

**RHETORIC AND PANDERING: AN EXAMINATION OF TAX POLICY ANNOUNCEMENTS IN THE HARPER-TRUDEAU ERA**

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**ABSTRACT**

This paper examines the tax policy announcements in Canada made by the current and immediately previous governments. The paper rests on the premise that democracy is strengthened where governments provide useful, complete and timely information to the public. The author evaluates the extent to which the tax policy announcements meet this standard, and finds them deficient in multiple respects. The communications are clearly persuasive in nature, involving strategic choices in language used and information provided. At best, the information provided is incomplete, and, at worst, the announcements are intentionally misleading. The author argues that governments should be more transparent in their reasons for, and the effects of, tax policy changes. Further, they should use annual budgets as an opportunity to educate citizens about the tax system instead of tools to manipulate the public. This would better equip the populace to evaluate policy choices and hold governments accountable, thus promoting democracy.

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## I INTRODUCTION

This paper examines the Canadian budgets and other tax policy announcements during the time former Prime Minister Stephen Harper and now Prime Minister Justin Trudeau have held office. The analysis exposes various tactics used, explains possible motivations for their use, and makes arguments about their appropriateness in light of the likely effects of the policy. Thus, the paper contains elements of both discourse and policy analysis. Underlying the discussion and analysis is an argument that democracy is better served through a more informed and engaged populace. This leads to a conclusion here that the Canadian government can play a role in strengthening democracy through its tax policy announcements.

This paper proceeds by first summarising the Canadian income tax system and fiscal politics, and then describing the major tax policy changes during the Harper-Trudeau era. In Part III, I consider the role of transparency in democracy, and what transparent tax policy announcements would look like. Then, in Part IV, I identify and analyse the persuasive tactics used in tax announcements during this period. The first set of tactics relate to the careful choice of language. The second set relates to the strategic delivery of rationales behind the policy choices. Winners and losers of tax policy reform, the theme of this conference, are discussed in this section, among other matters. The remaining sections show an absence of a link between taxes and spending, a lack of educational content in tax policy budgets, and the use of tax advantages to gain the political favour of certain groups. Overall, it is clear that the tax policy announcements lacked transparency.

In the final part of this paper, I recommend that tax policy announcements should be scrutinized with the identified persuasive tactics in mind. Further, the government should be compelled to formulate policy announcements that are more candid, include more complete disclosure around the nature and impact of the tax policy choices, and educate citizens on the tax system and its goals. These initiatives have the potential to increase government accountability, and, thus, strengthen democracy.

## II CANADIAN INCOME TAX SYSTEM AND POLITICS

In this part, I provide an overview of the Canadian tax system, fiscal politics, and tax policy changes during the period of study to set the stage for the analysis later in the paper.

### *A The Canadian income tax system and fiscal politics*

Both federal and provincial governments have the power to raise income taxes under Canada's Constitution.<sup>1</sup> With some exceptions, provincial taxes are collected by the federal government on behalf of the provinces, and provincial governments generally use income calculated under the federal *Income Tax Act*<sup>2</sup> as their tax base, with some adjustments. In addition to spending tax revenues on its own services, the federal

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<sup>1</sup> *Income Tax Act*, RSC 1985, c 1 (5<sup>th</sup> Supp).

<sup>2</sup> *Constitution Act 1982* (UK), 30 & 31 Vict, c 3.

government also provides significant equalisation payments to the 'have not' provinces, using an allocation formula.

Since 1940, the only two parties in power federally in Canada have been the Liberal and Progressive Conservative parties. The federal government enacts income tax legislation through the parliamentary system, with most major changes announced in the annual federal budget, which is presented by the Minister of the Department of Finance.

