be fiscally prudent of elected officials to consider charging for the issuing of a SIN in line with WP1.

According to a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013, user fees are not meant to be a funding solution. The senior advisor further noted that during the 2011 strategic and operating review in which departments had to reduce operating expenditures, user fees and cost recovery were out of scope, hence departments could not suggest increasing or introducing fees to compensate for the reduction in operating expenditures.

Now that we have a sense of how elected officials may try to provide public services in times of economic restraint and be viewed as fiscally prudent, we will next examine more closely the relationship between citizen-voters and elected officials in WP2.

9.2 Working proposition two (WP2)

As the tax system is complex and it is difficult for citizen-voters to determine the ‘fairness’ of tax expenditures or incentives, one of the rationale behind the decision to charge

user fees for some public services with others being provided through general taxation that elected officials may want to use revolves around the notion of a service providing a disproportionate private versus public benefit. As stated by a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013, introducing user fees for public services can moderate demand for a service as users contribute to the cost of providing the service eliminating those users who may simply access the service as it is perceived as ‘free.’ However, we found that the reality is that it may be challenging to calculate the private benefit versus the overall public benefit of a public service to assess whether user fees are appropriate.

Peck (1925) contributes that the amount of public or private benefit cannot be determined mathematically as it depends upon decisions made within the political, social and economic environment. However in order to make choices within the political, social and economic environment, according to a senior advisor from the centre of regulatory expertise at TBS, interviewed in Ottawa, 06 May 2013, decision-makers may require analysis of data to be aware of the evidence so they can make an informed decision.

Understanding the private versus public benefit of a service may aid elected officials in making an informed decision as to whether or not a user fee is appropriate plus providing a rationale for elected officials to use in communicating to citizen-voters who may demand more public services that are paid for through general taxation rather than user fees according to WP2.

We next analyze our findings from our four cases regarding the private versus public benefit of each service and whether or not this is a determinate in deciding to charge user fees.

9.2.1 Passports

In examining the case of passports for WP2, we found that while passports clearly have a private benefit such as ease of travel outside of Canada and helping to prevent identity fraud,

passports also have a public benefit as in safer borders. Some citizen-voters during Passport Canada's public consultation process regarding changes to passports "expressed their view that Canadians have a right to travel. They also referred to other instances where taxes are used to fund items that do not necessarily benefit or apply to every Canadian citizen" (Passport Canada 2010). We found in public documents that a citizen-voter did put forth an argument for fiscal support through general taxation with the following argument:

"Request special funding from the Federal Government for the initial start up costs of the E-Passport. I believe I understand why Passport Canada operates on a cost-recovery basis (only people who apply for the passport should pay for the passport) however a Passport is becoming a vital piece of identification which all Canadians should own. I do not have children, yet I pay school board taxes. I do not resent paying for the education of other people's children. I believe SOME federal tax money should be allocated to Passport Canada" (Passport Canada 2010).

These comments demonstrate that some citizen-voters do think about the private versus public benefit of a public service, how it is funded, and whether government should consider financing it through general taxation or a portion thereof rather than it being completely financed through user fees such as is the case with passports.

TBS's *Canadian Cost-Benefit Analysis Guide* on regulatory proposals outlines that government organizations need to provide monetary values for all variables, even those variables which may only be known with a considerable degree of uncertainty such as border security, to allow decision makers to compare costs and benefits of variables to make an informed decision (Treasury Board of Canada Secretariat 2007b). Even though it is a TBS requirement, Passport Canada did not submit monetary values for all variables in their Regulatory Impact Assessment Statement (RIAS). Passport Canada included the following "Due to the uncertainty in quantifying the potential benefits of the Regulations in terms of border security, reduced identity fraud, and facilitated travel and trade, these benefits are presented in qualitative terms only" (SOR/2012-253 November 30, 2012. Financial Administration Act: Passport and Other Travel

Document Services Fees Regulations). Hence, we cannot determine the overall public versus private benefit using a quantifiable method for the issuing of a passport.

We can determine that as elected officials decided to establish Passport Canada as a self-funding government organization that elected officials have chosen to have users pay for Passport Canada's services even if a segment of citizen-voters would like passports to be funded, or partially funded, through general taxation.

9.2.2 Pardons

Our analysis of public documents found that while a user fee was introduced for a pardon during program review, it was not done through a cost-benefit analysis to determine how much of a private benefit accrued to the individual versus the public (Parole Board of Canada 2011d). Rather a fee of fifty dollars was introduced which only covered approximately 50 per cent of direct costs (Parole Board of Canada 2011d).

Through an access-to-information request, we determined that PBC conducted a cost-benefit analysis¹⁰¹ which calculated the overall net benefit (private versus public) for the pardon fee increase to \$631. The cost-benefit analysis stated that the benefit was almost a three to one cost-benefit ratio per individual with the analysis excluding "most of the benefits of the pardon system to Canadian society as a whole" (RIAS-Inc. 2011, pg 4). Hence, pardons were identified to have a three to one cost-benefit ratio for the individual but the benefit to society was not quantified (RIAS-Inc. 2011) thus the public versus private benefit overall cannot be determined.

The charging of user fees for a pardon is the only one of our cases which has opposing sides of citizen-voters in regards to determining a public versus private benefit. On one side are those citizen-voters who have been convicted of a crime versus other citizen-voters that are the

¹⁰¹ ATI Parole Board of Canada File number A-2010-00046, page 19 (13 April 2013). The cost-benefit analysis as prepared by RIAS-Inc. stated that the focus would be "on the change in in the pardon application fee itself not on the pardon program as a whole."

victims of crimes. Hence in determining whether or not pardons provide a public or private benefit, and whether the increased user fee to \$631 was appropriate, we found that testimony at the Standing Senate Committee on Legal and Constitutional Affairs (2011c) reflected strongly competing views as illustrated by the following excerpts:

Opposition to fee increase: “the cost benefit analysis fails to take into account the positive effects that a pardon can have on a social level. A pardon facilitates... reconciliation between the offender and society.” (pg. 42)

Support for fee increase: “Canadians are becoming increasingly frustrated at the complete lack of offender accountability and balance between offenders and victims... It must not be the responsibility of victims and...Canadians to subsidize ...pardons for those who choose, of their own free will, to engage in criminal activity.” (pg. 83)

Additionally during these committee hearings, senators agreed that pardons do benefit both society and the individual; however, benefits are deemed significant to the recipient hence the charging of an increased user fee to cover most of the costs would be appropriate. Further a senator at the meeting stated that “Canadians would be quite surprised if they knew that they were paying...most of the fees for an individual applying for a pardon” (Standing Senate Committee on Legal and Constitutional Affairs 2011c, 67).

We conclude that in the case of pardons, some citizen-voters do demand more services that others pay for and that the existence and costs of all services are not necessarily visible to many citizen-voters including those that may benefit only certain segments of citizen-voters.

9.2.3 Security clearances

Through public documents we determined that security clearances do provide a private benefit to individual citizen-voters. As stated in an OAG (2013a) report, security clearances provide Canadian private sector organizations including individual citizen-voters, access annually to contracting opportunities worth billions of dollars. Through an access-to-information request, PWGSC noted that government overall benefits from having private sector citizen-

voters security cleared as “having access to secured contractors in that their sites and protected/ classified/sensitive information and assets are protected.”¹⁰²

In 2008 PWGSC was directed by elected officials to either provide adequate resources to the industrial security sector through internal reallocation of funds as received through appropriations and/or initiate cost recovery from client departments.¹⁰³ PWGSC justified implementing inter-departmental charging versus appropriations for processing security clearances even though there is no direct ‘user benefit’ to the department being charged for services but rather the benefit is to the government as a whole plus general public security.¹⁰⁴

According to the director general of the industrial security sector at PWGSC, interviewed in Ottawa, 02 July 2013, “central agencies have determined that these services are of benefit to government in that they ensure the proper safeguarding of classified government information and assets.”¹⁰⁵ Furthermore “Finance Canada provided direction not to charge industry.”¹⁰⁶ Therefore even though individuals receive a private benefit, elected officials decided that the public benefit outweighs the private benefit and a user fee would not be charged.

While it has been acknowledged by government that a private benefit does exist for citizen-voters and perhaps a user fee would be appropriate to recover costs, we found that according to the director general of industrial security sector at PWGSC, interviewed in Ottawa, 02 July 2013, government opted to implement inter-departmental charging rather than user fees as they determined that they could not collect fees from two sources.

¹⁰² ATI PWGSC File number A-2013-00021, page 00220 (08 July 2013)

¹⁰³ ATI PWGSC File number A-2013-00021, page 00155 (08 July 2013)

¹⁰⁴ ATI PWGSC File number A-2013-00021, page 00220 (08 July 2013)

¹⁰⁵ Email received from Director General, Industrial Security Sector (14 June 2013)

¹⁰⁶ ATI PWGSC File number A-2013-00021, page 00220 (08 July 2013)

In regards to WP2, we determined that citizen-voters receiving a security clearance are benefiting from a public service provided to only a segment of the population but financed by all citizen-voters.

9.2.4 Social insurance numbers

In the case of SINs, the director general of the identity policy and programs directorate at Service Canada, interviewed in Ottawa, 23 December 2013, provided that ESDC does not specifically track the cost of operating the program. If costs are not specifically tracked we would surmise that one cannot determine if there are efficiencies to be gained by charging a user fee as the administrative cost is unknown.

However we put forth that SINs have a private benefit as the individual who is issued the number is the one who benefits from employment or government benefits and services. We found that in deciding whether to charge a fee for a public service that benefits individuals, one may consider the administrative burden on government (Treasury Board of Canada Secretariat 2007b). Perhaps some services have user fees and others not because there may be administrative costs associated with user charging which may limit the extent or design of the user fee resulting in a trade-off between economic and administrative efficiency (Bird and Tsiopoulos 1997b). Therefore we found that sometimes even if a private benefit is identified as in the case of SINs, the administrative cost of providing the service with a user fee component may not warrant the costs of collecting the fee.

In regards to WP2, we have determined that all citizen-voters are funding through general taxation the provision of SINs which provide a private benefit to individual citizen-voters.

In examining the public versus private benefit of our four cases, we found that following WP2, individual citizen-voters do ask for and benefit from services that are paid for by all citizen-voters through general taxation.

As commented by the director of budget, estimates and reporting, expenditure and revenue analysis of the Library of Parliament, interviewed in Ottawa, 14 March 2013, as a former employee of TBS: “I know from working on several files, user fees were always, one of the messiest areas ... it was always difficult to actually calculate what was a private benefit and the public benefit.”

Further supporting WP2, as stated by an elected official upon hearing testimony related to Passport Canada’s user fee proposal review: “Everyone wants more services while paying less tax and few service fees. That is often what we encounter” (Standing Committee on Foreign Affairs and International Development 2012, 7).

We next examine the impact of pressure groups on elected officials’ decisions through WP3 with pressure groups attempting to secure benefits for their citizen-voter members.

9.3 Working proposition three (WP3)

As previously determined in our theoretical framework, not all pressure groups act the same as pressure groups represent many interests of society. As pressure groups are competing against the interests of other pressure groups, they need to be aware and not become complacent and take government incentives/tax breaks as a given (Stritch 2007), resulting in pressure groups that interact regularly with elected officials perhaps receiving more tax breaks or incentives versus those that assume status quo.

In our research we had expected to find that pressure groups sought from elected officials incentives or tax breaks for their citizen-voter members without considering the impact on others. As we shall demonstrate, we found mixed results.

9.3.1 Passports

We found in testimony regarding the passport user fee proposal that a pressure group representing senior citizen-voters, called the Canadian Snowbird Association, which was seeking a reduction in passport fees for senior citizens that was subsequently not accepted by Passport Canada, supported Passport Canada's proposal to continue to offer children's passports at 60 per cent of the price of an adult's to make travel 'fairer' for families (Standing Senate Committee on Foreign Affairs and International Trade 2012a). Hence, this is an example of a pressure group not obtaining more benefits for its members but rather supporting others even when it meant no reduction in fees for its senior citizen-voters which does not support WP3.¹⁰⁷

9.3.2 Pardons

In the case of pardons, we found that pressure groups¹⁰⁸ put forth the argument that obtaining a pardon was a 'right' hence should be funded through general taxation as

¹⁰⁷ Pressure groups who participated in Passport Canada's User Fee Consultation roundtables included: Advanced Card Technology Association of Canada, Air Transport Association of Canada, Association of Canadian Travel Agencies, Association of International Customs and Border Agencies, Canadian Airports Council, Canadian Association of Tour Operators, Canadian Civil Liberties Association, Canadian Federation of Independent Business, Canadian Federation of Students, Canadian Snowbirds Association, Canadian Soccer Association, Canadian-American Border Trade Alliance, Consumers' Association of Canada, Institute for Citizen-Centred Service, International Air Travel Association, National Airlines Council of Canada, and Tourism Industry Association of Canada (Passport Canada 2010).

¹⁰⁸ Sampling of pressure groups who voiced their dissent through testimony to the Standing Senate Committee or written responses to the Parole Board of Canada, to the increase of the pardon user fee: Canadian Association of Elizabeth Fry Societies, Pardon Society of Canada, Elizabeth Fry Society of Saint John, N.B., Elizabeth Fry Society of Manitoba Inc., John Howard Society of Canada, John Howard Society of Sudbury, Mennonite Central Committee Ontario, Inmate Committee (specific location withheld), Association des services de réhabilitation sociale du Québec plus numerous individual citizen-voters.

demonstrated by a pressure group's comment "we believe that anyone who is eligible should be able to receive a pardon at an **affordable cost**, if not for free."¹⁰⁹

In our research, we also found that during the public consultation process for the increased fee to \$631 that pressure groups used the argument about individuals lacking the ability-to-pay for a pardon as illustrated by the following comments: "the cost of a pardon shouldn't go up, if anything it should go down or at least be based on your income;"¹¹⁰ additionally "raising the pardon fees will make it impossible for the poor;"¹¹¹ plus "pardons that are accessible only to people with money is unfair."¹¹² PBC's public consultation process found that the ability-to-pay consideration was one of the three most common reasons that people expressed to not increase fees to \$631 - "It would pose a financial burden for applicants, with many unable to pay the increased fee" (Parole Board of Canada 2011b). Hence, the ability-to-pay argument may be interpreted as pressure groups attempting to obtain more public services for their citizen-voter members than they fund through general taxation which supports WP3.

However unlike most user fees, the pardon user fee issue has an opposing side¹¹³ with the victims of crime to consider regarding government financing pardons through general taxation or user fees. Representatives from victims of crime pressure groups argued that those seeking a pardon should pay for a pardon, as victims of crime do not receive 'subsidized' therapy or other such measures to assist them with the traumatization of being a victim of crime (Standing Senate Committee on Legal and Constitutional Affairs 2011d). Pressure groups representing victims of

¹⁰⁹ ATI Parole Board of Canada File number A-2013-00004, (11 April 2013), bold in original

¹¹⁰ ATI Parole Board of Canada File number AI-2013-00004 (11 April 2013)

¹¹¹ ATI Parole Board of Canada File number AI-2013-00004 (11 April 2013)

¹¹² ATI Parole Board of Canada File number AI-2013-00004 (11 April 2013)

¹¹³ Sampling of pressure groups who agreed through testimony to the Standing Senate Committee or written responses to the Parole Board of Canada, with the increase of pardon user fees: Respect Group Inc., Victims of Violence Canadian Centre for Missing Children, Canadian Crime Victim Foundation, and the Canadian Taxpayers Federation plus some individual citizen-voters.

crimes do not support government funding pardons through general taxation, again supporting WP3.

In addition we found that a pressure group used a veiled threat that if government did not back down from the proposed increased fee to \$631, that the pressure group's members may not vote for the elected officials during the next election with the comment that "Our Society has a ***four figure active membership*** and our response to the outcome of this motion, will reflect our reaction at the polls."¹¹⁴ However government did not adhere to the pressure group's demands and continued with the process to increase the fee to \$631 and move the pardon program to full cost recovery.

In examining the pardon user fee case, we found that two senators (appointed officials who are also associated with victims' pressure groups) while hearing testimony at the Standing Senate Committee on Legal and Constitutional Affairs (2011c, 51-52) voiced their personal, self-interested positions during meetings on whether or not to increase the pardon user fee to \$631:

"Social equity does not always require that the State bear all of the costs. Social equity also means responsibility and accountability...the victims themselves bear all of the costs involved after a criminal act. The victim has not chosen to be a victim, but the criminal has decided to be one."¹¹⁵

"I completely disagree with your statement that we should be paying more. I believe that the state has already paid a lot."¹¹⁶

While the Senate's *Conflict of Interest Code* states that senators are not to promote their private interests (Senate of Canada 2012), in practice this does not necessarily seem to be the case. Senators supporting the governing party's agenda plus furthering personal affiliations with

¹¹⁴ ATI Parole Board of Canada File number A-2013-00004 (11 April 2013), bold and italics in original

¹¹⁵ Comment is by Senator Pierre-Hugues Boisvenu is the founding President of the Murdered or Missing Persons' Families' Association As a champion of the rights of crime victims, he founded the association after the murder of his daughter in 2002 (Parliament of Canada 2013b).

¹¹⁶ Comment is by Senator Don Meredith who in addition to being a Senator appointed in 2010, is the Executive Director of the GTA Faith Alliance which promotes finding solutions to youth violence (Parliament of Canada 2013a).

pressure groups is an example of the complex relationship between elected officials, senators as appointed officials, and pressure groups.

Hence, we determined that WP3 is corroborated as pressure groups from both sides of the pardon user fee case attempted to either gain more benefits, or stop others from gaining more benefits, from a service that affords a private benefit.

9.3.3 Security clearances

We determined through correspondence obtained from PWGSC through an access-to-information request that: “clearing Canadian industry does allow Canada to remain competitive and to maintain the confidence of Canadians and allies.”¹¹⁷ Hence there is an argument to be made regarding individuals paying a user fee for security clearances. However, PWGSC also concluded that: “departments benefit by having access to secured contractors in that their sites and protected/classified/sensitive information and assets are protected.”¹¹⁸ According to the director general of industrial security sector at PWGSC, interviewed in Ottawa, 02 July 2013, public servants found that pressure groups had indicated a willingness to pay for security clearance services. However, government made the decision to not pursue charging the private sector as is demonstrated by: “based on the TB Decision and confirmation with PCO, TBS and Finance Canada colleagues in December, further review of charging of the private sector will not be pursued.”¹¹⁹

The decision to use inter-departmental cost recovery to finance the processing of security clearances rather than charge the private sector through user fees illustrates the complexity of some government initiatives. In regards to WP3, the security clearance is an example of how pressure groups may support implementing a user fee if service standards are increased.

¹¹⁷ ATI PWGSC File number A-2013-00021, page 00223 (08 July 2013)

¹¹⁸ ATI PWGSC File number A-2013-00021, page 00223 (08 July 2013)

¹¹⁹ ATI PWGSC File number A-2013-00021, page 00313 (08 July 2013)

9.3.4 Social insurance numbers

Our research found no examples of pressure groups attempting to influence whether or not user fees were charged for the issuing of a SIN or a SIN card.