Going back in history for a moment, in their introduction to the book *Tax is Not a Four Letter Word*,<sup>3</sup> Alex and Jordan Himelfarb recount the rise in neo-liberalism in Canada beginning around 25 years ago, and its free-market solution to economic stagnation and inflation, and the resulting prescription of low taxes and smaller government.<sup>4</sup> They explain how governments sold this to a public accustomed to public goods and services: 'The sales pitch was simple, and it was perfect politics: tax cuts would be so beneficial to economic growth that they would pay for themselves. Tax cuts were free – the last free lunch.'<sup>5</sup> They also observe, at the time of the writing of the book, published in 2013: 'that taxes are somehow separate from services they buy is now a part of political culture.'<sup>6</sup> The other contributors to the book continue along this theme of exploring the tax-cutting phenomenon, and it is notable that in this period there were both more right wing Progressive Conservative and more centralist Liberal federal governments in power.

The Harper-Trudeau period reviewed here begins in 2006, with the election of Steven Harper's Progressive Conservative minority government. This followed 13 years of Liberal reign, under the leadership of Jean Chrétien and Paul Martin. While some previous Progressive Conservative leaders have been considered moderate conservatives, Harper's Reform Party roots are indicative of his fiscal conservatism. As will be revealed shortly, his government continued the 'tax cut mania'<sup>7</sup> of those in power the decade before him. Harper's government retained a minority government in the 2008 election, and then formed a majority government after the 2011 election, but fell to Prime Minister Justin Trudeau's Liberal government in 2015. Trudeau successfully campaigned on strengthening the middle class at the expense of the wealthy, and his tax policy changes purport to reflect this. While it is clear that there is at least a softening of the tax-cut frenzy, remnants of the low-tax mentality are certainly still present, as evidenced by the significant net government cost of lowering middle-income bracket rates and adding a new highest tax bracket.

### ***B A summary of major tax policy changes in the Harper-Trudeau era***

In its first post-election budget speech, and during a time of economic growth, the Conservative Minister of Finance Jim Flaherty opened by announcing its focus on tax

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<sup>3</sup> Alex Himelfarb and Jordon Himelfarb, 'Introduction: Tax is Not a Four-Letter Word' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 1.

<sup>4</sup> Ibid 3.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Eugene Lang and Philip DeMont, 'A Brief Potted History of Ottawa's Tax Cut Mania' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 119.

relief.<sup>8</sup> Despite forming only a minority government, the 2006 Budget<sup>9</sup> included a plethora of significant tax changes, including a 1 per cent GST reduction, a decrease in the lowest income tax rate, and an increase of the basic personal amount.<sup>10</sup> More targeted tax credits included one for all employees, low-income earners entering the workforce, tradespeople's tools, students' textbooks, children's fitness activities, and public transit. There were also significant tax reductions for corporations: both the general corporate rate and the small business rate would be gradually reduced over the next few years. In the fall of 2006, Minister Flaherty announced changes that would eliminate tax advantages income trusts had over corporations, but dampened the impact with a further corporate tax reduction and favourable policies aimed at seniors.<sup>11</sup>

The 2007 Budget<sup>12</sup> again focused on tax reduction, concentrating on families (through a child tax credit and an increase of the spousal/dependent credit for single-earner families) and manufacturers (through accelerated depreciation). Later that same year, additional corporate tax decreases – from 22.1 to 15 per cent by 2012 – were announced, and small business deduction rate reductions were accelerated by one year, such that the rate would decline from 16 per cent to 11 per cent by 2008.<sup>13</sup>

By the time of the February 2008 Budget,<sup>14</sup> recession was looming. Nonetheless, the government introduced more tax relief, most notably in the form of a tax-free savings account, in which savings could grow tax-free. If it wasn't already clear in 2008, the 2009 Budget,<sup>15</sup> which followed the Conservatives winning another minority government, showed a full commitment to a plan to spend to stimulate the economy during an economic crisis. The Conservatives increased the basic personal amount and raised the upper limit of the lowest two tax brackets. It also offered more targeted relief through measures including expansion of the credit for low-income earners entering employment and the age credit for seniors, as well as offering new credits for first-time homebuyers and home renovators. The 2010 Budget,<sup>16</sup> in contrast, contained only minor tweaks to income tax policies.

The following year, 2011, was an election year, and by then the government's goal was to focus on low taxes as opposed to stimulus spending as it had been during the recession. Several 'boutique' credits were offered: the family caregiver credit, the arts tax credit, and

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<sup>8</sup> Department of Finance, Government of Canada, *The Budget Speech 2006: Focusing on Priorities* (2006).

<sup>9</sup> Government of Canada, The Honourable James M Flaherty, *The Budget Plan 2006: Focusing on Priorities* (2006).

<sup>10</sup> This amount is a non-refundable credit available to all individual taxpayers and essentially operates to create a 0 per cent tax bracket.

<sup>11</sup> Department of Finance, Government of Canada, 'Canada's New Government Announces Tax Fairness Plan' (News Release, 31 October 2006) <<https://www.fin.gc.ca/n06/06-061-eng.asp>>.

<sup>12</sup> Government of Canada, The Honourable James M Flaherty, *The Budget Plan 2007: Aspire to a Stronger, Safer, Better Canada* (2007).

<sup>13</sup> Department of Finance, Government of Canada, *Strong Leadership. A Better Canada: Economic Statement* (2007).

<sup>14</sup> Government of Canada, The Honourable James M Flaherty, *The Budget Plan 2008: Responsible Leadership* (2008).

<sup>15</sup> Government of Canada, The Honourable James M Flaherty, *Canada's Economic Action Plan: Budget 2009* (2009).

<sup>16</sup> Government of Canada, The Honourable James M Flaherty, *Budget 2010: Leading the Way on Jobs and Growth* (2010).

the volunteer firefighters tax credit.<sup>17</sup> Tax policy changes in the 2012 Budget<sup>18</sup> were relatively minor, but included reducing the research and development credit in favour of direct spending.

Highlights of the 2013 tax policy changes included expanding the lifetime capital gains exemption for small business owners and farmers and fisherpersons, expanding the adoption tax credit, and introducing a super-credit to encourage new donors to make charitable donations.<sup>19</sup> There were only minor income tax changes in the 2014 Budget,<sup>20</sup> with more notable changes announced later in the fall as the Conservatives geared up for the election the following year.<sup>21</sup> The fall announcements included enhancements to the children's fitness tax credit, and the announcement of a 'Family Tax Cut' package offering a more generous benefit for parents, an increase in the child care deduction, and income splitting for parents of minor children.

In 2015 the Conservatives announced plans to reduce the small business tax rate to 9 per cent by 2019, and to double the tax-free savings account limit. Yet another boutique tax credit was offered, this time a 'Home Accessibility Tax Credit'. Also, donors would no longer be taxed on the gains from selling private shares if the proceeds were donated to charity.<sup>22</sup>

When Prime Minister Justin Trudeau's Liberal Party government took over late in 2015, it wasted no time in effecting tax changes to deliver on some campaign promises. In December, it announced a 'Tax Cut to Strengthen the Middle Class',<sup>23</sup> which involved a reduction in the tax rate for the second lowest tax bracket, and the creation of a new highest tax bracket for the wealthy. The announcement also included a new income-tested Canada Child Benefit to replace the Conservative's Universal Child Care Benefit, and the repeal of income splitting for parents. In its first budget, released in 2016,<sup>24</sup> additional tax policy changes included eliminating the children's art and fitness credits, cancelling further phase-in of small business tax cuts as had been planned by the Conservatives, eliminating textbook and education credits, and introducing a teachers' credit for school supplies.

In 2017, the budget<sup>25</sup> announcements continued the trend of shrinking personal tax expenditures, consolidating the caregiver credits into a single credit and eliminating the public transit credit. The budget also signaled changes to close down loopholes used by

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<sup>17</sup> Government of Canada, The Honourable James M Flaherty, *A Low-Tax Plan for Jobs and Growth* (2011).