In our cases we determined that citizen-voters through pressure groups consider the redistribution of resources through public services as provided to individuals and whether or not an argument of social equity can be made to finance the provision of these services, at least partially through general taxation rather than completely through user fees. However, in reality it is difficult to measure what the ‘right’ or ‘fair’ distribution of income means; hence it is of limited value in government’s decision-making (Sproule-Jones 1994).

As stated by the director of budget, estimates and reporting, expenditure and revenue analysis of the Library of Parliament, interviewed in Ottawa, 14 March 2013, pressure groups can be influential in decision-making even when it has been determined that a private benefit may exist and a user fee may be in order:

“if it was an industry group, they would be very well organized...and then they would come in and have extensive meetings with the minister, with the minister’s staff, and they would explain why this is not justified, why in fact it might be a private benefit and they don’t quibble with the calculations. But, you know, overall the industry is facing tough times and this would be a mechanism to provide some additional support. So there ended up being a political dynamic in terms of the decisions actually made around user fees.”

In regards to WP3, we found mixed results with some pressure groups at times supporting the demands of other pressure groups as in the passport case; with some pressure groups seeking more benefits for their members and other pressure groups blocking these benefits as in the pardon case; and with some pressure groups willing to pay user fees for increased service standards as in the case of security clearances.

9.4 Summary

WP1 is confirmed as three of our four cases (pardons, security clearances and social insurance numbers) were impacted by fiscal restraint measures. Even though these cases were impacted by fiscal restraint measures the outcome was not always to implement user fees. Elected officials' decisions changed the pardon program to operate on a full cost recovery basis, security clearances became funded through inter-departmental cost recovery, and government stopped issuing SIN cards so the user fee for a replacement card is no longer relevant. For passports, user fees have always been charged, demonstrating fiscal responsibility, with Passport Canada operating on a full cost recovery basis.

WP2 is corroborated as we found examples of citizen-voters attempting to gain more public services through general taxation rather than pay user fees for two cases: passports and pardons. We also found that it is difficult to fully determine the private versus public benefit of services. The murkiness of a private versus public benefit means that citizen-voters may put forth arguments regarding why some services even though disproportionately provided to individuals should be funded through general taxation rather than a user fee including: that some services such as passports are a right and that society benefits from citizen-voters having a pardon. We determined that elected officials decided that having security cleared private sector individuals is an overall benefit to government and a user fee would not be charged. We found that even though SINs provide a private benefit, since the initiation of the program elected officials chose not to charge a user fee. For the case of security clearances and SINs as there is no user fee charged, we do not have public consultation input from citizen-voters to consider.

WP3 is not confirmed as we did not find that pressure groups were successful in influencing elected officials' decision-making and invoking tyranny of the majority. In the case of passports, we did not find that pressure groups attempted to gain more benefits for their

members at the expense of others. In the case of pardons, even though there were many pressure groups who were against the increased user fee, elected officials decided to implement the fee; thus these pressure groups failed to benefit from tyranny of the majority. In the case of security clearances, pressure groups indicated that they would be willing to pay a user fee if the service was enhanced but government chose to initiate inter-departmental cost recovery. We determined that pressure groups were not a factor for SINs.

Thus we see that at times elected officials acquiesce to citizen-voters' and pressure groups' demands for fewer user fees or subsidized services with part of the service covered by user fees and at other times, elected officials do not respond favorably to these demands demonstrating that a complex relationship exists between the various actors and the decision to charge user fees or finance public services through general taxation.

In the next chapter we shall examine the legislative environment of government.

Chapter 10

Legislative and Oversight Environment

10.0 Introduction

As discussed previously, elected officials have initiated a number of fiscal restraint exercises over the years. In addition to providing fewer financial resources, elected officials sought to control the bureaucracy by instilling more legislation, regulations, and administrative rules to strengthen overall public sector management practices.

This is not to say that legislation and regulations are put in place to solely control the bureaucracy as we have previously determined that these may be used by elected officials to achieve policy objectives which are in elected officials' self-interest as they work to please constituents in order to, hopefully, win votes (Buchanan 2005; Savoie 2010, 2013). However, while elected officials may enact legislation, regulations, and policies, it is the bureaucracy that does the implementation.

Also to be considered is when legislation and regulations are enacted, an 'actual' policy may be different from an 'optimal' policy as the latter considers technical and informational constraints but not the constraints of politics (Drazen 2000). Hence legislation, regulations and policies may need modification as elected officials become aware of potential limitations, often highlighted through reports by oversight bodies such as the OAG, as the bureaucracy works through the implementation process.

Over the years as elected officials instilled more rules to strengthen overall public sector management practices, the number of rules have increased to such a point that it has become "a widely held conviction that committed managers were being undermined by a culture based overmuch on rules – that following the rules was viewed as more important than getting results" (Edwards 2001, 8). Hence, the complexity and number of rules were found to impede the bureaucracy in delivering public services to citizen-voters (Lepine 2007).

With a view to lessen the number of management policies, in 2005 elected officials initiated a review of Treasury Board policies with the intent to streamline and strengthen how government operates (Treasury Board of Canada Secretariat 2012b). However the government's notion of streamlining management policies means that as of 2012, TBS has established 38 policies, 92 directives, 49 standards, and 53 guidelines that need to be followed by government organizations (Treasury Board of Canada Secretariat 2012b). Thus while elected officials speak about streamlining the number of rules; the reality is that even a 'streamlined' version of management rules is still complex. In addition to following these streamlined management practices, government organizations also need to follow overarching legislation and regulations.

In Chapter 7 we outlined the various pieces of legislation, regulations and management policies that need to be followed when implementing user fees. In this chapter consistent with WP4, we shall examine how elected officials use legislation, regulations, and oversight bodies to control what gets done and how by the bureaucracy in the implementation of user fees as we present our findings and analysis regarding the legislative environment encountered by the bureaucracy.

10.1 Working proposition four (WP4)

The *Financial Administration Act* (R.S.C., 1985, c. F-11) (FAA) is the overarching legislative framework which governs the bureaucracy by setting out the formal rules for the administration and management of the public service (Treasury Board of Canada Secretariat 2005). The FAA also authorizes the passing of regulations which, similar to legislation, are official published instruments that are binding and “usually set out rules that apply generally, rather than to specific persons or situations” (Treasury Board of Canada Secretariat 2012a). Furthermore, the FAA outlines the responsibilities of ministers and deputy heads in regards to

their government organizations including the responsibility for implementing appropriate management processes and monitoring the performance of these processes (Treasury Board of Canada Secretariat 2005).

Elected officials monitor the bureaucracy's implementation of legislation and regulations by establishing ex post sanctions such as the OAG. As an independent federal organization, the OAG provides Parliament with objective, fact-based information which Parliament utilizes to fulfill its role of holding the bureaucracy accountable for the stewardship of public funds (Office of the Auditor General of Canada 2013b). The role of the OAG is not to question the merits of government policies but instead it examines government's management practices based on the policies which have been set (Good 2008). As stated by an assistant auditor general from the OAG, interviewed in Ottawa, 5 May 2013, when new legislation such as the UFA is passed, the auditor general may want to conduct an audit to see if the new legislation is operating as intended or whether or not there are concerns.

The OAG tables reports to the Standing Committee on Public Accounts which then holds hearings and issue their own report on a particular subject, and/or receive the government organization's response to the OAG's report (Office of the Auditor General of Canada 2011). When the OAG tables a report through Parliament, the reports are automatically referred to the appropriate parliamentary committee who then hold hearings to discuss issues raised, with attendees comprised of the OAG, TBS and senior public servants from the audited government organizations who respond to findings and provide action plans as appropriate (Office of the Auditor General of Canada 2011). Upon the completion of hearings, the parliamentary committee may issue a report that includes recommendations to the government entity that is expected to table a response to the report within 120 days (Office of the Auditor General of

Canada 2011). During a given parliamentary session, TBS and government organizations may need to respond to numerous parliamentary committees' reports plus OAG reports.

In addition to the OAG there are 'oversight' bodies such as the Cabinet Committee of Treasury Board as part of the Executive and its Secretariat, to monitor the implementation process of legislation such as user fees. The Cabinet Committee of Treasury Board and its Secretariat, among other duties, is responsible for comptrollership, administrative management and approving regulations (Prime Minister of Canada 2013). Government organizations must adhere to numerous policies, directives, and standards which are mandatory plus guidelines which are considered voluntary (Treasury Board of Canada Secretariat 2012b) under the watchful eye of TBS and oversight by the OAG.

According to the Auditor General's testimony in responding to a question by an elected official relating to the role of TBS in establishing management policies and then monitoring departments' adherence to policy:

"This discussion always comes back to the relative weight of responsibilities among the central agencies, the Treasury Board Secretariat and the deputy ministers and their own departments. It is up to the ***Treasury Board Secretariat to establish those management policies***. They should be doing some monitoring, but I think at the end of the day we also have to say that it is ***up to the departmental heads to make sure their departments are meeting and respecting the policies that are put in place***" (Standing Committee on Public Accounts 2008, 16, bold added).

Thus we understand that while TBS sets the policy framework, it is up to government organizations, led by the deputy head, to follow it; however, the multitude of policies may make it challenging for government organizations to adhere. According to a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013, TBS policies change to adapt to legislation such as the UFA. While the only legislation in the last twenty years which has impacted user fees is the UFA, TBS policies related to the management of user fees have changed several times as explained in Chapter 7. With each change, government organizations

must adapt their understanding of requirements for such things as the user fee process, or risk being found noncompliant in reviews by TBS and the OAG.

Hence elected officials provide oversight of the administration of the bureaucracy through ex post sanctions in addition to providing direction through legislation and regulations. Furthermore TBS provides guidance on management practices to government organizations by implementing policies, directives and guidelines which align with various parliamentary requests and legislation.

Not only do government organizations need to align with specific legislation and regulations related to their entity but they also need to adhere to the TBS policy framework related to user fees and costing while ensuring that any other regulations such as the *Canadian Charter of Rights and Freedoms Examination Regulations* and the *Privacy Act*, and/or other TBS policies are not at cross-purposes. As there is a multitude of legislation and regulations to work through, departments as a part of the review process such as for the introduction or amendment of user fees includes engaging with the Department of Justice Canada. Departments engage with the Department of Justice Canada in keeping with the *Statutory Instruments Act*, to examine proposed regulations to ensure that they:

“have the necessary legal authorization to be made; are consistent with the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights, 1960; are not an unusual or unexpected use of the enabling authority; and are drafted in accordance with established standards.” (Treasury Board of Canada Secretariat 2012a).

In other words, as confirmed by a senior advisor from the centre of regulatory expertise at TBS, interviewed in Ottawa, 06 May 2013, the Department of Justice Canada reviews a proposed regulation and then puts a blue stamp on it to say there are no conflicts with other legislation or regulations. Additionally, the senior advisor provided that Justice Canada also

reviews the regulation to ensure that the act supporting the proposed regulation actually provides the needed delegated authority to make the regulatory change.

We now turn to look at each of our cases and how government organizations providing a service are impacted in needing to adhere to multiple legislation, regulation and management policies plus respond to oversight bodies.

10.1.1 Passports

As outlined in Chapter 8, we found in public documentation that Passport Canada is mandated by the *Canadian Passport Order* (SI/81-86), an Order issued by the Executive through the Royal Prerogative thus is changed by Governor-in-Council announcements in the Canada Gazette, rather than through an Act of Parliament, therefore changes are not subject to parliamentary oversight or review but are subject to judicial review (Library of Parliament 2009). As Passport Canada operates under a revolving fund, it is also subject to the *Revolving Funds Act* (R.S.C., 1985, c. R-8). The *Revolving Funds Act* provides the authority for the Minister of Foreign Affairs to make expenditures out of the Consolidated Revenue Fund for the purpose of operating passport offices.

We determined through our research that oversight bodies such as the OAG, impact Passport Canada when reports are tabled to various parliamentary committees. For example, the OAG (2005, 2007b, 2009) has tabled three reports (descriptions provided in Chapter 8) regarding Passport Canada that included follow-ups to audit recommendations from previous reports in which the OAG reported that Passport Canada was struggling to meet heightened expectations for security and growing demands for service. The Standing Committee on Public Accounts (2006, 2007, 2009), who received the OAG reports, then issued their own reports in response to ensure recommendations were being responded to by Passport Canada. Passport Canada (2006a,

2006b, 2008) subsequently issued a government response to provide updates on action plans as a result of each of the OAG and Standing Committee on Public Accounts reports. This circular pattern of reporting provides a mechanism for oversight by elected officials of government organizations and an opportunity to amend legislation and regulations as required.

To amend passport user fees, Passport Canada needs to also take into consideration the following legislation and regulations: *Financial Administration Act* (R.S.C., 1985, c. F-11), *User Fees Act* (S.C., 2004, c.6), and the *Passport and Other Travel Document Services Fees Regulations* (SOR/2012-253 November 30, 2012. Financial Administration Act: Passport and Other Travel Document Services Fees Regulations). Also according to the UFA, both the Standing Committee on Foreign Affairs and International Development and the Standing Senate Committee on Foreign Affairs and International Development reviewed Passport Canada's user fee proposal in 2012 (Standing Committee on Foreign Affairs and International Development 2012; Standing Senate Committee on Foreign Affairs and International Trade 2012b).

Additionally various parliamentary committees may hold meetings and issue reports regarding Passport Canada thus acting as oversight bodies. Parliamentary committees as 'oversight bodies' are left free to organize their committee work as they deem appropriate (House of Commons 2013). Hence, committees may directly or indirectly impact a government organization if they decide to study a particular event. An example we found of committee impact is the Standing Senate Committee on Banking, Trade and Commerce (2006) who conducted a study called *Passports and PASS Cards, Identity and Citizenship: Implementing the Western Hemisphere Travel Initiative* (WHTI).

10.1.2 Pardons

From public records we established that for PBC, the responsibility for making decisions to order, refuse to order and revoke record suspensions is under the *Criminal Records Act* (R.S.C., 1985, c. C-47) subsections 4(1- 4), sections 4.1, 4.2, 7, 7.1, and 7.2, and *Criminal Records Regulations* (SOR/2000-303) section 1.1 related to federal acts and regulations.

We determined through our research that PBC was impacted by numerous pieces of legislation in the past few years which PBC needed to take each into consideration to carry out its mandate. Legislation specifically affecting pardons includes:

- Bill C-23A (An Act to Amend the Criminal Records Act, 40th Parliament, 3rd Session, 2010) which requires PBC employees to review applications and for board members to write a report for every pardon application accepted whether granted or denied (Parole Board of Canada 2011d). Bill C-23A also provided PBC the authority to make inquiries related to pardon applications for all offences; provided PBC the discretion to consider additional factors in decision-making; established factors that PBC may consider related to whether the granting of a pardon would bring the administration of justice into disrepute; and implementing the assessment of good conduct (RIAS-Inc. 2011, pp. 5-6); and
- Bill C-10¹²⁰ (An Act to Enact the Justice for Victims of Terrorism Act and to Amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and Other Acts, 41st Parliament, 1st Session, 2012) provided amendments changing the name from ‘pardons’ to ‘record suspension,’ and altered the ineligibility periods for applications to five years for a summary conviction and ten years for an indictable offense (Library of Parliament 2010).

From an oversight perspective, we found that the OAG (1994, 1998a, 2003) has issued several reports related to pardons and PBC (descriptions provided in Chapter 8) with PBC

¹²⁰ Bill C-10 was formerly Bill C-23B (Library of Parliament 2012)

responding to each report as required. The House of Commons committee that PBC is associated with is the Standing Committee on Public Safety and National Security. PBC is also associated with the Senate Standing Committee on National Security and Defence.

We determined that to increase pardon fees to full cost recovery, PBC complied with the following legislation and regulations: *Financial Administration Act* (R.S.C., 1985, c. F-11), *User Fees Act* (S.C., 2004, c.6), *Pardon Services Fees Order* (SOR/95-210), *Criminal Records Act* (CRA) (R.S.C., 1985, c. C-47), and the *Corrections and Conditional Release Act* (S.C. 1992, c. 20). From an oversight perspective, the Standing Senate Committee on Legal and Constitutional Affairs (2011a) approved PBC's two user fee proposals.

10.1.3 Security clearances

In the case of security clearances we determined that the 2009 *Policy on Government Security* applies to any department, of which PWGSC is one, within the meaning of Schedules I, I.1, II, IV and V, of the *Financial Administration Act* (R.S.C., 1985, c. F-11). The *Policy on Government Security* provides that government security is the assurance that information, assets and services are protected against compromise (Treasury Board of Canada Secretariat 2009b). On top of government organizations adhering to the *Policy on Government Security*, we found that every private sector organization and individual provided with a security clearance under the Industrial Security Program (ISP) located within PWGSC must be familiar with the contents of the *Security of Information Act* (R.S.C., 1985, c. O-5) (Public Works and Government Services Canada 2013b). Hence ISP fulfills its mandate through the *Security of Information Act* (R.S.C., 1985, c. O-5) and the *Policy on Government Security*.

Through public records we found that from an oversight perspective, the OAG (2007a, 2013a) has issued two reports on security in contracting which impacts the ISP. The Standing

Committee on Public Accounts issued a report in response to the OAG's 2007 report which resulted in PWGSC and TBS issuing a joint government response outlining how government was planning on addressing the recommendations within the OAG's report (Treasury Board of Canada Secretariat and Public Works and Government Services 2010; Standing Committee on Public Accounts 2010b). Additionally the Standing Committee on Public Accounts held a meeting to discuss the OAG's 2013 report where the OAG testified that of the three follow-up audits and the seven new audits in its 2013 report, the status report on security in contracting contained some serious concerns and is considered one of the most urgent chapters in the overall report as significant weaknesses remained in critical areas (Standing Committee on Public Accounts 2013). As ISP is primarily responsible for private sector organizations regarding security, any government report on contract security would be of interest to ISP.

From an access-to-information request we found that the decision to move to inter-departmental cost recovery was a Treasury Board decision¹²¹ and the decision to not charge the private sector for security clearances was a Finance Canada decision.¹²² Thus in effect, both Treasury Board and Finance Canada as central agencies act as oversight bodies to government organizations.

10.1.4 Social insurance numbers

We determined that the federal government uses SINS as a file number, or account number, for data-processing purposes in the administration of specific Canadian government programs as defined in the *Employment Insurance Act* (S.C. 1996, c. 23). The SIN program is governed by sections 28.1 to 28.4 of the *Department of Human Resources and Skills Development Act* (S.C. 2005, c. 34); sections 138, 139 and 140 of the *Employment Insurance Act*

¹²¹ ATI PWGSC File number A-2013-00021, pages 00953 -00968 (08 July 2013)

¹²² ATI PWGSC File number A-2013-00021, page 00220 (08 July 2013)

(S.C. 1996, c. 23); sections 1 to 14 of the *Social Insurance Number Regulations* (SOR/2013-82); and subsections 89(1) to 89(6) of the *Employment Insurance Regulations* (SOR/96-332).

We also found that legislation has provided use of the SIN for income tax identification; banks, trust companies, caisse populaires and for stock brokers who sell individuals financial products or provide services that generate interest plus various government programs (Office of the Privacy Commissioner 2008). This is of interest as there is a cross-over between government and private sector organizations, with both using SINs and having responsibilities to adhere to federal government legislation and regulations.

We found that Bill C-38 (An Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 29, 2012 and Other Measures, 41st Parliament, 1st Session, 2012) was the formal legislation which announced changes to the SIN including that a SIN card (not the number but the card itself) ‘may’ be issued rather than ‘shall’ be issued moving the dispensing of the SIN card from a mandatory service to a discretionary service. To provide the option of whether or not to issue a SIN with a user fee attached to it, ESDC was required to adhere to the *Human Resources and Skills Development Canada Act, Employment Insurance Act, Social Insurance Number Regulations, and Immigration and Refugee Protection Act* (SOR/2013-82 April 26, 2013. Department of Human Resources and Skills Development Act/Employment Insurance Act: Social Insurance Number Regulations).

As provided in Chapter 8, from an oversight perspective the OAG (1998b, 2002, 2007c) has issued several reports on SINs which impacts ESDC. The Standing Committee on Public Accounts (1998, 2002) held meetings to address the 1998 and 2002 OAG audits. No committee hearings were held to specifically address the 2007 OAG audit report. The Standing Committee on Human Resources Development and the Status of Persons with Disabilities (1999) issued a

report called *Beyond the Numbers: The Future of the Social Insurance Number System in Canada* in response to the OAG's 1998 report. The Standing Committee on Human Resources Development and the Status of Persons with Disabilities also held a meeting (no report was issued) in response to the OAG's 2002 report with ESDC responding they were continuing to implement the action plan developed to address the concerns raised in the 1998 report which would address the same concerns in the 2002 report (Standing Committee on Human Resources Development and the Status of Persons and Disabilities 2002).

The director general of the identity policy and programs directorate at Service Canada, interviewed in Ottawa, 23 December 2013 provided that with the creation of the SIN in 1964, government decided not to charge a user fee as the SIN is a legal requirement.

10.2 Summary

In this chapter we determined that WP4 is corroborated for all of our cases. In reviewing our findings and analysis for our four cases we determined that government organizations must adhere to a variety of legislation, regulations and policies in order to have an item changed within the organization such as user fees or cost recovery. We determined that the OAG, TBS and various parliamentary committees act as oversight bodies in monitoring what each government organization is doing in delivering services. We found that the legislative environment is cyclical with elected officials passing legislation and regulations, TBS adjusting or introducing management policies as required to adapt, departments implementing TBS management policies, and then the OAG reviewing how TBS and departments have done so plus providing recommendations for improvement by tabling reports to Parliament.

In the next chapter we shall examine how the legislative environment may impact the relationship between elected officials and the bureaucracy.

Chapter 11

Relationship between
elected officials and
bureaucracy

11.0 Introduction

As previously explained, parliamentarians as elected officials control the bureaucracy through legislation, regulation and oversight bodies:

“Managers in the federal Public Service serve in an institution created and governed by a complex array of statutes, regulations, policies, and directives. They operate in an environment of increasingly intense scrutiny” (Treasury Board of Canada Secretariat 2005).

Not only are there numerous rules to follow in administering various legislation, regulations and policies but deputy heads may also need to obtain agreement or sign-off beyond their departmental minister such as from a number of authorities within central agencies each of which has their own elected official as minister plus input from other parliamentarians, adding to the complexity of managing the implementation of initiatives such as user fees within the federal government.

The decision to implement user fees for public services ultimately rests with the deputy head of the organization that is responsible for the management of his organization. However, at times there may be other considerations or influences beyond the control of the organization that can impact this decision. These influences may include elected officials’ decisions or central agency policies such as balancing between national security and human rights (Eliadis 2011), or balancing between national security and privacy (Chandler 2009), or balancing privacy with creating, collecting, using and sharing information across government (Treasury Board of Canada Secretariat 2012c).

In this chapter we will discuss our findings related to WP5 and WP6 which revolve around the complex relationship between elected officials and the bureaucracy as the bureaucracy strives to implement enacted legislation, regulations and policies. In line with WP5, deputy heads are responsible for the financial management of their organizations thus may consider implementing user fees as a government organization can retain these funds; however

deputy heads are unlikely to implement user fees unless operating budgets are decreased as the process is complex with the implementation of user fees taking two to three years. Following WP6, deputy heads may be constrained in implementing user fees as the final decision rests with elected officials who may not be in favour of user fees as user fees may not be popular with citizen-voters.

11.1 Working proposition five (WP5)

The deputy head as the senior management executive of the department, after obtaining ministerial approval, is responsible for the decision to implement user fees (or not) (Treasury Board of Canada Secretariat 2009a). However, as shall be demonstrated, the process for implementing user fees may be complex and time consuming. It is the responsibility of the deputy head to ensure that the department complies with administrative policies and procedures and to maintain effective systems of internal control (Privy Council Office 2007).

As elected officials control the appointment of deputy heads, elected officials have only a limited requirement to directly monitor or supervise the bureaucracy (Mueller 2003; Borcharding and Besocke 2004) or even to assure compliance with policies without specifying or even necessarily understanding what substantive outcome is in elected officials' self-interest (McCubbins, Noll, and Weingast 1987) as deputy heads may be replaced if they fall out of favour with elected officials. For example the governing party may table legislation requiring the bureaucracy to disclose certain information through a Treasury Board Submission¹²³ or a User Fee Proposal which is used to propose a new user fee or amend an existing fee. The requirement for such documents permits the governing party to be aware of an organization's plans before these plans are executed presenting an opportunity for elected officials to intervene if these plans

¹²³ "A Treasury Board submission is an official document submitted by a sponsoring minister on behalf of a federal organization seeking approval or authority from the Treasury Board ministers for an initiative that is beyond the federal organizations delegated authority or involves funding for policies, programs or activities" (Health Canada 2011).

do not align with the direction of the governing party (Borcherding and Besocke 2004; Savoie 2003, 2010).

As discussed in the previous chapter, the OAG tables reports with findings and recommendations to the House of Commons for such matters as reviewing the implementation of user fees by departments. Parliamentary committees may hold meetings and invite government officials to respond to OAG reports. If summoned a deputy head has a legal obligation to appear before a parliamentary committee to answer questions on management responsibilities (Privy-Council-Office, 2007). Thus deputy heads will want to ensure alignment of policies in the implementation of items such as user fees with other government legislation and TBS policies in order to respond favorably when called to testify in front of a parliamentary committee.

As stated there are numerous regulations and legislation which deputy heads must adhere to in the management of their organizations. In addition many government organizations' program funding is through departmental appropriations rather than through cost recovery as some services do not meet the conditions for external charging. Thus with the introduction or amendment of user fees, there may be a significant learning curve by public servants to understand the user fee process as it is not part of their regular responsibilities. During TBS's *Review of the Cost Recovery and User Fee Approval Process* in 2001, interviewees expressed that the regulatory process for implementing user fees was long and complicated, confusing, and that significant resources were required to support the initiative (Treasury Board of Canada Secretariat 2001). It was mentioned during several interviews for this study that the process to amend user fees is time intensive. Even though interviewees commented that the process was time intensive, they indicated that they did not want the comments attributed to them.

As we discussed in Chapter 7, to assist departments TBS developed tools and guidance documents for public servants to follow when implementing user fees in order for them to understand how to work through the complex process. For example TBS's *User Fee Proposal Approval Process* guidance document (Figure 7.1) outlines the four phases of the user fee process. Additionally, if there are challenges through the public consultation process, a government organization needs to go through the six phases of the *User Fee Complaint Process Flowchart* (Figure 7.2). As we shall demonstrate, all of these steps take considerable time to work through depending upon the complexity of the user fee proposal.

As stated by a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013, only 12-13 government organizations as of May 2013, have gone through the UFA process thus it is still a relatively new process. The senior advisor further indicated that depending upon the complexity of the user fee proposal process, at times the process can be quick (e.g. 9-12 months), sometimes it can be more lengthy (e.g. 2-3 years), and sometimes it is even longer as it is beyond the control of the government organization as Parliament may dissolve and the government organization needs to wait until Parliament resumes.

The OAG (2008) found that the parliamentary process under the UFA may mean that there are long delays in reviewing fees. Further, the OAG established that if government decided to review and modify fees more regularly, such as every five years, the government may find that there are significant delays in implementing fees and collecting revenue as departments need to wait for parliamentary approval. According to a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013, an anticipated directive on user fees is expected to state that government organizations must review fee structures every five years. Whether the review of fee structures every five years will mean delays in parliamentary approval remains to be seen.

Beyond UFA requirements, user fees are often linked to regulatory acts as fees for public services can be set either by “enabling statute or by regulation” (Office of the Auditor General of Canada 2008). To meet the requirements of the regulatory affairs process as set out by TBS, a cost-benefit analysis is required (Treasury Board of Canada Secretariat 2012a) which may add time to the overall user fee process. A cost-benefit analysis provides an economic viewpoint of the regulation (Treasury Board of Canada Secretariat 2012a).

We next analyze each of our cases to assess the experience that each government organization had when deciding to implement user fees (or not).

11.1.1 Passports

We found that even though Passport Canada has always charged a fee for passports, in order to increase the fees Passport Canada must still adhere to the rigorous *User Fee Proposal Approval Process* (Figure 7.1) which can be time consuming and intense as was articulated by the deputy head at a Senate committee hearing:

“Passport Canada's fee-for-service proposal, the result of two years of inclusive public consultations under the User Fees Act...we conducted an international comparison...we published our fee-for-service proposal...We invited Canadians to provide input...Passport Canada replied to all the input...those who submitted input were allowed to request independent advisory panels if they were unsatisfied with our responses... brings us to the parliamentary tabling of our proposal” (Standing Committee on Foreign Affairs and International Development 2012, 2).

According to a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013, Passport Canada took a year to work through Phase 1 (the public consultation process) of the *User Fee Proposal Approval Process* as they did two public consultation sessions, one for passport services overall and the other for the user fee.

Beyond conducting public consultations as a part of the UFA process, we found that Passport Canada in order to fulfil the requirements of the *Cabinet Directive on Streamlining*

Regulation also had to complete a cost-benefit analysis as part of the RIAS requirements (Passport Canada 2012b) adding to the time required to alter passport fees.

Public documents stated that it was very important to Passport Canada's existence that it determine the appropriate level of service and fees for passports as Passport Canada operates on a ten-year cycle for funding requirements (Standing Senate Committee on Foreign Affairs and International Trade 2012a). Additionally as a full cost recovery organization, Passport Canada needs to ensure that it has sufficient funds to operate with a positive cash flow (Standing Senate Committee on Foreign Affairs and International Trade 2012a).

11.1.2 Pardons

We determined that while deputy heads may decide to implement user fees as a part of good financial management such as is the case of PBC, the process can be complex not only due to the number of approvals and regulations to be followed but Parliament may prorogue which means that deputy heads must wait until it resumes sitting to further the process related to cost recovery efforts. We found that Parliament dissolving affected PBC's two user fee proposals, one to \$150 approved December 2011 and the other to \$631 approved March 2012, increasing the workload required for increasing the pardon user fee. For one of the interviews for this study, an interviewee brought with him three binders with each holding a separate user fee proposal. By simply being aware of this volume of paper and understanding the timelines that needed to be adhered to, one can surmise that going through the user fee approval process is time intensive.

Additionally for the increase to a \$631 pardon fee PBC only allocated two weeks for their public consultation process as they were working towards a legislative deadline. Unlike Passport Canada, PBC also had to work through Phase 2, Step 2(a) of the *User Fee Proposal Approval Process* which is the independent panel review of client complaint, potentially lengthening the time for the user fee proposal process. PBC had to complete Step 2(a), which is further

elaborated in the *User Fee Complaint(s) Resolution Process Flowchart* (Figure 7.2), as there were 16 formal complaints regarding the increase in the pardon fee to \$631 (Parole Board of Canada 2011b; Standing Senate Committee on Legal and Constitutional Affairs 2011c). As there were formal complaints that could not be resolved, PBC had to convene a three-member independent advisory panel (Parole Board of Canada 2011b; Standing Senate Committee on Legal and Constitutional Affairs 2011c).

PBC had to wait for Parliament to resume sitting each time before they could continue with their two user fee proposals. They had to wait for Parliament to resume as Phase 3 of the *User Fee Proposal Approval Process* (Figure 7.1) is to table the proposal in both Houses of Parliament. User fee proposals are tabled in both Houses of Parliament to comply with Sections 5 and 6 of the UFA which states that the appropriate Committees are given the opportunity to review and make recommendations before the Houses pass resolution for each user fee.

To fulfil the requirements of the *Cabinet Directive on Streamlining Regulation* as directed by the Regulatory Affairs division of TBS, PBC was required to complete a RIAS for each user fee proposal (Canada Gazette 2011, 2012; RIAS-Inc. 2011) which added to timelines.

During an interview with the manager of financial planning and reporting of PBC, interviewed in Ottawa, 21 May 2013, we found that the overall cost of PBC processing a pardon application was determined through an activity-based management and costing exercise which provided the elements for determining direct and indirect costs. As an OAG (2008) report stated that citizen-voters may challenge the validity of a user fee, it is important that there is a reasonable relationship between the user fee and the cost to provide the service or the user fee may be deemed an unlawful tax if the fee is found to be greater than the cost to the government. Hence in moving to full cost recovery, it was important that PBC accurately determine the cost

of providing pardon services in order to set an appropriate fee. Doing the activity-based management and costing exercise meant that even more time was required to complete activities related to the two user fee proposals.

11.1.3 Security clearances

We found that not only is the implementation of user fees complex and time intensive but also implementing inter-departmental cost recovery is time intensive. In a response from an access-to-information request provided to us, we found that the Industrial Security Sector within PWGSC planned a three to four year timeframe to implement inter-departmental cost recovery for contract security due to the consultation process, fee structure development, TB Submission, and implementation.¹²⁴

We also determined that while security clearances have a regulatory act associated with them, they did not have a publicly available cost-benefit analysis (with or without user fees) as it was deemed that changes to the funding of the Industrial Security Sector had no impact on citizens.¹²⁵

11.1.4 Social insurance numbers

As previously stated there is no user fee charged for issuing a SIN but up until March 31, 2014 a ten dollar fee was charged to issue a replacement card. The director general of the identity policy and programs directorate at Service Canada, interviewed in Ottawa, 23 December 2013 said that as part of the 2011-2012 strategic review exercise, ESDC committed to discontinuing the issuing of the SIN card. Testimony provided by a public servant at the Standing Senate Committee on National Finance noted that government would save approximately \$1.5 million per year by not producing the cards (Standing Senate Committee on National Finance 2012).

¹²⁴ ATI PWGSC File number A-2013-00021, page 00318 (08 July 2013)

¹²⁵ ATI PWGSC File number A-2013-00021, page 00318 (08 July 2013)

We found that to stop issuing SIN cards there were numerous pieces of legislation that had to be passed to make this ‘simple’ change including an announcement in Budget 2013 (Finance Canada 2013a) and the passing of Bill C-38 (An Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 29, 2012 and Other Measures, 41st Parliament, 1st Session, 2012). Additionally, ESDC had to complete a Forward Regulatory Plan to comply with the regulations associated with the SIN indicating that “there is no requirement for formal consultations, given the administrative nature of this action” (Human Resources and Skills Development Canada 2013b). To gain the appropriate authorization to stop the production of the SIN card, ESDC also had to publish notification in the Canada Gazette and indicate that no public consultation was required (Canada Gazette 2013).

We determined that even when it is a relatively small change such as discontinuing issuing SIN cards, there are numerous pieces of legislation, regulations and policies that must be prepared for, and adhered to, in order to make the lawfully required changes. The government decision was made during the 2011-2012 time period but not fully enacted until March 2014 thus it required almost three years to fully execute the decision to discontinue producing SIN cards.

In examining our four cases we have determined for WP5 that while deputy heads are responsible for the financial management of their organization they may not be inclined to introduce user fees or inter-departmental cost recovery to finance public services unless their budget is squeezed as the process is time intensive.

We next examine findings related to WP6 which provides that deputy heads may be constrained in implementing user fees (or not) as the final decision needs to be approved by elected officials.

11.2 Working proposition six (WP6)

The Governor-in-Council appointment process provides the statute which specifies appointment authority including the deputy head being responsible for the financial management of the government organization (Privy Council Office 2008). As the deputy head was given increased autonomy with more flexibility and latitude in the financial management of his department, one financial incentive provided was retention of funds raised from cost recovery rather than having funds distributed to the Consolidated Revenue Fund (Good 2008). Thus deputy heads may be encouraged to review programs and determine whether or not the benefits of the program is directed at Canadians as a whole or individually. If it is determined that programs are directed towards particular individuals, a user fee may be appropriate (Treasury Board of Canada Secretariat 1997), and if this is the case deputy heads may be recognized as running their department more efficiently if they decide to initiate cost recovery.

However in order to implement user fees, the deputy head requires approval from the minister plus other decision-makers. The deputy head gives his best advice to the minister but decisions are made by elected officials (Zussman 2013). Given our findings and analysis in Chapter 9 related to WP1, WP2 and WP3, it is unlikely that elected officials will support the implementation of user fees unless government has the desire to be seen as being fiscally prudent as it is not in government's self-interest. Consistent with our discussion in Chapter 9 related to WP1, elected officials may want to appear fiscally prudent by initiating cost cutting reviews resulting in the possible reduction in operating budgets, hence may direct deputy heads to consider the introduction of, or amend, user fees to help support program costs.

Government and the bureaucracy have a tacit understanding over their respective duties with the bureaucracy providing impartial and objective advice to government followed by the bureaucracy implementing whatever decision has been made in a nonpartisan manner (Savoie

2003). Thus government may ask public servants for impartial advice regarding the implementation of user fees or cost recovery, the government makes a decision as to whether or not to follow the advice, with public servants implementing the decision.

We found examples in our cases of public servants providing impartial advice to elected officials for decision-making related to user fees and cost recovery and then public servants implementing these decisions.

11.2.1 Passports

In the case of passports we found that not only was the minister responsible for the decision-making related to the user fee increase but also other parliamentarians questioned the rationale behind the decision. The following is an example of a senate committee member questioning the authority of Passport Canada's deputy head in regards to who made the final decision around passport fees:

“Why do you offer the two options? Is it your decision or the government's?...With respect to the policy decision, did Passport Canada decide not to cover the full cost of children's passports or was that a decision of the government? Do you have the authority to make those decisions internally?” (Standing Senate Committee on Foreign Affairs and International Trade 2012a).

Even though passports have always had a user fee associated with them, and the fees are only formally reviewed every ten years, and Passport Canada went through the appropriate public consultation process to determine the ‘right’ fees, senators used the meetings as an opportunity to question not only the fee levels but who has the authority to set the fees.

We found that Passport Canada was required to appear before the Standing Committee on Foreign Affairs and International Development on one occasion plus three meetings of the Standing Senate Committee on Foreign Affairs and International Trade to answer questions regarding Passport Canada's fee proposal (Standing Committee on Foreign Affairs and International Development 2012; Standing Senate Committee on Foreign Affairs and

International Trade 2012a, 2012b). While the meetings were time intensive and direct for public servants, there were no recommendations made by either committee regarding the proposed passport fees.