<sup>18</sup> Government of Canada, The Honourable James M Flaherty, *Jobs, Growth and Long-Term Prosperity: Economic Action Plan 2012* (2012).

<sup>19</sup> Government of Canada, The Honourable James M Flaherty, *Jobs, Growth and Long-Term Prosperity: Economic Action Plan 2013* (2013).

<sup>20</sup> Government of Canada, The Honourable James M Flaherty, *The Road to Balance: Creating Jobs and Opportunities* (2014).

<sup>21</sup> Department of Finance, Government of Canada, 'PM Announces Tax Cuts, Increased Benefits for Families' (News Release, 20 October 2014) <<http://www.fin.gc.ca/n14/14-155-eng.asp>>.

<sup>22</sup> Government of Canada, The Honourable Joe Oliver, *Strong Leadership: A Balanced-Budget, Low Tax Plan for Jobs, Growth and Security* (2015).

<sup>23</sup> Department of Finance, Government of Canada, 'Government of Canada Announces Tax Cut to Strengthen the Middle Class' (News Release, 7 December 2015) <<https://www.fin.gc.ca/n15/15-086-eng.asp>>.

<sup>24</sup> Government of Canada, The Honourable William Francis Morneau, *Growing the Middle Class* (2016).

<sup>25</sup> Government of Canada, The Honourable William Francis Morneau, *Building A Strong Middle Class: Budget 2017* (2017).

small businesses. Those changes were announced in the fall after public consultation,<sup>26</sup> a day after a promise to reduce small business taxation rates.<sup>27</sup> The most recent budget, released 27 February 2018,<sup>28</sup> did not heavily feature tax changes. More details on the changes to small business taxation, as had been signaled the preceding year, were announced. Also, the Working Income Tax Benefit was replaced with a more generous Canada Workers Benefit, which would be automatically applied to qualifying individuals in order to increase take-up.

To sum up the tax policy changes in the past dozen or so years, Harper's time as Prime Minister was an era of tax cuts and boutique credits,<sup>29</sup> followed by now Prime Minister Trudeau's quest to recalibrate income distribution to favour the middle class, at the expense of the upper class.

### III TRANSPARENCY IN TAX POLICY-MAKING AS A NECESSARY ELEMENT OF GOOD DEMOCRATIC GOVERNANCE

A strong democracy requires an engaged and informed public to hold governments accountable for its actions through rational and informed consideration and debate.<sup>30</sup> One important element of this is that citizens need to have the necessary information to enable them to evaluate government actions, including, of particular relevance here, tax policy decisions. This understanding has led to a push in democracies for government transparency. As Michael Halberstam puts it, 'Government transparency has become a measure of democratization and a goal of good government reform'<sup>31</sup> through 'afford[ing] citizens the means to hold their elected and unelected government officials accountable.'<sup>32</sup>

It is thus argued in this paper that democracy will be strengthened where governments provide useful, complete, and timely information to the public. Tax policy announcements are one way in which this information can be provided. In this Part, I consider what optimal transparency in tax policy announcements would look like. Later in the paper, this will be used as a baseline to determine how the Harper and Trudeau governments measured up.

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<sup>26</sup> Department of Finance, Government of Canada, 'Government Thanks Canadians for Helping Get Tax Fairness Right' (News Release, 17 October 2017) <<http://www.fin.gc.ca/n17/17-098-eng.asp>>.

<sup>27</sup> Department of Finance, Government of Canada, 'Government Moves to Reduce Small Business Tax Rate and Support Fairness for the Middle Class' (News Release, 16 October 2017) <<http://www.fin.gc.ca/n17/17-097-eng.asp>>.

<sup>28</sup> Government of Canada, The Honourable William Francis Morneau, *Equality and Growth: A Strong Middle Class* (2018).

<sup>29</sup> For more discussion on the use of boutique credits, see Neil Brooks, 'Policy Forum: The Case Against Boutique Tax Credits and Similar Tax Expenditures' (2016) 64 *Canadian Tax Journal* 65.