11.2.2 Pardons

We found an example of public servants articulating that they only provide advice to elected officials for decision-making, when a public servant testified at a senate meeting regarding PBC's pardon fee increase to \$631:

“the board is responsible for administering the pardons program...To amend the fee, we are required to follow regulatory processes and the User Fees Act. It is our responsibility to conduct the consultations, collect the results and comments from the public and various organizations and provide that information to the minister as well as to committees, the House and the Senate. **It is up to the government to decide whether or not to implement the fee.** To reframe it, our responsibilities are to implement the pardons, to follow the regulatory and user fees requirements and to collect that information for the government to consider” (Standing Senate Committee on Legal and Constitutional Affairs 2011c, 15,bold added).

The public servant acknowledged that it is not his place to comment on the decision to increase the user fee but rather the public servant comments that the bureaucracy has gathered the information for elected officials to make a decision which public servants will implement.

11.2.3 Security clearances

In the case of security clearances, we established that one of the findings from the OAG (2007a) report was that PWGSC needed to obtain stable funding for the Industrial Security Program which processes private sector security clearances as 30 per cent of funding was through departmental reserves rather than allocated funding. A response found in an access-to-information request provided that PWGSC has been internally reallocating funds to the Industrial Security Program since 1998. This would imply that the deputy head has found it easier to reallocate funds from departmental reserves rather than pursue a different funding solution such as user fees.

The deputy head of PWGSC testified at a Standing Committee on Public Accounts' meeting that in 2008 an additional \$11.2 million had been allocated for that year for contract security related activities and that he was working with TBS and the Privy Council Office to secure an increase in the permanent funding base for the Industrial Security Program (Standing Committee on Public Accounts 2008). As it appeared that the deputy head was having difficulties securing permanent funding for the Industrial Security Program, in 2008 Treasury Board directed the deputy head to provide adequate financial resources to the Industrial Security Program either through permanent internal reallocation of appropriated funds or seek inter-departmental cost recovery¹²⁶ but PWGSC was not to charge private sector organizations for security related activities.¹²⁷ This is an example of how over the years, deputy heads of PWGSC could have pursued a different policy instrument such as user fees to finance private sector security services and be viewed as leaders of their organization but instead dragged their feet and then were directed by elected officials to reallocate internal funding.

We also found through an access-to-information request that Industrial Security Sector public servants in email correspondence indicated that “we are awaiting the March 4th Budget to determine next steps on this file”¹²⁸ and “the second draft of the letter being prepared by the CFO for the Minister to send to Hon. Flaherty was reviewed and comments provided”¹²⁹ and “this information cannot be confirmed until tabling of the Budget however we are presently planning for this eventuality.”¹³⁰ These statements demonstrate how public servants prepare documentation for elected officials to make a decision then plan to implement the decision.

¹²⁶ ATI PWGSC File number A-2013-00021, pages 00174 and 00501 (08 July 2013)

¹²⁷ ATI PWGSC File number A-2013-00021, page 00220 (08 July 2013)

¹²⁸ ATI PWGSC File number A-2013-00021, page 00299 (08 July 2013)

¹²⁹ ATI PWGSC File number A-2013-00021, page 00289 (08 July 2013)

¹³⁰ ATI PWGSC File number A-2013-00021, page 00300 (08 July 2013)

11.2.4 Social insurance numbers

As provided by the director general of the identity policy and programs directorate at Service Canada, interviewed in Ottawa, 23 December 2013, that as a part of the 2011 strategic and operating review, ESDC committed to no longer issuing SIN cards effective March 31, 2014. Testimony provided by a public servant at the Standing Senate Committee on National Finance stated that government would save approximately \$1.5 million per year by not producing the cards (Standing Senate Committee on National Finance 2012). Hence we glean that ESDC provided impartial advice to elected officials on the costs of producing the SIN card, elected officials made a decision to have ESDC stop producing the cards, and then ESDC implemented the decision.

Hence according to WP6, we see in these findings that we have the bureaucracy willingly playing a background role in providing advice for policy-making and then implementing decisions, with government making the formal decisions and then communicating these decisions to citizen-voters through mechanisms such as the annual budget.

11.3 Summary

WP5 is confirmed for each of our cases in that we found the process to implement user fees (or not) is time intensive. In the case of passports, we determined that Passport Canada underwent two public consultation processes over a one-year period. PBC had to go through two user fee proposals to increase fees from \$50 to \$150 to \$631 during different sessions of Parliament. For private sector security clearances, even though there are no user fees, PWGSC still needed three to four years to move the program to interdepartmental cost recovery. In the case of SINs, to stop issuing SIN cards required ESDC to prepare information for various pieces of legislation and regulations which was time consuming.

WP6 was corroborated in three of our four cases. We found that parliamentarians questioned public servants about who had the authority to make the decision regarding passport fees to ensure that it was the appropriate elected official making the final decision on fees and not public servants. In the case of pardons, elected officials made two decisions regarding user fees: the first was to increase the fee to \$150; the second was to move the pardon program to full cost recovery increasing the fee to \$631. For private sector security clearances, we found that elected officials made the decision to move to interdepartmental cost recovery and to not charge user fees to the private sector.

In this chapter we examined the complex relationship between elected officials and the bureaucracy including the need for public servants to provide impartial advice to elected officials and then implement decisions made by elected officials whether public servants agreed with the decision or not. We examined the deputy head's responsibility for managing his department responsibly by not only considering user fees as a financing option but also how the implementation of user fees can be complex.

In the previous three chapters we have examined the relationship between elected officials, citizen-voters and pressure groups, the legislative and regulatory environment that the bureaucracy operates in, and the relationship between elected officials and the bureaucracy. One thing that has become clear is that these three areas do not stand alone. There is cross-over between these areas and at times there are struggles between how elected officials want to run government to appease citizen-voters and pressure groups but fiscal pressures may lead to a different outcome than originally envisioned.

In the next chapter we provide an analysis of our findings and contribution to knowledge.

Chapter 12

Analysis of findings

12.0 Introduction

The research question postulated in this study was “*Why does the Canadian federal government decide to finance some public sector services through user fees, while others are financed through general taxation?*” We were seeking to understand the rationale behind how decisions were derived to either charge user fees or not for public services provided to individuals by examining four cases: passports, pardons, security clearances and SINS.

In this chapter we provide an analysis of our results by reviewing what we expected to find with what we actually found. First we look at our research question and consider the attributes as presented in our methodology to determine if case variety and/or feasibility of analysis were contributors. We then present a summary of research findings through the WPs.

12.1 Variety of cases

In considering case variety, we examined three attributes: institutional form, financial authority and the visibility of the public service. For the first attribute we looked at whether the public service was delivered by an organization that is a separate entity or part of a larger government entity. What we found was that for each case the public service was delivered through a program within different types of government organizational structures. Passport Canada, responsible for issuing passports, is a separate operating agency. PBC, responsible for making decisions related to pardons, is an independent administrative tribunal. PWGSC is responsible for CISD, which is a directorate mandated with coordinating the security screening of private sector individuals. ESDC issues SINS. While we found that each case represents a different organizational structure, each report to Parliament through an elected official. Plus three cases - passports, security clearances, and SINS - report to a deputy minister with one case – pardons - reporting to the chair of an independent administrative tribunal. We did not find that the attribute of institutional form was a factor in the decision-making process as to whether or

not to charge user fees. Passports are issued by a separate operating agency and an independent administrative tribunal issues pardons, with both charging user fees. Security clearances are delivered through a directorate within a department while SINs are delivered by a department with both not charging user fees.

For the second attribute we considered if the financial authority was relevant to each case as in whether or not the user fee is the only source of funding in delivering the public service. We determined that passports have always been financed through user fees though it is unclear initially in 1867 what the complete cost was to produce a passport document so we are unable to determine whether the full cost to produce passports included funding through parliamentary appropriations plus the user fee. Prior to 1995, pardons were completely funded through parliamentary appropriations, with partial funding by user fees since 1995. As of 2012 pardons are now completely funded by user fees. Security clearances as issued by CISC, while completely funded through appropriations did not have sustained funding for the directorate until 2012. The directorate is now funded through inter-departmental cost recovery.¹³¹ SINs are financed through parliamentary appropriations though it is unclear as to the amount of specific funding for SINs as costs are not tracked in providing this service, which we found to be quite surprising.

Hence we found that two of our cases (passports and pardons) have been authorized the financial authority to operate on a full cost recovery basis while the other two cases (security clearances and SINs) are funded through parliamentary appropriations. However we do not find that the financial authority provided to a government organization in relation to our four cases is a defining attribute as to whether or not to charge user fees. The decision to charge user fees was not because passports and pardons operate through full cost recovery but rather operating on full

¹³¹ Inter-departmental cost recovery is the reallocation of parliamentary appropriations between departments hence general taxation.

cost recovery is a result of the decision made to finance the service through user fees. Since 1867 there has always been a charge for passports with passports previously issued through the Department of External Affairs (Department of External Affairs 1960). Passport Canada did not become a special operating agency operating with full cost recovery until 1990 (External Affairs and International Trade Canada 1990; Kernaghan, Borins, and Marson 2000; Passport Canada 2012a). Similarly until 2012, pardons were funded through user fees and parliamentary appropriations.¹³² The issuing of pardons moved to a full cost recovery basis in 2012 as a result of a government decision that pardons would no longer be funded through appropriations.

For the third attribute we examined the visibility of the public service, as in whether or not citizen-voters were aware of the service. We expected to find that the visibility of the service to citizen-voters for our four cases would vary with passports having high visibility, pardons having low-to-medium visibility, security clearances having medium-to-high visibility, and SINS having low visibility. What we found was that all four cases have low visibility with citizen-voters except when things go awry such as delays with issuing passports, pardons being granted to convicted serial killers and sex offenders, security breaches including the lack of security clearances, and identity fraud using SINS. As the delivery or lack of delivery, of these services escalates in visibility there may be complaints by citizen-voters and pressure groups to elected officials or through the media. Citizen-voters and pressure groups complaining to elected officials results in elected officials asking the bureaucracy probing questions regarding the whys and wherefores in delivering these services. There is also the possibility of increased scrutiny by oversight bodies which is considered below.

¹³² Prior to 1995 pardons were fully funded through parliamentary appropriations.

In summary we did not find that any of the attributes related to case variety were a significant factor in the decision-making process as to whether or not to introduce user fees. Next we examine attributes related to the feasibility of analysis.

12.2 Feasibility of analysis

In considering the feasibility of analysis we examined three attributes: single or multiple services, enabling legislation, and oversight bodies. For the first attribute we examined whether or not the government organization provided a single service or multiple services. We did not find that the number of services delivered by an organization was a factor in whether or not user fees were charged. Passport Canada charges user fees for all services. PBC only charges user fees for one of its services – pardons. CISD and ESDC do not charge any user fees to citizen-voters for any of their services. We determined that each of the government organizations provides multiple services but only some services have user fees. Hence the number of services delivered by each government organization was not found to be an attribute that contributed to the decision-making process as to whether or not user fees would be charged.

For the second attribute we considered the enabling legislation for each service to determine if it was an attribute that affected the decision-making process. We found that the four cases each have different enabling legislation, with the enabling legislation not appearing to be a factor in whether or not to charge user fees. We did find that as user fees are charged for services delivered by Passport Canada and PBC, each also has legislation which provides the authorization to charge fees. Hence similar to above in examining the financial authority for each case, we found that once a decision is made to charge user fees, then the corresponding legislation needs to be amended to reflect this decision. Thus it does not appear to be the enabling legislation which is a contributing attribute as to whether or not to charge user fees but

rather enabling legislation needs to be in place after a decision is made to provide government with the appropriate authority to charge user fees.

For the third attribute we examined whether or not oversight bodies were a contributing factor in deciding to charge user fees for some public services. We found that all cases were subject to similar oversight bodies including: TBS as a central agency, parliamentary committees for the House and Senate plus the OAG. We found that as PBC reports to Parliament through the Minister of Public Safety that the decision to move to full cost recovery for pardons may have been impacted by the government's *Tough on Crime* agenda even though pardons are not about public safety but rather support the socio-economic integration of individuals into society. We did not find that the various oversight bodies were a significant factor in whether or not to charge user fees though in the case of pardons, we found that some senators during parliamentary committee hearings were biased in their review of the user fee proposal for the fee increase to \$631. In another case, we found that the OAG made the recommendation to Parliament that PWGSC needed to secure stable funding for CISC with government then deciding to move to inter-departmental cost recovery. Inter-departmental cost recovery while providing stable funding for CISC still means funding from parliamentary appropriations, rather than user fees from the private sector. The OAG has issued several reports related to SINs and their usage. We found that while government has clarified how SINs may be used and has stopped issuing SIN cards, the costs of operating the SIN program is not tracked. Costs are not tracked for SINs as government determined from the beginning that there would be no charge to citizen-voters. Having a SIN is a legal requirement. Hence we found that the attribute of oversight bodies was not a significant contributor in government decision-making though oversight bodies such as the

OAG may bring to light some issues that government organizations need to address to align with government policies.

Using Mill's methods we attempted to consider all possible attributes (Nichols 1986) as illustrated in Table 6.8, but realistically we also considered that there may be unidentified attributes that may have an impact. If there are unidentified attributes or omitted attributes it is because they did not come to light not because they were intentionally omitted from the methodology. As provided in our methodology, one of the shortcomings of Mill's methods is the assumption that there are no interaction effects between multiple attributes (Lieberson 1992; Ragin 1987), as in there may be more than one attribute that impacts the outcome; however, we did not find that any of the attributes were relevant to the decision-making process.

We next present a summary of research findings through the working propositions.

12.3 Summary of findings based on working propositions

Through the previous three chapters we applied our theoretical framework to our four cases through six working propositions. In our analysis we examined whether the decision to implement user fees or not may be influenced by the relationship between elected officials, citizen-voters and pressure groups (WP1, WP2 and WP3). We explored whether or not in deciding to implement user fees pressure groups were able to benefit from tyranny of the majority to attain benefits for their citizen-voter members (WP3). We studied the complex operating and reporting regime that the bureaucracy must adhere to as created by elected officials through legislation, regulations, management policies and oversight bodies to provide elected officials a means of controlling the management of the public service (WP4). We then explained that while deputy heads are responsible for the financial management of government organizations, deputy heads are unlikely to implement user fees as the process is complex (WP5). We also examined whether deputy heads are constrained in implementing user fees as

the final decision rests with elected officials who may not be in favour of user fees as user fees are not popular with citizen-voters (WP6). We next present a summary of the research findings through the WPs.

12.3.1 Working proposition one (WP1)

In WP1 we postulated that at times government may want to be viewed as being fiscally prudent by announcing the implementation of user fees for services in which individuals are identified as receiving a disproportionate amount of a public service. We found that government does announce cost recovery during times of fiscal restraint. We also established that government introduces cost recovery for reasons other than fiscal restraint.

TBS's 1984 *Expenditure and Program Review* report reported that some government services provided to individuals were being delivered by government well below their cost hence TBS recommended that individuals who receive a disproportionate benefit from a service should bear most of the cost (Treasury Board of Canada Secretariat 1984, 11) rather than being financed through appropriations. Subsequently as announced by the Conservative government, Budget 1985 contained measures related to cost recovery including a "fair but firm policy on cost recovery to enforce a user-pay concept for certain public services" (Finance Canada 1985, 30).

In Budget 1995 the Liberal government announced that as a result of the program review exercise approximately 65 per cent of departments would be introducing or increasing user fees for services that provide a private benefit to force a "more cost-conscious and client-oriented government" (Finance Canada 1995, 41).

The Liberal government declared in Budget 2003 that it was initiating a five-year cycle of strategic reviews drawing on the experience of program review (Finance Canada 2003a). Budget 2003 also stated that TBS would be reviewing management practices related to user charging and

cost recovery (Finance Canada 2003a). Budget 2006, under a Conservative government, announced that expenditure reviews commenced by the previous government would be continuing (Finance Canada 2006).

In Budget 2011 the Conservative government stated that strategic reviews were being temporarily replaced by a one-year strategic and operating review (SOR) that would focus on fiscal restraint and the search for improvements in efficiency and effectiveness in program delivery to ensure value for taxpayers' money (Finance Canada 2011). According to a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013 during SOR user fees and cost recovery were out of scope, and hence departments could not suggest increasing or introducing fees to compensate for the reduction in operating expenditures. While user fees and cost recovery were out of scope for SOR, we still experienced increases or the introduction of fees in subsequent budgets which may have been identified through SOR but not included in overall cost reduction numbers. For example, Budget 2012 announced cost recovery for nuclear licence holders, the introduction of user fees for temporary foreign workers applications, fees for the citizenship program, and a full cost-recovery model for aircraft safety certifications (Finance Canada 2013a). It may be a coincidence but a logical link would be that cost savings were identified during SOR, then considered by decision-makers, and subsequently announced in Budget 2012. As decision-making related to SOR is classified, it is unknown if this is the case.

There is a common assumption that right-wing political parties favour smaller operating budgets whereas left-wing parties favour public spending increases (Tellier 2006). We found that the fiscal restraint measures introduced in 1984-2013 were by both Liberal and Conservative governments. While only a high level view this finding does appear to support Franzese's (2002)

empirical study which concluded that both left-wing and right-wing governments may be fiscally disciplined.

As we shall see in our discussion on WP3, government introduces user fees and cost recovery not only during times of fiscal restraint but that they may also introduce user fees to support the governing party's ideology.

12.3.2 Working proposition two (WP2)

In WP2 we proposed that citizens would continue to ask for services that disproportionately benefit individuals at the expense of others. We found this to be true. During Passport Canada's public consultation process regarding changes to passports, citizen-voters "expressed their view that Canadians have a right to travel. They also referred to other instances where taxes are used to fund items that do not necessarily benefit or apply to every Canadian citizen" (Passport Canada 2010). One respondent put forth the argument that "a Passport is becoming a vital piece of identification which all Canadians should own. I do not have children, yet I pay school board taxes. I do not resent paying for the education of other people's children. I believe SOME federal tax money should be allocated to Passport Canada" (Passport Canada 2010). Not only do we see that citizens put forth arguments to have services that are disproportionately provided to individuals paid for through general taxation but that citizens in putting forth their argument confuse the levels of government responsible for providing services. Education is a provincial responsibility whereas passports are issued by the federal government yet the respondent quoted has put the two together as if there is only one level of government making spending decisions.

Responses during PBC's public consultation process included that the \$631 fee would pose a financial burden for applicants, the high cost would make it difficult or impossible for some people to apply for a pardon who need one to help them obtain employment or pursue their

education, and the fee increase amounted to further punishment (Canada Gazette 2012). During committee hearings, senators agreed that pardons do benefit both society and the individual; however, benefits are deemed significant to the recipient (Standing Senate Committee on Legal and Constitutional Affairs 2011c). PBC's cost-benefit analysis related to the issuing of a pardon reported that there was a three-to-one cost-benefit per individual (RIAS-Inc. 2011). As mentioned by a former chair of the PBC, interviewed in Ottawa, 09 May 2013, in his opinion the \$631 fee is considerable especially for someone who may be underemployed due to not having a pardon or for someone who may be relying on social assistance. We found that there were numerous submissions by individuals which referred to the increased user fee to \$631 as a 'cash' grab.¹³³ During a parliamentary committee hearing a senator stated that "Canadians would be quite surprised if they knew that they were paying...most of the fees for an individual applying for a pardon" (Standing Senate Committee on Legal and Constitutional Affairs 2011c, 67).

Citizen-voters argued that "if cost cutting is the single largest interest for the government, the fastest way to do cost cutting is to create a rebuttable presumption that after five, ten, or fifteen years of no criminal behaviour, someone can have a record suspension" (Standing Senate Committee on Legal and Constitutional Affairs 2011c). The government could have found a middle of the road solution by examining alternatives to the pardon program to address not only the cost to individuals but also the number of applications to PBC; however government chose not to do so. As we shall see in WP3, the government was making a political statement regarding criminals paying for their misdeeds.

As stated in an OAG (2013a) report, security clearances provide Canadian private sector organizations access annually to contracting opportunities worth billions of dollars. CISC monitors 8,700 registered private sector organizations that have approximately 340,000 security

¹³³ ATI Parole Board of Canada File number A-2013-00004 (11, April 2013)

screened individuals (Public Works and Government Services Canada 2013c). CISD estimates that it costs \$110 to process a security clearance.¹³⁴ Doing a straight calculation of 340,000 security cleared resources multiplied by \$110 means that Canadians have invested \$37.4 million in private sector security screenings. Echoing the senator's comment above, Canadians may be quite surprised if they knew they were paying through taxation for private sector individuals to be security cleared. Unlike the Ontario government and the U.S. federal government who process security clearances based on the issuing of a contract so there is an identified need for the security clearance, the government of Canada allows individuals to apply for security clearances in the event that they *may* contract with the federal government. One may want to consider how many security clearances have been processed by CISD for individuals who have never contracted with the federal government. As stated by a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013, introducing user fees for public services can moderate demand for a service as users contribute to the cost of providing the service eliminating those users who may simply access the service as it is perceived as 'free.' Rather than using inter-departmental cost recovery, if there was a charge to private sector individuals for a security clearance would the demand be lessened?

12.3.3 Working proposition three (WP3)

WP3 theorized that pressure groups in their self-interest seek incentives or tax breaks from government for their citizen-voter members. As stated by Young and Everitt (2004, 3) citizen-voters may choose to participate in pressure groups as "the pervasive character of government makes it inevitable that most of us will at some point want to influence the direction of a government decision...Many of us are drawn into political activity in an effort to make government provide a service."

¹³⁴ ATI PWGSC File number A-2013-00021

To influence the direction of a government decision we found that pressure groups appealed to elected officials through individual ministers and parliamentary committees for ‘fairness’ in being charged user fees. As noted by a Member of Parliament “Companies in my former riding...came to visit me sometime in 1999 and argued that user fees were seriously eroding their competitiveness” (Cullen 2011, 71-72). Pressure groups such as BCCR appealed to government using the argument in testifying at parliamentary committee meetings that they significantly contribute to the economy with their membership generating about \$330 billion worth of economic activity every year and providing over two million jobs for Canadians (Standing Committee on Finance 2000a). At other times in appealing to government, pressure groups may threaten to not vote for the governing party during the next election as we found with the pardon case with comments such as “Our Society has a *four figure active membership* and our response to the outcome of this motion, will reflect our reaction at the polls.”¹³⁵

The director of budget, estimates and reporting, expenditure and revenue analysis of the Library of Parliament, interviewed in Ottawa, 14 March 2013, stated that when he worked at TBS, pressure groups tried to influence decision-making related to user fees:

“if it was an industry group, they would be very well organized...and then they would come in and have extensive meetings with the minister, with the minister’s staff, and they would explain why this is not justified, why in fact it might be a private benefit and they don’t quibble with the calculations. But, you know, overall the industry is facing tough times and this would be a mechanism to provide some additional support. So there ended up being a political dynamic in terms of the decisions actually made around user fees.”

We also found that elected officials do not always agree on the implementation of user fees and will lobby cabinet members in support of an industry:

“Mazankowski wanted to apply user fees for transportation services. I [Tobin] argued that the fees would be hurtful and unfair to certain groups, and we managed to have it expunged there in the committee room” (Tobin 2002, 61, Tobin's name added in brackets).

¹³⁵ ATI Parole Board of Canada File number A-2013-00004 (11 April 2013), bold and italics in original

The UFA requires public consultation with clients who are direct users of the service. For the pardon case we found that during the two-week public consultation period not only were there responses from pressure groups representing potential users of the service but also from pressure groups representing victims of crimes.

Pressure groups representing victims of crimes argued that a person who commits a crime should be responsible for the fees associated with processing the record suspension application and that the record suspension program should not be subsidized by hardworking, law-abiding citizens (Parole Board of Canada 2011d). Additionally pressure groups representing victims testified and voiced their approval to increase the fee to \$631 during parliamentary committee meetings with the argument that: “It must not be the responsibility of victims and law-abiding Canadians to subsidize the application-process for pardons for those who choose, of their own free will, to engage in criminal activity” (Standing Senate Committee on Legal and Constitutional Affairs 2011c, 83).

It’s curious that pressure groups representing victims were permitted to participate in both the public consultation process and parliamentary committee meetings, as public consultation according to the UFA is to be with the direct user of a service. Or we could suggest potential users of a service. Sub-section 4(1)(a) of the *UFA* requires a government organization ‘to notify clients, and other regulating authorities with similar clientele’ of a user fee proposal. Given that pressure groups representing victims testified that there is no subsidized support for victims of crime (Standing Senate Committee on Legal and Constitutional Affairs 2011c), the similar clientele requirement of the UFA does not appear to provide justification for victims’ groups to speak out in support of the fee increase to \$631. There is nothing mentioned in the UFA which addresses having those that are not direct users of a service or potential users of a

service having a right to provide responses during the public consultation process or to testify at parliamentary committee meetings. In its report to Parliament, the parliamentary committee recommended that the UFA should be amended to “require all such future notifications to be provided more broadly to members of the general public, and in relation to user fees for pardon applications, to include organizations and groups that represent victims of criminal offences.” (Standing Senate Committee on Legal and Constitutional Affairs 2011e). To date Parliament has not made this change to the UFA.

12.3.4 Working proposition four (WP4)

We put forward in WP4 that government organizations operate in a complex legislative environment with the management of a government organization not being about the implementation of a single public policy that provides clear direction, but rather a single area of management within a government organization can be impacted by numerous public policies. In Chapter 7, we outlined government’s journey in implementing user fees and the complexities that are involved.

Not only are there numerous pieces of legislation, regulations and policies to be adhered to but senior public servants must also learn how to engage with a multitude of decision-makers and influencers within government as we described in Chapter 5. In working through the process for implementing or amending user fees, a deputy head needs to get approval and/or input from his minister, TBS, PCO and the department of Finance prior to tabling a user fee proposal within Parliament. Additionally, the deputy head needs to ensure that the request to amend or introduce user fees aligns with government’s priorities.

As leaders of their government organization, deputy heads are the connective tissue between the bureaucracy and political leadership (Evans, Lum, and Shields 2014, 324). As

ministers are often generalists with few networks of their own, senior public servants are in charge of not only the technical side of files but also in reaching out and persuading key government players (Bourgault 2014, 366). Accordingly when a deputy head wants to consider introducing or amending user fees, he needs to ensure he aligns with the priorities of government. To ensure alignment he may need to meet with several key players – Finance, PCO, PMO, TBS - all of whom at some level may influence the priorities of government and fiscal decisions.

According to a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013 departments are slow in moving to user fees as the requirement is too burdensome. For example, the senior advisor stated, Section 5.1 of the UFA, provides there is a penalty if service standards¹³⁶ are not met thus providing a reason for departments to drag their feet in updating fees as departments may determine that they cannot meet the service standards due to constraints. Further the senior advisor provided that prior to the UFA, there were 8 to 12 fee changes per year; therefore departments were actively reviewing and if necessary altering fee structures. Post-UFA, according to the senior advisor, there have only been 12 fee proposals in total (2004 to 2013). Additionally there is no TBS direction or mechanism making departments review and set fees to the appropriate level. The lack of fees being reviewed has resulted in some fees staying the same for the past 15 to 20 years. Hence taxpayers may be picking up a larger portion of the cost as costs may have increased over time but the fees have not.

In 2012 TBS announced in its *Report on the State of Comptrollership in the Government of Canada* that it had completed three sub-activities: “analysis of options and drafting of

¹³⁶ In line with the *User Fees Act* (S.C. 2004, c. 6), “Where a regulating authority’s performance in a particular fiscal year in respect of a user fee does not meet the standards established by it for that fiscal year by a percentage greater than ten per cent, the user fee shall be reduced by a percentage equivalent to the unachieved performance, to a maximum of fifty per cent of the user fee. The reduced user fee applies from the day on which the annual report for the fiscal year is tabled under subsection 7(1) until the day on which the next annual report is tabled.”

potential requirements, alignment of future guidance with the *UFA* and other relevant policies, and recommendation of draft policy instruments” which would be used in developing new guidance on user fee management (Treasury Board of Canada Secretariat 2012d). As mentioned by a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013, to address gaps in the *UFA* and the OAG report, TBS is expecting to issue a draft directive on user fees in 2014.¹³⁷ According to the senior advisor, the directive on user fees is expected to describe identifiable stakeholders; benefits above and beyond what taxpayers pay; and provide grounds for charging, plus provide the requirement for fees to be reviewed every five years. In other words, it appears that the expected directive on user fees will strengthen the current policy suite.

Not only is it about how and whether government organizations are reviewing and amending existing fees, but there lacks an overall ‘look and feel’ as to what is considered a user fee. We found that both the OAG and the PBO did reviews of federal fees but they used different methodologies resulting in varied findings. The OAG (2008) stated that government organizations reported \$1.9 billion in fee collection in the 2006-2007 departmental performance reports. The PBO (2012) reported that depending upon how user fees were defined in the 2010-2011 Public Accounts, government yielded \$8 billion in revenues from the collection of fees. This is not say that revenue collection through user fees increased by almost \$6 billion from 2006 to 2010 but rather it illustrates the difference between what may be reported by government organizations as ‘user fees’ in departmental performance reports versus the reporting of ‘external

¹³⁷ An access-to-information request was submitted to Treasury Board of Canada Secretariat of Canada (TBS) on May 27, 2013 requesting a draft copy of this directive plus the decision-making behind it (TBS File number A-2013-00205). On July 22, 2013, TBS issued a letter indicating that all relevant records for this request are entirely withheld under section 69(1)(e) of the Access to Information Act which permits withholding of information that is used to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in section 69(1)(d). Section 69(1)(d) states that records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy may be withheld from public disclosure.

sales' in Public Accounts. Hence within government organizations there is inconsistency in not only the reporting of user fees in annual reports but also in defining what is considered a user fee (Office of the Parliamentary Budget Officer 2012) resulting in a gap.

12.3.5 Working proposition five (WP5)

The deputy head as the senior management executive of the department, after obtaining ministerial approval, is responsible for the decision to implement user fees or not (Treasury Board of Canada Secretariat 2009a). WP5 postulated that it is not in deputy heads' self-interest to change methods of financing the provision of services unless there is a reduction in their budget as changing methods requires going through a rigorous process. It was mentioned during several interviews for this study that the process to amend user fees is time intensive. Even though interviewees commented that the process was time intensive, they did not want to be quoted directly.

As described in Chapter 7, TBS developed several tools as guidance to assist departments with the user fee process including the *User Fee Proposal Approval Process*, a *Complaint Resolution Process Flowchart*, and a four-page template for *Tabling User Fee Proposals in Parliament* (Treasury Board of Canada Secretariat 2011c). TBS's *User Fee Proposal Approval Process* guidance document outlines the four phases of the user fee process. All of these steps take considerable time to work through depending upon the complexity of the user fee proposal. Additionally if there are challenges through the public consultation process, a government organization needs to go through the six phases of the *User Fee Complaint Process Flowchart*. Parliament must be sitting in accordance with Phase 3 of the *User Fee Proposal Approval Process* in order for a government organization to table its proposal in both Houses of Parliament. User fee proposals are tabled in both Houses of Parliament to comply with Sections

5 and 6 of the UFA which states that the appropriate parliamentary committees must be given the opportunity to review the proposal, make recommendations, and then pass a resolution for each user fee.

As stated by a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013, only 12-13 government organizations as of May 2013, have gone through the UFA process thus it is still a relatively new process. The senior advisor further indicated that depending upon the complexity of the user fee proposal process, at times the process can be quick (e.g. 9-12 months), sometimes it can be more lengthy (e.g. 2-3 years), and sometimes it is even longer as it is beyond the control of the government organization as Parliament may dissolve and the government organization needs to wait until Parliament resumes.

As many government organizations' program funding is through departmental appropriations rather than through cost recovery, the introduction or amendment of user fees may pose a significant challenge for public servants in understanding the requirements as it is not part of their regular responsibilities. To meet the requirements of the UFA and TBS management policies, departments can expect to commit two to three years' worth of effort to adhere to the user fee proposal approval process. Given the extensive time it takes to implement new fees or change existing fees, even though the deputy head can retain funds from cost recovery, we are of the view that it is not worth the bother unless his budget is reduced or elected officials direct him to do so as the process is time intensive.

12.3.6 Working proposition six (WP6)

In WP6 we theorized that it is not in a deputy head's self-interest to alter the financing method of providing services as he requires approval by the elected official that he reports to. Given WP1, WP2 and WP3, we posited that it is unlikely that the elected official will support the

implementation of user fees unless elected officials have the desire to be seen as being fiscally prudent as it is not in government's self-interest.

As explained by a former chair of PBC, interviewed in Ottawa, 09 May 2013, the only time fees became an issue was when government was trying to contain costs. We ascertained that three of our cases were impacted by cost reduction exercises. The initial \$50 user fee for a pardon application was announced as a result of program review (Parole Board of Canada 2011d). The increase of the pardon fee to \$150 was an outcome of PBC's 2008 strategic review exercise. Program review impacted the delivery of security services by PWGSC's CISD program as is demonstrated by the statement the "program was fully funded via appropriations at one time, but significant program review cuts... resulted in the under-funding."¹³⁸ The director general of the identity policy and programs directorate at Service Canada, interviewed in Ottawa, 23 December 2013 stated that as part of the 2011-2012 strategic review exercise, ESDC committed to discontinuing issuing the SIN card. Whether or not the decisions that impacted the funding of these services were political decisions as in elected officials trying to appear fiscally prudent, or management decisions as in deputy heads reviewing programs to more efficiently running their organizations is unclear.

Given the time and effort required to introduce or amend user fees, it is unlikely that PBC chose to go through the process twice in such a short time period – once in 2010 and then again in 2012. We surmise that to increase the fee to \$631 and move to full cost recovery the decision was politically motivated rather than a management decision. In February 2011 the minister of public safety announced that criminals should be held fully accountable for their crimes thus pay the full administrative costs for processing record suspensions (Public Safety Canada 2011). Subsequently the government decided that the record suspension program should operate on a

¹³⁸ ATI PWGSC File number A-2013-00021, page 00220 (08 July 2013)

full cost recovery basis and not be subsidized through general taxation (Standing Senate Committee on Legal and Constitutional Affairs 2011a).

The Conservative Party of Canada campaigned in both 2006 and 2011 with a *Tough on Crime* agenda (Conservative Party of Canada 2006, 2011). In 2006, electoral candidates representing the Conservatives campaigned on ensuring effective and appropriate justice is administered to criminals (Conservative Party of Canada 2006). In 2011, the party's policy platform included that since first elected in 2006, the Conservatives have made tackling crime one of their highest priorities (Conservative Party of Canada 2011, 45). Further Conservatives campaigned on supporting victims of crime and not putting the rights of criminals ahead of the rights of victims (Conservative Party of Canada 2011, 46). Specifically related to record suspensions, the Conservative platform promised if elected to "limit the granting of pardons, to better reflect the severity of the crimes committed" and to "eliminate pardons for serious criminals" (Conservative Party of Canada 2011, 47, 50) which they have done.

Given the Conservative's *Tough on Crime Agenda* policy platform, it is not surprising at all to discover that government did not acquiesce to the many who opposed the substantial user fee increase to \$631 for a record suspension application. Nor is it surprising that government did not consider an alternative approach for financing the record suspension program such as forgiving past crimes after an extended period of time but rather the government moved the record suspension program to operate via full cost recovery.

The selection of a policy instrument such as user fees illustrates the management of the policy process but does not convey how difficult decisions are made as in most situations there is more than one solution (Bridgman and Davis 2003). Elected officials will not necessarily choose the most cost effective or most efficient policy instrument but instead will attempt to gauge how

citizen-voters and pressure groups may react to anticipated benefits or costs as it impacts them as a result of elected officials' actions or inactions (Trebilcock and Hartle 1982; Harman 2005).

12.4 Summary

This chapter provided a summary of our findings to better understand why the Canadian federal government decides to provide some public services to individuals through general taxation and others through user fees. We found that decision-making related to public finance is a judgement call by elected officials as there may be economic, political, or public management concerns. We determined that implementing user fees as a funding instrument depends upon what message elected officials are trying to communicate to citizens. For example, support the economy by not charging user fees for security clearances, or take a stance in not supporting criminals by subsidizing pardons through general taxation. Through our findings we were able to glean a better understanding of how, and when, citizen-voters and pressure groups may influence elected officials decision-making as well as understand how elected officials decisions may affect the management of the bureaucracy.

Chapter 13

Conclusion

13.0 Introduction

In this final chapter we provide a summary of our study by examining our research design through reviewing our sources of information and how these media helped to provide insights into our cases. We next explore the attributes we used to explain the variety of cases and feasibility of analysis relative to each of our cases. Subsequently we examine the strengths and limitation of the study and what we can learn from it. Then we provide our overall contribution to public administration. Finally we conclude with whether we met our research objectives and recommendations for future research.

13.1 Sources of information

An explanatory method was used for this study as the four cases focused on contemporary, real behavioural events that were observable through the use of public records, access-to-information requests, and interviews in examining federal government services provided to individual citizen-voters but available to all citizen-voters, through four cases: passports, pardons, security clearances and SINs.

13.1.1 Public records

Public records such as OAG reports, parliamentary committee reports, PBO reports and numerous specific government organizations' reports plus websites all provided background information on the four cases. In particular accessing testimony from parliamentary committees' meetings provided details not found in overall reports as testimony provided the actual evidence rather than the summary of information that is generally a part of a final report.

13.1.2 Access-to-information requests

Many of the access-to-information requests received for this study proved to be a valuable source of data. Access-to-information requests provided email communications between

public servants, presentations to various internal working groups, reports prepared by third party vendors, and detailed public consultation responses all contributing to a rich field of data. We also found that requesting copies of previously released access-to-information requests was helpful as there was less of a time lag in receiving the information. While we found that in some instances government decided that some information could not be released due to it being a part of cabinet decision-making, and that some information could not be found by government organizations even though it was referenced in public documents, overall we found these requests for information instrumental in understanding how decisions are made in government.