<sup>30</sup> See Mark Fenster, 'The Opacity of Transparency' (2006) 91 *Iowa Law Review* 885, 897, 949.

<sup>31</sup> Michael Halberstam, 'Beyond Transparency: Rethinking Election Reform from an Open Government Perspective' (2015) 38 *Seattle University Law Review* 1007, 1107-8.

<sup>32</sup> *Ibid* 1008. See also Fenster, above n 30, 900.

### ***A Ideal characteristics of tax policy announcements***

It is argued here that there are at least six aspects of an ideal tax policy announcement: it should (1) not mislead, (2) explain the content, (3) explain the impact, (4) reveal the rationale, (5) be accessible, and (6) be timely. Each of these six aspects is briefly elaborated on below.

#### *1 Not mislead the reader*

The point of transparency is to inform citizens so that they can hold governments accountable. Misleading communication, whether intentional or not, is detrimental to achieving this goal.

#### *2 Explain the content of the policy change*

Some explanation of the content of the rule change is necessary to alert citizens to its substance. This has been referred to as ‘obligation transparency’, or revealing what is required by the rule.<sup>33</sup> While describing every minutia will often not be necessary, or even helpful, enough detail should be revealed that the audience would be able to understand the essence of the new rule.

#### *3 Explain the impact of the policy change*

Without knowledge of the *impact* of the policy change, it cannot be properly evaluated. A meaningful evaluation requires knowledge of who will be impacted, in what way, and to what extent. In the case of tax policy, the impact will normally be financial in nature, and this leaves the issues of who will be impacted financially, and to what extent. As will be explained in more detail below in Part IV.C below, there will be ‘winners’ and ‘losers’ with each tax policy change, and it is thus important for governments to identify these groups and, to the extent possible, give readers an indication of the degree of impact that is likely to be experienced by the various groups and sub-groups.

As part of its explanation of the impact of a policy change, governments should also connect taxes with spending. If citizens do not understand that the policy change will result in an increase or decrease in tax revenue, and that this, in turn will have repercussions for government services, the impact of a particular policy will not be appreciated. Kornhauser (in the American context) frames the argument for greater links between taxes and services as a government obligation:

Leaders have an obligation to lead. As Justice Frankfurter once said ‘the responsibility of those who exercise power in a democratic government is not to reflect inflamed public feeling but to help form its understanding[.]’ In the tax area, many officials and candidates for office have sorely neglected this responsibility. Indeed, they have not only reflected inflamed public feeling, they have consciously sought to ignite the public’s constantly simmering anti-tax sentiment. It is time for them to shoulder their responsibility by rationally discussing tax policy. They should help preserve the balance

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<sup>33</sup> Andrew Keane Woods, ‘The Transparency Tax’ (2018) 71 *Vanderbilt Law Review* 1, 6.

between the positive and negative aspects of tax protest, not destroy it in their efforts to achieve or maintain office. It is time for them to lead.<sup>34</sup>

As an added benefit, so long as taxpayers see value in public spending, a consequence of linking taxes and spending may be that taxes will be elevated in status from a burden to a responsibility. This should help to motivate tax compliance.<sup>35</sup> It should also help governments to gain public support for maintaining or even increasing tax rates.

#### 4 *Reveal the rationale behind the policy change*

One type of transparency that is particularly relevant here has been labelled 'justification transparency'.<sup>36</sup> Providing justifications for the policy change will help citizens to understand the problem the policy was meant to address and therefore the need for the policy change. They then will be better able to evaluate the measure and, in turn, hold governments accountable where citizens feel it necessary.

#### 5 *Be accessible to citizens*

Policy announcements should be accessible. There are two aspects to accessibility: it should be widely available,<sup>37</sup> and comprehensible. Comprehensibility requires that the content not be so highly technical that it is not understandable to the public,<sup>38</sup> yet not so general that it is devoid of meaning.