13.1.3 Interviews

For each case, interviewees were drawn from those who were privy to the decision-making process for whether or not to apply user fees for public services that are provided to individual Canadians. Included were Ottawa-based interviewees not only from within a specific government organization but also there were those that may impact the workings of the organization, such as central agencies and oversight bodies. To generate a range of multiple perspectives for each case, the breakdown of interviewees included:

- within government organizations: two director generals, two directors, and two managers
- an assistant auditor general from the Office of the Auditor General;
- a director from the Office of the Parliamentary Budget Officer;
- two special advisors from Treasury Board of Canada Secretariat; and
- a former chair of a government organization.

Using multiple sources of information allowed us to triangulate evidence and converge on facts as public documentation and access-to-information requests provided a method of cross-checking and corroborating information gathered from the interviews (Yin 2003; Stake 2005).

13.2 Case selection

The multiple sources of information provided data relevant to our four cases and linked to attributes examined concerning the variety of cases and the feasibility of analysis. These attributes were examined for whether or not they may be linked to the decision-making process for why some services are provided to individuals through user fees while others are provided through general taxation.

In attempting to answer the research question, our research design utilized Mill's Method of Agreement and Method of Difference since by combining these two comparative logics we would have a mechanism to examine the similarities and differences (Skocpol 1979; Ragin 1987; Little 1991) across the four cases we selected. Two of our cases utilized user fees while two do not. Using Mill's methods we attempted to consider all possible attributes (Nichols 1986) by categorizing the attributes by case variety and feasibility of analysis, as illustrated in Table 6.8.

In considering case variety, we examined three attributes: separate government organization, financial authority, and the visibility of the public service. In considering feasibility of analysis, we examined three attributes: single or multiples services, enabling legislation, and oversight bodies. As stated in Chapter 12, we did not find that any of the attributes related to case variety or feasibility of analysis were a significant factor in the decision-making process as to whether or not to introduce user fees.

13.3 Strengths and limitations of study

A cross-sectional analysis of multiple cases was used with the primary focus being the decision-making process involved in deciding whether to finance services delivered to individual citizens either through general taxation or user fees in the federal government. Through the use

of inferences relating to our area of focus we analyzed and interpreted our working propositions by using observations from data collection (King, Keohane, and Verba 1994).

We applied the Buchan and Tullock model to six working propositions through four case studies to interpret, analyze and understand what is happening in government in regards to the financing of services through user fees. While it is difficult to draw extensive conclusions on political decision-making processes regarding the research question posed from a small sample of case studies, we did describe the area of concern and attempted to explain what is happening. We found that in the case of passports, that a user fee has always been charged, that Passport Canada operates as a self-sustaining business entirely financed by user fees, and that the majority of citizen-voters and pressure groups through extensive public consultation supported the approach of government continuing to finance passports through user fees. In the case of pardons, we determined that there were competing sides during public consultation and that government chose to listen to those citizen-voters and pressure groups who lobbied for the users of pardon services to pay the full cost of the program. The pardon fee was increased to \$150 as a part of a strategic review exercise which supports our theoretical framework that government looks to implement user fees during times of fiscal restraint. For the case of security clearances, even though the program faced funding challenges and that some business-focused pressure groups indicated that they would be willing to pay for security services, government decided that the program would be financed through general taxation (inter-departmental cost recovery). In regards to SINs, government decided in 1964 that citizen-voters would not pay for the provision of a SIN as it was a government requirement and that decision has stood the test of time. What guided the research was to follow the working propositions, which are derived from the

Buchanan and Tullock model, systematically through each case. What was gained from in-depth analysis by exploring cases is lost in generality (King, Keohane, and Verba 1994).

Our study examined four cases in-depth by describing, understanding and explaining the various attributes as each related to the working propositions. During our research we also found other examples of the implementation of user fees (or not) which corroborated the notion that the relationship between elected officials, citizen-voters and pressure groups was relevant when it came to decision-making as to whether or not to implement user fees. Furthermore in Chapter 7, we found that the relationship between elected officials and business-focused pressure groups significantly impacted the introduction of the UFA.

We established that the individual attributes discussed in Chapter 12 were not factors in the decision to implement user fees for some services provided to individuals. We determined that the decision to implement user fees was based on government decision-making related to relationships with citizen-voters and pressure groups as developed in our theoretical framework rather than any specific attributes of a case. The type of government organization, the financial authority, the visibility of the service, the number of services provided by a government organization, the enabling legislation, and oversight bodies were not contributing factors as to why government decides to implement user fees for some public services while others are funded through general taxation. However, while we found that the attributes in Table 6.8 were not a factor in our cases, it does not mean that the attributes could not be a factor in other cases if one was to attempt to replicate the study (Lieberson 1992) by applying the model to other scenarios.

13.4 Overall contribution to public administration

The apparent triviality of conclusions in social sciences may lead some to think certain conclusions may seem intuitively logical or be self-evident truths. However, while the

conclusions of this study may seem common sensical, the conclusions are based on a rigorous research design, based on an appropriate theoretical framework, and as shall be demonstrated have now become a part of academic knowledge. In order to demonstrate the significance of our findings and contribution to knowledge, this section aligns our findings with themes of public administration including: public finance, public management, decision-making, reforms of the state and governance. By positioning our findings into a larger research context, we signal the importance and relevance of the work done in the previous chapters.

13.4.1 Public finance

This study supports previous contributions to public finance from an economic perspective (e.g. Musgrave 1959; Oates 1994; Schick 2001; Good 2008; Bibbee 2008; Stanford 2013), political perspective (e.g. Holcombe and Sobel 1995; Good 2008; Tellier 2009; Stanford 2013), and public administrative perspective (e.g. Graham 2007; Good 2008; Miller 2011).

From an economic perspective we found that government made numerous announcements through annual budgets (Finance Canada 1985, 1989a, 1995, 2003a) related to introducing user fees for those services which provide a benefit to individuals. When government introduces user fees it not only identifies that there is an individual benefit, and perhaps may be a more efficient method of delivering services, but it also provides an opportunity for government to appear to be fiscally prudent. Government appears to be fiscally prudent since when government introduces user fees there may be a perception by citizen-voters that there will more revenues from general taxation available for delivering other services as these funds are no longer being used to deliver the service for which the user fee was introduced.

However from a political perspective, we found that while government makes announcements related to being fiscally prudent elected officials do not always follow through

on the actual implementation of user fees as users – citizen-voters – don’t like to pay for a service which was previously provided for ‘free’ through general taxation (Steinmo 1993; Bird and Tsiopoulos 1997b). When user fees are introduced there is an expectation by users – citizen-voters – that taxes should be reduced to reflect that these services are no longer provided through general taxation. Given the complexity and the number of services provided by the government, a reduction in taxation is unlikely. Some suggest that the apparent trivial amount of user fees collected by the federal government¹³⁹ makes the decision a moot point and appears to simply add a speaking point for elected officials to communicate that they are being fiscally prudent with taxpayers’ dollars. Others, in particular those that now have to pay for the service (e.g. \$631 for a pardon), may voice their dissent through pressure groups and at the polls.

Additionally from a political perspective, elected officials may use the implementation of user fees to help shape the political party’s ideology which supports the existing literature (Frey and Schneider 1978a, 1978b, 1979). In this study we found that moving to full cost recovery for the pardon program supported the Conservative Party of Canada’s *Tough on Crime Agenda*. Additionally, the Conservative government changed the term ‘pardon’ to ‘record suspension’¹⁴⁰ as the word ‘pardon’ appeared to imply that the state had forgiven the offence while in reality, as the government positions it, it is the victims of the crime who provide the notion of forgiveness (Standing Senate Committee on Legal and Constitutional Affairs 2010a). While this is an interesting perspective, the pardon program is not meant to be about forgiveness, it is a process administered by the federal government. In a similar vein as moving to full cost recovery for pardons, the Conservative Party of Canada decided to not charge private sector organizations for

¹³⁹ The OAG reported that government collected \$1.9 billion for 220 user fees in the 2006-2007 time period (Office of the Auditor General of Canada 2008). The PBO reported, using a broader definition of user fees, that government collected \$8 billion in revenues versus \$191 billion from excise taxes, duties, personal and corporate income tax (Office of the Parliamentary Budget Officer 2012).

¹⁴⁰ The name change was included in [Bill C-10](#). The terms ‘pardon’ and ‘record suspension’ will be used interchangeably.

the issuing of security clearances which aligns with the party's ideology of supporting business interests.

From a public administrative perspective, government strives to achieve many policy outcomes to address citizens' needs and desires while managing a finite amount of funds (government could operate in a budget deficit position though over time this becomes a challenge). In attempting to achieve many policy outcomes within a finite budget, governments may communicate that they are positioning financial resources around the public interest. The issue becomes how does one define the public interest as society is diverse with different regions and segments of the population resulting in there being no right or wrong answer for a policy decision; though a policy decision could benefit one group and be negative for another (Zussman 2008). We found that while government may speak about supporting the public interest with budget themes such as "supporting jobs and growth" and "supporting families and communities" (Finance Canada 2013a), in actuality government supports only certain segments of the population which aligns with governments pursuing their self-interest. For example, the government increased the pardon fee to \$631 even though of the 1,086 responses received by PBC during the public consultation process; only 12 respondents agreed with the fee increase (Parole Board of Canada 2011d). Hence we determined that the government's notion of making decisions to align with the public interest (in this case it would be those that apply for pardons), this was not the case as the government chose to move to full cost recovery to make a statement about not assisting those with a criminal record but rather supporting the victims of crime.

This study supports the existing literature that government does make announcements which align with being fiscally prudent and appear to support the public interest; as well as announcements being shaped around the party's ideology.

13.4.1.1 Evolution of user fees as a funding instrument

As part of the decision-making related to public finance, government needs to decide on the appropriate funding instrument to provide services to citizens. For example, if services are provided to individual citizens, but available to all, government may finance the provision of these services through general taxation or perhaps consider user fees. When considering user fees as a policy instrument, we found the following areas to be of interest: one, from an efficiency perspective; two, the ‘fairness’ of citizen-voters paying for services they receive on an individual basis; three, the difficulty in calculating the private versus public benefit of a public service; four, ensuring the fee is not greater than the cost to provide the service; and finally that the decision to implement user fees or not is a political decision. We will look at each of these in turn in regards to the existing literature and the contribution that this study makes to it.

Efficiency perspective

The existing literature on user fees provides that deciding to fund services that provide a private benefit to citizen-voters may be an efficient solution in delivering public services (Ontario Committee on Taxation 1967; Bird and Tsiopoulos 1997a, 1997b; Chartrand 1997; Pal 1997; OECD 1998; McGee 2004; Norman 2004). We found that over the decades, the Canadian federal government has announced in several budgets (Finance Canada 1985, 1989a, 1995, 2003a) the notion of fairness and equity in the implementation of charging user fees for government services which benefit individuals versus providing a public benefit to all citizen-voters. We also determined that TBS policies consistently reflect that those who benefit from a service should pay for the service as a more efficient method of delivering public services (Treasury Board of Canada Secretariat 1997, 2003a, 2004b). Additionally, we found similar statements in legislation such as the UFA. We established that the OAG (1991, 1993, 1997, 2008) has commented in several reports that government has declared one of its objectives in

charging user fees was to promote an approach to financing government programs that would fairly charge those who received a service or derived benefits beyond those general taxpayers enjoy. In other words, government has communicated that it promotes being efficient in delivering public services which supports the existing literature.

However the literature also provides that even though government may communicate that they are attempting to deliver services more efficiently, user fees may not be popular with citizen-voters especially if the service was previously provided through general taxation, as user fees may appear to be a revenue grab if general taxation is not reduced with the introduction of the fee (Bird and Tsiopoulos 1997a, 1997b). We found that in the case of pardons, numerous responses from the public consultation process provided the comment that increasing the user fee to \$631 was a revenue grab, a method for government to make more money,¹⁴¹ and the fee represented an additional tax (Parole Board of Canada 2011b). Both of these findings within our study - government communicating that user fees are a more efficient solution and citizen-voters not favouring user fees - support the existing literature.

Fairness argument

The existing literature provides that user fees may be a 'fairer' method of financing public services provided to individual citizen-voters as user fees can make citizens aware of the cost or benefit of the public service they receive (Sproule-Jones 1994; Maslove 1994; Bird and Tsiopoulos 1997b; Howlett and Ramesh 2003). The notion of fairness was verified in our study during an interview with a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013, who provided that introducing user fees for public services can moderate demand for a service as users contribute to the cost of providing the service eliminating those users who may simply access the service as it is perceived as 'free.' TBS's (2003a) *External Charging Policy*

¹⁴¹ATI Parole Board of Canada File number A-2013-00004 (11, April 2013)

states that user fees are a means “to promote an equitable approach...by fairly charging those who derive benefits beyond those enjoyed by the general taxpayer... reducing or eliminating the demand for products or services that are perceived as ‘free.’”

The existing literature contributes that at times some citizen-voters may perceive that user fees may be ‘unfair’ with the notion of fairness revolving around terms such as social equity, or redistribution of wealth, or distributional effects, or the ability-to-pay principle (Kendrick 1939; Musgrave 1959; Oates 1994; Schick 2001; Good 2008). Others argue that in reality it is difficult to measure what the ‘right’ or ‘fair’ distribution of income means; hence it is of limited value in government’s decision-making (Sproule-Jones 1994; Bird and Tsiopoulos 1997b). We found that even though elected officials announced that user fees and cost recovery promoted fairness and equity in the financing of certain public services (Treasury Board of Canada Secretariat 1984; Finance Canada 1989a, 1995; Treasury Board of Canada Secretariat 1997, 2003a), citizen-voters were concerned with a person’s ability-to-pay. We established that the ability-to-pay consideration was one of the three most common reasons that people expressed to not increase user fees to \$631 during the PBC’s public consultation process: “It would pose a financial burden for applicants, with many unable to pay the increased fee” (Parole Board of Canada 2011b). Hence we found evidence that supports both sides of the existing literature as in government does communicate using terms such as fairness in providing and financing public services and citizen-voters voiced their concerns about whether or not it was fair to ask all income levels to pay user fees.

Calculating the private versus public benefit

While the literature provides that those who disproportionately benefit from an individual public service, should pay for it, we found that government may be challenged in calculating the private benefit versus the overall public benefit of a public service in order to assess whether user

fees are appropriate or not. The existing literature is murky in how to determine the overall private versus public benefit with Bird and Tsiopoulos (1997a, 33) providing that “it is by no means easy to design and implement user charges.” We found evidence that supports Bird and Tsiopoulos’s view. During an interview with the director of budget, estimates and reporting, expenditure and revenue analysis from the Library of Parliament, interviewed in Ottawa,¹⁴ March 2013, he stated that as a former employee of TBS, that: “I know from working on several files, user fees were always, one of the messiest areas ... it was always difficult to actually calculate what was a private benefit and the public benefit.” Through examining public documents we determined that neither Passport Canada nor PBC in their cost-benefit analyses could determine the complete overall public versus private benefit of passports or pardons.

Setting the appropriate fee

The literature provides that government needs to be able to determine the applicable costs of providing the service to be able to set an appropriate fee and not charge more for the service than what it costs to deliver (Bird and Tsiopoulos 1997a; Chartrand 1997; Norman 2004). During our study we found evidence to support the notion of charging the appropriate fee. The OAG (2008) reported that citizen-voters may challenge the validity of a fee; hence it is important that there is a reasonable relationship between the fee and the cost to provide the service, or the fee may be deemed an unlawful tax if the fee is found to be greater than the cost to the government. PBC provided an overall comment summarizing public consultation input with the following: “some of them [citizen-voters and pressure groups] also felt that the proposed fee would represent an additional tax by the Government” (Parole Board of Canada 2011b). We determined that in order to understand the costs in delivering public services, Passport Canada utilizes activity-based costing to ensure that the cost to provide a passport does not exceed the user fee charged (Standing Senate Committee on Foreign Affairs and International Trade 2012a). PBC

calculated the \$631 pardon fee by “identifying work activities directly linked to the processing of a pardon application and identifying the level of effort required to complete the work.”¹⁴² CISC bases its inter-departmental charges for security clearances on historical usage, as they have no formal process to track, monitor or report costs.¹⁴³ CISC stated that in order to track costs and usage of its services it will require a new system for accurate charging to departments.¹⁴⁴

Decision to implement user fees is political

The literature states that the decision to implement user fees may not be mathematically derived but rather be a reflection of a political decision (Peck 1925; Bird and Tsiopoulos 1997b; Pal 1997; Howlett and Ramesh 2003). Our findings support the literature in that we found the decision to implement user fees or not was politically determined. For example we found that even though an approved pardon application benefits the individual by providing better job opportunities, and it may also lower the probability of the individual recommitting a crime benefiting all of society, elected officials still decided that pardons should be completely financed through user fees and not general taxation. We determined that elected officials decided that even though a private benefit accrues to those individuals who receive a security clearance that the private sector would not finance CISC but rather funding would be provided through inter-departmental cost recovery.

The literature provides that government uses funding instruments such as user fees to achieve a desired policy objective or goal *vis-à-vis* target populations in making political decisions (Pal 1997; Howlett and Ramesh 2003; Harman 2005; Althaus, Bridgman, and Davis 2007). Our findings support this notion as government introduced full cost recovery for the pardon program as a part of their *Tough on Crime* agenda hence targeting criminals. In regards to

¹⁴² ATI Parole Board of Canada File number A-2013-00012 (30 August 2013)

¹⁴³ ATI PWGSC File number AI-2013-00186 (18 July 2013)

¹⁴⁴ ATI PWGSC File number AI-2013-00186 (18 July 2013)

security clearances, government determined that the target population of private industry would not finance the provision of security clearances.

Beyond adding to the existing literature, a further contribution that this study makes is that Chapter 7 provides an overview of the Canadian federal government's user fee journey which had not been previously documented. Understanding the Canadian federal government's user fee journey is of interest to TBS as mentioned during conversations with the special advisor on costing strategies. One of our research objectives was to try to determine when it may be more appropriate to use one type of funding instrument over another. While we have thoroughly documented government's use of user fees or not for four cases, and the evolution of user fees within the federal government, we have not arrived at when it may be appropriate to use them as a funding instrument based on the cases. While we have postulated when it may be appropriate to introduce user fees, our cases reflect that the introduction of user fees is a political decision and the decision depends on the message government is communicating to citizen-voters at the time for a specific service.

13.4.2 Public management

The academic literature provides that public management reforms are "grounded on the principle that managers must be permitted to run their operations without undue outside interference" (Schick 2001, 9). In Canada, over the years with the Glassco's Commission (1962) recommendation to 'let the managers manage' and the Lambert Commission's (1979) findings to 'make the managers manage,' departments appeared to be given increased autonomy with more flexibility and latitude in the management of their organizations.

One of the incentives provided to deputy ministers to encourage better management of financial resources was the retention of funds raised from cost recovery (Good 2008). However,

we found that whereas the decision to implement user fees for public services ultimately rests with the deputy head of the organization there are other considerations or influences beyond the control of the organization that may impact this decision (Parole Board of Canada 2011d). For example we found that in regards to obtaining new funding for security clearances it was not the deputy minister of PWGSC who decided whether or not to charge user fees to private sector organizations, it was the minister of Finance as indicated by “the second draft of the letter being prepared by the CFO for the Minister to send to Hon. Flaherty was reviewed and comments provided.”¹⁴⁵ Whereas, the deputy minister is supposed to have increased autonomy with more flexibility and latitude in the management of their organizations such as the introduction of user fees for security clearances; we found that it was the minister of Finance, or a political advisor within his office, who made the decision that user fees would not be charged to the private sector but rather inter-departmental cost recovery would be initiated. Whether the minister of Finance acted alone or engaged with the PMO in making this decision is unknown.

We found another example of a deputy head not having full responsibility for the management of her organization when we examined Passport Canada’s user fee proposal. During testimony to the Standing Senate Committee on Foreign Affairs and International Trade, the deputy head stated that Passport Canada uses other service providers such as Service Canada and Canada Post to provide additional service outlets for receiving citizen-voters’ passport applications (Standing Senate Committee on Foreign Affairs and International Trade 2012a). In issuing their report, the Committee provided that government should consider why Passport Canada needs offices across Canada to receive passport applications when Service Canada was capable of providing this service (Standing Senate Committee on Foreign Affairs and International Trade 2012b). On May 8, 2013 the government announced that Citizenship and

¹⁴⁵ ATI PWGSC File number A-2013-00021, page 00289 (08 July 2013)

Immigration Canada would have the primary responsibility for Passport Canada with Service Canada assuming responsibility for passport operations (Citizenship and Immigration Canada 2013). This is an example of how others outside of the deputy head's control may influence the management of a government organization.

In the case of pardons, PBC began working through the user fee process to increase the fee from \$50 to \$150 in 2010 as they were currently moving funds internally to support the pardon program (Standing Senate Committee on Legal and Constitutional Affairs 2011b). While government agreed to the increase after PBC went through the required implementation steps, government also decided that the pardon program should move to full cost recovery resulting in a fee increase to \$631. Hence while the deputy head of PBC wanted to increase the fee to discontinue the transfer of funds from other PBC programs, the government viewed this as an opportunity to advance their *Tough on Crime* agenda. This is a further example of deputy heads being responsible for the management of their organization but government stepping in and making decisions on their behalf in regards to the management of the organization.

We found that while government states the deputy head is responsible for the management of the department, deputy heads are unlikely to change how they run their departments, e.g. the introduction of user fees, as elected officials may make decisions that affect the department which the deputy head then needs to implement.

13.4.3 Decision-making

The existing literature contributes that government decision-making affects how government, citizen-voters, and pressure groups develop their policy preferences (Steinmo 1993). As the administrative arm of government, the bureaucracy implements government decisions regarding policy preferences. The relationship between elected officials and the

bureaucracy is not widely studied but generally revolves around relations that are informal, indirect, and changeable based on changing interpretations of unwritten constitutional conventions (Thomas 2002). With no formal rules but rather relying on conventions, government and the bureaucracy have an understanding over their respective duties with the bureaucracy providing impartial and objective advice to government regarding policy matters, then government deciding on policy matters, resulting in the bureaucracy implementing whatever policy decisions have been made in a nonpartisan manner (Savoie 2003). Thus in the political-administrative dichotomy, we have the bureaucracy willingly playing a background role in providing advice for policy-making and then implementing policy decisions, with government making the actual policy decision and then communicating to citizen-voters.

Further deputy head appointments are made to hold office ‘during pleasure’ which means that he may be replaced or removed at the discretion of the Governor in Council (Privy Council Office 2008, 2009). In other words, if the deputy head is not behaving in the expected manner by the prime minister, he may be removed. While the deputy head’s ‘supreme loyalty’ is to the minister responsible for the department, the deputy head is also answerable to the prime minister who is accountable for the unity and direction of government overall, thus the deputy head contributes to the unity of the government he serves (Privy Council Office 2003).

Our research found that the deputy head of PBC contributed options for the government to consider for reducing the backlog of pardon applications and for meeting the additional requirements for processing pardon applications which included a written report. One such option provided by the deputy head was that if an individual had no other convictions after five or ten years, a pardon might be issued to the individual without needing to go through the formal

pardon process.¹⁴⁶ While the bureaucracy gave this advice and government could have agreed to it which would have led to a different policy outcome, government decided to shape policy preferences by choosing to make a statement that taxpayers would not support criminals and criminals would be responsible for paying for their crimes by moving the pardon program to full cost recovery, rather than have a pardon system which would suggest ‘forgiveness’ of a crime.

In shaping policy preferences through decision-making we found that it depends on who (e.g. type of pressure group and citizen-voters) voiced their concerns about a particular matter. For example, during the public consultation process for the pardon fee increase to \$631, 1,074 of 1,086 respondents¹⁴⁷ did not support the increase (Parole Board of Canada 2011b) but the government decided to move to full cost recovery regardless even though the pardon program is positioned as a socio-economic program not a public safety program. In another example, that of a business focussed pressure group called BCCR¹⁴⁸ and its impact on the UFA, we found that government not only accepted most of BCCR’s recommendations in the Standing Committee on Finance’s study on cost recovery (Standing Committee on Finance 2000c) but elected officials also used these recommendations to create the UFA. This example demonstrates the impact that business focused pressure groups may have on government’s decision-making in shaping policy preferences. This example also demonstrates that business focused pressure groups not only influenced legislation which may have impacted businesses but that legislation was passed that

¹⁴⁶ According to the director of clemency and pardons of PBC, interviewed in Ottawa, 08 May 2013, less than 4% of applicants have spent time in a federal penitentiary

¹⁴⁷ Sampling of pressure groups who voiced their dissent through testimony to the Standing Senate Committee Legal or Constitutional Affairs or written responses to the Parole Board of Canada during the public consultation process, to the increase of the pardon user fee: Canadian Association of Elizabeth Fry Societies, Pardon Society of Canada, Elizabeth Fry Society of Saint John, N.B., Elizabeth Fry Society of Manitoba Inc., John Howard Society of Canada, John Howard Society of Sudbury, Mennonite Central Committee Ontario, Inmate Committee (specific location withheld), Association des services de réhabilitation sociale du Québec plus numerous individual citizen-voters.

¹⁴⁸ BCCR testified to the Standing Committee on Finance that their pressure group included many of Canada’s leading business organizations generating about \$330 billion worth of economic activity every year and providing over two million jobs for Canadians thus demonstrating the breadth of concern about Canada’s cost-recovery policy (Standing Committee on Finance 2000a).

applied to all user fees whether for businesses or individual citizen-voters. Hence, individual citizen-voters are subjected to the same requirements as businesses when being charged fees.

For security clearances we found evidence of public servants providing four options including costs, to government for financing the security program with one option being having private sector organizations pay user fees.¹⁴⁹ What we found interesting is that the option to have private sector organizations pay user fees is in a document dated February 2012; however, we know from other evidence that the minister of Finance made a decision in 2008 that private sector organizations would not pay for security clearances. It is unknown as to why PWGSC still provided the option for private sector organizations to pay a user fee for services when a decision had already been made to move to inter-departmental cost recovery.

In government decision-making that shapes policy preferences we found examples of the bureaucracy providing advice to elected officials and then implementing government decisions. We also found an example of business focused pressure groups influencing government decision-making related to policy preferences.

13.4.4 Reforms of the state

The literature provides that governments use policy instruments to achieve a desired policy preference (Pal 1997; Howlett and Ramesh 2003; Harman 2005; Althaus, Bridgman, and Davis 2007). While there appears to be a substantial number of policy instruments ranging from non-decisions to decisions which include incentives or directives, the actual usage of policy instruments is somewhat limited as governments typically use existing policy instruments through an incremental approach to tweak policy efforts rather than implementing new policy instruments (Pal 1997). In using policy instruments to achieve policy preferences, there may be

¹⁴⁹ ATI PWGSC File number A-2013-00021, page 00517 (08 July 2013)

existing policies which no longer align with government intentions when government introduces new legislation.

We found that the federal government has recognized over the years that for those public services which disproportionately benefit individuals that a cost recovery approach through user fees may be a more efficient and effective method of delivering public services (Finance Canada 1985, 1989a, 1995, 2003a). Government made numerous announcements through annual budgets (e.g. 1985, 1989, 1995 and 2003) regarding cost recovery. Additionally, we found that government struck various committees to study cost recovery such as the Ministerial Task Force on Program Review in 1984 (Finance Canada 1985) and the Standing Committee on Finance's study *Challenge for Change, A Study on Cost Recovery* in 2000 (Standing Committee on Finance 2000c) plus government instructed TBS to review departmental policies related to cost recovery (Standing Committee on Finance 2000c; Finance Canada 2003a). Furthermore, beyond reviewing user fees within specific departments (Office of the Auditor General of Canada 2002, 2005, 2006, 2007a, 2007b, 2007c, 2009, 2013a), the OAG has conducted overall audits/reviews/studies of the application of user fees including: Financial Management and Control of Non-tax Revenue (Office of the Auditor General of Canada 1991), Parliamentary Control over the Raising of Revenues by Fees (Office of the Auditor General of Canada 1993), Financial Management: Developing a Capability Model (Office of the Auditor General of Canada 1997), and Management of Fees in Selected Departments and Agencies (Office of the Auditor General of Canada 2008).

We found through examination of these documents that in shaping policy preferences through user fees, government including TBS, had to reform the legislative and management landscape often with recommendations or input from the OAG so that there was alignment. We

found that this is no easy task as TBS went through several management policy changes related to cost recovery in order to align with OAG recommendations and legislation such as the UFA (Treasury Board of Canada Secretariat 2003a, 2004b, 2009a). The OAG (2008) recommended that as TBS had rescinded its policy on external charging, which had seen several modifications over the years (e.g. 1989, 1997, 2003), as it conflicted with certain provisions of the UFA, that TBS should provide more general guidance such as setting the fee, requirement for regular review, and updating the fee when circumstances change, on user fees beyond the current guide issued. In response to the OAG's recommendation, TBS issued the *Guide to Establishing the Level of a Cost-Based User Fee or Regulatory Charge*. While TBS (2009a) issued the *Guide to Establishing the Level of a Cost-Based User Fee or Regulatory Charge* to assist departments in implementing user fees, it was issued as a guideline not as a policy which means that it is not mandatory for departments to follow.

In 2012 TBS announced in its *Report on the State of Comptrollership in the Government of Canada* that it had completed three sub-activities: “analysis of options and drafting of potential requirements, alignment of future guidance with the UFA and other relevant policies, and recommendation of draft policy instruments” which would be used in developing new guidance on user fee management (Treasury Board of Canada Secretariat 2012d). As mentioned by a senior advisor of costing strategies at TBS, interviewed in Ottawa, 21 May 2013, to address gaps in the UFA and the OAG report, TBS expects to issue a draft directive on user fees in 2014.¹⁵⁰ According to the senior advisor, the directive on user fees is expected to describe

¹⁵⁰ An access-to-information request was submitted to Treasury Board of Canada Secretariat of Canada (TBS) on May 27, 2013 requesting a draft copy of this directive as well as the decision-making behind it (TBS File number A-2013-00205). On July 22, 2013, TBS issued a letter indicating that all relevant records for this request are entirely withheld under section 69(1)(e) of the Access to Information Act which permits withholding of information that is used to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in section 69(1)(d). Section 69(1)(d) states that records used for or reflecting communications or discussions between ministers of the Crown on matters

identifiable stakeholders; benefits above and beyond what taxpayers pay; and provide grounds for charging as well as provide the requirement for fees to be reviewed every five years. In other words, it appears that the expected directive on user fees will strengthen the current policy instrument related to user fees. Additionally to meet the requirements of the UFA, departments can expect to commit two to three years' worth of effort to adhere to the user fee proposal approval process. Given the extensive time it takes to implement new fees or change existing fees, even though the deputy head can retain funds from cost recovery, we are of the view that it is not worth the bother unless his budget is reduced or elected officials direct him to do so as the process is time intensive. The UFA has resulted in having broader incentive effects on the managerial and bureaucratic processes for senior public servants. This is an example of how government initiates reforms of the state.

We determined that another example from this study of government initiating reforms of the state revolves around the Conservative government's *Tough on Crime* agenda. In 2010-2011, the government passed numerous pieces of legislation¹⁵¹ impacting PBC (2011b) with most of these bills increasing PBC's workload due to additional requirements - some of which impacted pardon applications. In particular the impact of Bill C-23A (An Act to Amend the

relating to the making of government decisions or the formulation of government policy may be withheld from public disclosure.

¹⁵¹ Legislation included Bill C-23A (An Act to Amend the Criminal Records Act, 40th Parliament, 3rd Session, 2010), C-59 (An Act to Amend the Corrections and Conditional Release Act (Accelerated Parole Review) and to Make Consequential Amendments to Other Acts, 40th Parliament, 3rd Session, 2011), S-2 (An Act to Amend the Criminal Code and Other Acts, 40th Parliament, 3rd Session, 2010), C-21 (An Act to Amend the Criminal Code (Sentencing for Fraud), 40th Parliament, 3rd Session, 2011), C-22 (An Act Respecting the Mandatory Reporting of Internet Child Pornography by Persons who Provide an Internet Service, 40th Parliament, 3rd Session, 2011), C-30 (An Act to Amend the Criminal Code, 40th Parliament, 3rd Session, 2011), C-31 (An Act to Amend the Old Age Security Act, 40th Parliament, 3rd Session, 2010), C-48 (An Act to Amend the Criminal Code and to Make Consequential Amendments to the National Defence Act, 40th Parliament, 3rd Session, 2011), S-6 (An Act to Amend the Criminal Code and Another Act, 40th Parliament, 3rd Session, 2011), S-9 (An Act to Amend the Criminal Code (Auto Theft and Trafficking in Property Obtained by Crime), 40th Parliament, 3rd Session, 2010), C-268 (An Act to Amend the Criminal Code (Minimum Sentence for Offences Involving Trafficking of Persons Under the Age of Eighteen Years), 40th Parliament, 3rd Session, 2010), C-475 (An Act to Amend the Controlled Drugs and Substances Act (Methamphetamine and Ecstasy), 40th Parliament, 3rd Session, 2011), and S-215 (An Act to Amend the Criminal Code (Suicide Bombings), 40th Parliament, 3rd Session, 2010)

Criminal Records Act, 40th Parliament, 3rd Session, 2010) which significantly increased the workload and costs required to process a pardon application due to the additional time required for PBC employees to review applications and for board members to write a report for every pardon application accepted whether granted or denied (Parole Board of Canada 2011d). Bill C-23A amended the *Criminal Records Act* (R.S.C., 1985, c. C-47) to not only increase the ineligibility period for certain offences but also provided PBC authority to make inquiries related to pardon applications for all types of offences. According to the director of clemency and pardons of PBC, interviewed in Ottawa, 08 May 2013, these changes not only increased the legislative authority of PBC but also shifted the role of employees from performing relatively simple administrative tasks to responsibility for executing more complex investigative and analytical roles. The director commented that board members now require additional effort as a written report is required for each pardon granted, denied or revoked.

As well, Bill C-10 made significant changes to the eligibility of receiving a record suspension including increasing the eligibility period from three to five years for summary convictions and from five to ten years for indictable offences (Library of Parliament 2012). Moreover individuals who have been convicted of sexual offences against minors, or been convicted of more than three indictable offences tried by indictment are now ineligible for a record suspension (Library of Parliament 2012).

All this to say that not only did the government change the landscape of the criminal justice system considerably but for the purpose of this study, it resulted in PBC now having three different sets of legislation to consider when processing pardon applications: one set of legislation for those that applied with a \$50 fee, another for those that applied with the \$150 fee, and a further set of legislative changes to consider for applications with the \$631 fee resulting in

the issuing of pardons becoming more complex from an administrative perspective based on government's reforms of the state.

13.4.5 Governance

Constitutions are vague providing basic logic and a community of understanding but rarely define the governance for decision-making, resulting in each nation state adapting its political foundations to the realities of governing its citizen-voters (Steinmo 1993; Sproule-Jones 1993; Levy 2009). In governing citizen-voters, elected officials need to be aware that citizen-voters have a virtually insatiable desire for increased public services but they don't want higher taxes (Steinmo 1993; Good 2008). Pressure groups, whose members are citizen-voters, pursue the group's self-interest at the expense of others as government only has a limited amount of funds available to provide public services (Becker 1983, 1985). Beyond meeting individually with elected officials, pressure groups also utilize parliamentary committees to have their voice heard and hopefully influence government decision-making to gain more benefits for their members. Hence parliamentary committees are an important aspect of the governance system within the Canadian Westminster system.

Malloy (1996) contributes that while parliamentary committees would like to inform policy-making, in actuality the government utilizes committees to act as a public forum to communicate with others such as pressure groups. We had expected to find that parliamentary committees were an enabler for furthering the interests of non-government actors as committees provide a venue for political party opposition members, citizen-voters, and pressure groups to present their views on various public issues. We did not expect to find that committees made much of a difference in altering legislation. What we determined was that committees do have an impact such as in the case of the Standing Committee on Finance's study *Challenge for Change*,

A Study on Cost Recovery with many of its recommendations being adopted into the UFA and TBS's 2003 *External Charging Policy*.

We expected to find that pressure groups, as a part of the governance system would be successful in influencing elected officials decisions. We found that in the case of pardons there were opposing sides to the fee increase to \$631 from pressure groups that represented offenders' rights versus pressure groups who represented victims' rights. We did not expect to find the level of passion exuded by both sides of the issue and the very public opposing views voiced between these pressure groups. To appease both sides, the government could have found a middle of the road solution to the pardon fee issue but chose not to do so. Rather the government sided with the victims' groups by implementing full cost recovery for the pardon program.

We were surprised in the PBC case to find that two senators who represent victims' group openly voiced their opinions during testimony on the pardon user fee increasing to \$631. One could speculate that these senators may not be impartial given their political party affiliation with the governing Conservative Party, the Party's *Tough on Crime* agenda, and their association with victims' groups. While the Senate's Conflict of Interest Code provides that senators are not to promote their private interests (Senate of Canada 2012), in practice this does not seem to be the case as we found in the pardon user fee case.

The above demonstrates the significance of our findings and contribution to knowledge, by aligning our findings with themes of public administration including: public finance, public management, decision-making, reforms of the state and governance signaling the importance and relevance of the work done in the previous chapters.

13.5 Meeting research objectives

This study focused on the Canadian federal government's decision-making process to provide some public services to individuals either by funding through general taxation or by financing through user fees. For services that disproportionately benefit individuals versus society as whole, it is important to understand why some services are provided through general taxation while others are financed through user fees. In answering the research question posed, this study pursued the following research objectives:

- To better understand decision-making related to public finance;
- To help to determine when it may be more appropriate to use one type of funding instrument over another;
- To understand how political decisions impact the management of the bureaucracy; and
- To understand how citizens may, or may not, influence political decisions.

For the four cases that we studied by applying Buchanan and Tullock's model, we did not find that decisions related to public finance and the implementation of user fees were based on different values, as in government did not decide to not charge user fees based on a citizen-voter's ability-to-pay. Ability-to-pay as a reason not to implement full cost recovery for pardons was voiced loud and clear by citizen-voters and pressure groups but government decided to proceed with full cost recovery to have those that commit a crime pay for the services. With this decision government supported pressure groups and citizen-voters who may have been victims of crimes. Hence we determined that at times citizen-voters may influence political decisions but it is not necessarily the majority of citizens in a particular matter that elected officials adhere to; it may, as in the case of pardons, be the minority.

From a values-based perspective, we found it interesting that government has a difficult time in trying to determine the public versus private benefit for services provided to individuals.

We found this to be the situation with passports and pardons as a part of the Regulatory Impact Assessment Statements (RIAS) that were conducted with the public benefit not being quantifiably defined. PWGSC was not required to complete a RIAS as no fee was introduced to private industry for contract security. However, it will be interesting to see what the public versus private benefit in the RIAS that PWGSC needs to prepare for user fees for the Controlled Goods Program (a complementary program to contract security) which is expected in July 2015.

Political decisions in regards to matters related to public finance were found to impact the management of the bureaucracy. From a public management perspective, the implementation of user fees was said to be intense by several interviewees from within government organizations. We found that the overall process can be lengthy (e.g. two to three years) as a government organization works through the various approval functions required such as central agency approval and parliamentary committee approval. For the pardon fee, PBC prepared three proposals to increase the user fee to full cost recovery. For passports, there were two separate consultation processes – one for the types of services, the other for the costs – both of which were time intensive. PWGSC has been reallocating funds since 1998 rather than find a permanent funding solution for contract security suggesting that it is time intensive to find a permanent funding solution. From an administrative perspective, we were perplexed that ESDC provided a response that it does not track the costs of administering the SINs program.

From a macro-perspective, we found that political decisions in regards to matters related to public finance were not consistent. Political decisions not being consistent aligns with the Buchanan and Tullock model in that actors pursue their self-interest depending upon circumstances. For instance for contract security, government made a decision to not charge the private sector. This decision was made even though private sector organizations have access to

contracting opportunities worth billions of dollars (Office of the Auditor General of Canada 2007a). Government determined that the security of government information and assets is an “integral part of maintaining public trust” (Standing Committee on Public Accounts 2010a, 1). Additionally government organizations have the responsibility to protect government information and assets under its control including when contracting with private sector organizations (Office of the Auditor General of Canada 2007a). Government decided to initiate inter-departmental cost recovery rather than user fees. In the case of pardons, even though pardons are positioned as benefiting the economy and society, government decided to move to full cost recovery so that offenders would pay the full cost of a pardon rather than having taxpayers fund a portion through general taxation.

13.6 Recommendations for future research

In answering our research question, we have not only contributed to the existing literature but we have also uncovered future areas of research which may be of interest. Future research could include applying Buchanan and Tullock’s model to other examples within the federal government and assessing why a decision was made to charge user fees or not creating a larger collection of case studies to analyze, interpret and understand the research issues. It would also be interesting to study whether or not the decision to implement user fees is related to a political party’s ideological stance.

We had expected to find that parliamentary committees were not influential in changing government legislation but rather were used as public forums for pressure groups and others to express their views. We found that this is not always the situation as demonstrated by our findings related to the Standing Committee on Finance. Understanding more about the role of committees and how well they do their work such as altering legislation would be an interesting

area for further research. Further research may provide additional evidence that is not presently clear in the application of Buchanan and Tullock's model or the role of committees overall.

We found in our study that one large business-focused pressure group was very successful in having government introduce legislation that benefited its members. A further area of research that would be interesting is examining other instances in which pressure groups may have influenced legislation such as the example provided in Chapter 7. In doing future research we would want to be cognizant as well as to the implications revolving around which standing committee pressure groups are presenting to and attempting to influence. As mentioned the Standing Committee on Finance has a higher profile than others which may have been an influencing factor as to why the BCCR pressure group was successful. Future research could be examining different types of pressure groups and which committees they try to influence.

Results of this study may be used as a baseline for future research in regards to several areas: comparative research between countries or to examine Canadian provinces and municipalities in how each makes decisions regarding implementing user fees or financing services provided to individuals through taxation.

This study draws on the established theory of public choice in assessing its findings. It would be interesting to apply the Buchanan and Tullock model to other jurisdictions such as provinces and municipalities within Canada and/or other Westminster models of government and/or other systems of government that have user fees. It would be of interest to apply to other jurisdictions so that one could glean whether or not the decision-making process behind user fees has similar results as in the Canadian federal government model that we have developed.

Within the Canadian federal government the overall understanding of the user fee process is not well understood including where gaps may lay thus future research in developing a

comprehensive model may be of interest. User fees generally, as well as the decision-making process specifically, have received relatively little attention in Canadian public administration. As per the findings of the PBO (2012), within the federal government an inconsistent approach is used to report on user fees. Public administration would benefit from further research and a costing methodology that could be applied broadly.

Additionally research that would lead to the development of a database that provides quantifiable metrics for measures such as public safety would aid decision-makers in trying to determine the private versus public benefit of a service. Understanding the private versus public benefit is one of the main determinants in evidence-based decision-making regarding whether or not to charge user fees but alas it is also one of the most difficult to quantify.

All in all, this study contributes to the existing literature, provides original contributions, and provides areas of examination for future research.

Appendix 1 – Consent Form as Approved by the Office of Research Ethics and Integrity

Title of the study: Financing Public Goods and Services through General Taxation or User Fees: A Matter of Public Choice?

Supervisor:

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Invitation to Participate: I am invited to participate in the above mentioned research study conducted by Dr. Genevieve Tellier and Ms. Connie Hache as a part of Ms. Hache's doctoral thesis.

Purpose of the Study: The purpose of this research study is to examine the decision-making process as to whether or not to finance public goods and services provided to individuals through general taxation or user fees in such areas as passports, security clearances, pardons, and social insurance numbers. The research question is to determine why some public goods are provided by the federal government through external user fees, while others are not. The objectives of the study are:

- from a values-based perspective, when government decides to finance public sector services through user fees does part of the decision making process involve considering what the impact means for all citizens (e.g. lower-ability versus higher-ability)?
- from an administrative perspective, does the decision-making process depend on the 'culture' of the department and whether or not user fees have been introduced previously for other services?
- from a macro perspective, is the decision to provide services through either taxation or user fees values-based, economically driven, or a political decision? and

- from an economic and/or political perspective, at times is there a formal decision made, depending upon circumstances, to not charge user fees but to continue to finance through taxation even if there is a recognition that only specific individuals benefit from the service?

Participation: My participation will consist of a one-hour interview at a location that is convenient to me during which the researcher will ask a number of questions that deal with the particular matter of expertise that I have in regards to user fees within the federal government. The interview has been scheduled for *(place, date and time of each session to be inserted once interview scheduled)*. I understand that if I'm not comfortable with the interview I may withdraw at any time.

Risks: I have received assurance from the researcher that every effort will be made to minimize any risks and that upon completion of the interview, I will be asked if my responses can be referenced in the research study. As a participant, I will also be asked if I would like to see the specific references prior to the completion of the study. If at any time I indicate that I would not like my comments to be referenced then these references will be removed.

Benefits: My participation in this study will provide a forum to discuss a topic that has not been broadly studied. A benefit to me is that upon completion of the interview, I will be asked if I would like to receive a copy of the completed study as a reference tool.

Society will benefit from the research study as it will provide information and findings in an area that is not well known.

Science will benefit as the study will provide analysis and background information that will be helpful in understanding the decision to finance public services through either general taxation or user fees from an academic perspective that may then be applied to practical scenarios. Once this research study has been completed it may then be replicated with other national and sub-national governments with similar public goods and services thus allowing for a comparative analysis.

Confidentiality and anonymity: I have been informed by the researcher that the information I share will not remain confidential. I understand that the contents will be used only for the completion of the research study – *Financing Public Goods and Services through General Taxation or User Fees: A Matter of Public Choice?* Anonymity will not be guaranteed as the purpose of the interview is to clarify and supplement the information gathered from the research based on publicly available data. Participants' comments will be referenced in the study by indicating title and organization but not specific names. As a participant, I will also be asked if I would like to see the specific references prior to the completion of the study. If at any time I indicate that I would not like my comments to be referenced then these references will be removed.

I would like to review any of my comments that are referenced in the study.
Yes or No (Please circle the appropriate response).

Conservation of data: The data (written records, electronic data, audio tapes, and interview notes) will be stored in a secure manner in the supervisor's office. Data will be conserved for five years after publication. At the end of the storage period, the written records and interview notes will be shredded, the electronic data and audio tapes will be destroyed, and files on hard drives will be deleted. Access to the collected data will be limited to the supervisor and the researcher.

Voluntary Participation: I am under no obligation to participate and if I choose to participate, I can withdraw from the study at any time and/or refuse to answer any questions, without suffering any negative consequences. If I decide to withdraw from the study my data will be removed.

I understand that this interview will be conducted in English in which I am proficient and comfortable conversing. I understand that the interview may be audio-recorded.

Acceptance: I, *(Name of participant)*, agree to participate in the above research study conducted by Connie Hache of the School of Political Studies, Faculty of Social Sciences, University of Ottawa, whose research is under the supervision of Dr. Genevieve Tellier.

If I have any questions about the study, I may contact the researcher or her supervisor.

If I have any questions regarding the ethical conduct of this study, I may contact the Protocol Officer for Ethics in Research, University of Ottawa, Tabaret Hall, 550 Cumberland Street, Room 154, Ottawa, ON K1N 6N5, phone: (613) 562-5387, email: ethics@uottawa.ca.

There are two copies of the consent form, one of which is mine to keep.

Participant's signature: *(Signature)* Date: *(Date)*

Researcher's signature: *(Signature)* Date: *(Date)*

Appendix 2 - Annotated Bibliography

The following documents were accessed for background information:

- [User Fees Act](#)
- [Report of the President of the Treasury Board on the Provisions and Operation of the User Fees Act](#)
- [User Fee Proposal Approval Process](#)
- [Template for Tabling User Fee Proposals in Parliament](#)
- [Complaint\(s\) Resolution Process Flowchart](#)
- [List of Tabled and Approved User Fee Proposals \(August 28, 2012\)](#)
- [2012-2013 Reports on Plans and Priorities – User Fees/External Fees Summary](#)
- [2006 – 2007 Departmental Performance Reports – User Fees/External Fees Summary](#)
- [2007 – 2008 Departmental Performance Reports – User Fees/External Fees Summary](#)
- [2008 – 2009 Departmental Performance Reports – User Fees/External Fees Summary](#)
- [2009 – 2010 Departmental Performance Reports – User Fees/External Fees Summary](#)
- [2010 – 2011 Departmental Performance Reports – User Fees/External Fees Summary](#)
- [Guide to Establishing the Level of a Cost-Based User Fee or Regulatory Charge \(2009 - current\)](#)
- [User Charging in the Federal Government - A Background Document \(1997 – archived\)](#)
- [Review of the Cost Recovery and User Fee Approval Process - Number 3 \(2001 – archived\)](#)
- [Guide to Costing \(2013 - current\)](#)
- [Cost Recovery \(1999 – archived\)](#)
- [Cost Recovery and Charging Policy \(1997 – archived\)](#)
- [External Charging Policy \(2003 – archived\)](#)
- [Policy on Service Standards for External Fees \(2004 – current\)](#)
- [Quality and Affordable Service for Canadians: Establishing Service Standards in the Federal Government - An Overview \(1996 – current\)](#)
- [Cabinet Directive on Regulatory Management \(2012 – current\)](#)
- [Canadian Cost-Benefit Analysis Guide – Regulatory Proposals Interim \(2007 – current\)](#)
- [Passports:](#)
 - [Passport Canada's Fee-for-Service Proposal to Parliament – March 2012](#)
 - [Impact Assessment of Passport Canada's Fee-for-Service Proposal – March 2012](#)
 - [International Comparison of Passport-Issuing Authorities – March 2012](#)
 - [How Passport Canada is Funded \(video clip\)](#)
 - [The Canadian ePassport \(video clip\)](#)
 - [Get your Canadian Passport \(video clip\)](#)
 - [The Canadian Passport: Excellent Value for Money \(video clip\)](#)
 - [Tips to apply for a passport \(video clip\)](#)
 - [Passport Canada Annual Report 2011 - 2012](#)
 - [Passport Canada Annual Report 2010 - 2011](#)
 - [Passport Canada Annual Report 2011 - 2012](#)
 - [What Passport Canada Heard From Canadians: Public Consultations Findings Report October 2010](#)
 - [Passport Canada Consultations on Passport Services: In-depth Interview Report January 2010](#)

- o [Passport Canada Consultations on Passport Services: Survey Report November 2009](#)
- o [Passport Canada Consultations on Passport Services: Focus Group Report – October 2009](#)
- o [Passport Canada - 2008 National Client Satisfaction Survey](#)
- o [Canadian Passport Order](#)
- o [Passport Services Fees Regulation](#)
- o [Passport Canada's MOU with Correctional Services Canada](#)
- o [Office of the Auditor General – 2009 – Chapter 5 – Passport Services – Passport Canada](#)
- o [Office of the Auditor General – 2007 – Chapter 5 – Passport Services – Passport Canada](#)
- o [Office of the Auditor General – 2005 – Chapter 3 – Passport Office – Passport Services](#)
- o [Standing Senate Committee on Foreign Affairs and International Trade Meetings 1-3 Passport Canada's Fee-For-Service Proposal](#)
- o [Standing Senate Committee on Foreign Affairs and International Trade Meetings 4 Passport Canada's Fee-For-Service Proposal](#)
- o [Standing-Committee-on-Foreign-Affairs-and-International-Development. 2012. Meeting 33: Evidence. Department of Foreign Affairs User Fee Proposal Relating to Passport Canada. 41st Parliament, 1st Session.](#)
- o [Report 2 - Passport Office – Passport Services](#) (Adopted by the Committee on May 11, 2006; Presented to the House on May 17, 2006)
 - GOVERNMENT RESPONSE: [Second Report of the Standing Committee on Public Accounts, "Passport Office – Passport Services"](#) (Presented to the House on August 16, 2006)
 - [Passport Canada – Passport Services: Update on Status of Action Plan to Address the report of the Auditor General June 2006](#)
- o [Report 9 - Chapter 5, Passports Services - Passport Canada of February 2007 Report of the Auditor General of Canada](#) (Adopted by the Committee on February 28, 2008; Presented to the House on March 5, 2008)
 - GOVERNMENT RESPONSE: [Ninth Report of the Committee, "Chapter 5, Passports Services - Passport Canada of February 2007 Report of the Auditor General of Canada"](#) (Presented to the House on June 6, 2008)
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- o [External Affairs and International Trade Annual Report 1990-91](#)
- o [Passport Office Strategic Plan 1992-1993 to 1996-1997](#)
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- o [Department-of-External-Affairs. 1972. Press Release: 1972/02/25.](#)
- o [Special Operating Agencies: Financial Issues \(1994\)](#)
- o [Taking Stock of Special Operating Agencies—A Summary of Conclusions of Joint Public and Private Sector Steering Committee \(1994\)](#)

- o [Guide on Revolving Funds \(1997\)](#)
- Pardons:
 - o [Parole Board of Canada](#)
 - o [Parole Board of Canada - Report on Plans and Priorities. \(2010-2011\)](#)
 - o [Parole Board of Canada – Reports on Plans and Priorities \(2013-2014\)](#)
 - o [Justice Canada – Pardon Services Fees Order](#)
 - o [Appendix to the Twelfth Report of the Standing Senate Committee on Legal and Constitutional Affairs on the National Parole Board’s User Fees Proposal – November 2010](#)
 - o [Standing Senate Committee on Legal and Constitutional Affairs - Issue No. 2: Future business of the committee and First, second, third, fourth and fifth meetings on Parole Board of Canada's User Fees Proposal](#)
 - o [Parole Board of Canada – Consultation Report – Proposed Increase to the Pardon Application User Fee – June 2011](#)
 - o [RIAS Inc. – Cost Benefit Analysis: Proposed Cost Recovery for the Processing of Pardon Applications – prepared for the Parole Board of Canada - obtained through an informal Access to Information request \(2010-00046\)](#)
 - o [Responses from public consultation process - obtained through an informal Access to Information request \(2010-00048\)](#)
 - o [Appendix to the Fifth Report of the Standing Senate Committee on Legal and Constitutional Affairs on the Parole Board of Canada’s User Fee Proposal – November 2011](#)
 - o [Issue 4, November 2 and November 3, 2011](#)
 - o [Issue 3, October 20, October 26 and October 27 \(in camera\), 2011](#)
 - o [Issue 2, September 28 \(in camera\), September 29, October 5, October 6 and October 19 \(in camera\), 2011](#)
 - o [\(Treasury Board of Canada Secretariat and Public Works and Government Services 2010\)](#)
 - o [Justice Canada – Pardon Services Fee Order](#)
 - o [Order Amending the Pardon Services Fees Order – February 2012](#)
 - o [Library of Parliament – Bill C-23B: Eliminating Pardons for Serious Crimes Act – October 2010](#)
 - o [Office of the Auditor General – 1994 – Chapter 17 – National Parole Board](#)
- Security Clearances
 - o [Canada's Industrial Security Program: Moving Forward February 2012](#)
 - o [Common Objectives and Challenges in Industrial Security January 2012](#)
 - o [Industrial Security Branch – History](#)
 - o [International Industrial Security Relations](#)
 - o [Personnel Security Screening](#)
 - o [Office of the Auditor General – 2007 – Chapter 1 – Safeguarding Government Information and Assets in Contracting](#)
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- [Report on the Review of Security in Contracting](#)
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 - [Standing-Senate-Committee-on-National-Finance. 2012. Issue 19 - Evidence - May 15, 2012 - Morning meeting](#)
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- o [Office of the Parliamentary Budget Officer – 2012 – Federal User Charges](#)
- Additional Parliamentary Reports:
 - o [Report of the Standing Committee on Finance: Challenge for Change – A Study on Cost Recovery June 2000](#)
 - [Standing Committee on Finance – Evidence - June 6, 2000](#)
 - [Standing Committee on Finance – Evidence – May 31, 2000](#)
 - [Standing Committee on Finance – Evidence – May 30, 2000](#)
 - [Standing Committee on Finance – Evidence – May 10, 2000](#)
 - [Standing Committee on Finance – Evidence – May 9, 2000](#)
- Other departments:
 - o [Health Canada’s Proposal to Parliament for User Fees and Service Standards for Human Drugs and Medical Devices Programs – April 2010](#)
 - o [CFIA Service Standards and User Fees: Cost Recovery Policy & Framework](#)
 - o [Canadian Food Inspection Agency User Fee Proposal: Overtime Fees Canadian Grain Commission: User Fees Consultation and Pre-proposal Notification – November 2012](#)

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