Comprehensibility will be improved if disclosure is paired with public education about the income tax system. Citizens need to have the requisite broader understanding of how our tax system works to fully evaluate the policy change. As Edward McCaffery has stated, '[p]eople just do not think very much, or very well, about taxes', and tend to '[look] only to one salient dimension of a public policy issue, ignoring or underweighting all else.'<sup>39</sup> While he is likely referring to Americans, it applies to Canadians as well. Media and tax experts also play a role in educating the public on both the specific tax provisions and general tax principles, but they, too, need the information and, particularly in the case of the media, may also need education.

While expecting all citizens to become tax experts is not a realistic goal, most adults, or even teenagers, could achieve basic understanding of the goals of a tax system (such as equity, neutrality, and simplicity) and the concepts of tax expenditures. As an additional benefit, the literature suggests that greater knowledge of the tax system may increase tax compliance.<sup>40</sup>

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<sup>34</sup> Marjorie E Kornhauser, 'Legitimacy and the Right of Revolution: The Role of Tax Protests and Anti-Tax Rhetoric in America' (2002) 50 *Buffalo Law Review* 810, 929–30 [footnotes omitted].

<sup>35</sup> Marjorie E Kornhauser, 'A Tax Morale Approach to Compliance: Recommendations for the IRS' (2007) 8 *Florida Tax Review* 599, 638.

<sup>36</sup> Woods, above n 33, 19.

<sup>37</sup> Woods refers to this as the 'publicity' aspect of transparency: *ibid* 20–2.

<sup>38</sup> Fenster, above n 30, 942.

<sup>39</sup> Edward J McCaffery, 'Commentary – Are We Asking the Right Questions?' (2014) 67 *New York University Tax Law Review* 669, 674.

<sup>40</sup> Kornhauser, 'Tax Morale', above n 35, 633; Antoine Genest-Grégoire, Luc Godbout and Jean-Herman Guay, 'The Knowledge Deficit about Taxes: Who It Affects and What to Do about It' (Commentary No 484, C D Howe Institute, 2017) 3–4.



## 6 *Be timely*

Finally, the information should be disclosed at a time that enables citizens to hold governments accountable in a meaningful sense, and should not, for example, delay disclosure until after an election.<sup>41</sup>

### **B Constraints on transparency**

Scholars have recognised that there are costs to transparency.<sup>42</sup> These costs are both monetary, in terms of the time and effort to provide information to the public,<sup>43</sup> and political, in terms of the negative effects on government reputation (and, ultimately, voter support) where the policy choice is unpopular.<sup>44</sup> While there may valid reasons for closed deliberations because of the candor it requires,<sup>45</sup> in the case of disclosing policy changes already enacted, these reasons are not pertinent.<sup>46</sup>

Another constraint, which is often tied to cost, is the availability of information. In the context of tax policy decisions, it may be impossible, or potentially very costly, to calculate exact costs and impacts. This point is demonstrated by the number of tax expenditures for which the government is unable to estimate the cost in its tax expenditure budget.<sup>47</sup>

It would be unfair, and, in fact, not in the best interests of the country as a whole, for governments to be expected to demonstrate full transparency at all costs. Thus, in measuring the announcements against the ideal, monetary costs and lack of available information should be taken into account. On the other hand, governments should not be excused from transparency where the costs are political.

## **IV TAX ANNOUNCEMENTS AS PERSUASIVE DOCUMENTS**

Others have, not surprisingly, recognised that tax policy is political.<sup>48</sup> The delivery of government communications, and the receipt, evaluation, and response by members of the public, are part of the political process.<sup>49</sup> In this Part, I examine one aspect of this process: the government communication of tax policy changes.

The scope of analysis here is limited to income tax policy discussion in budgets and the budget speeches, as well as other written announcements of income tax policy changes. These sources were chosen as they are the most broadly available and intended for general audiences, as opposed to other communications aimed at tax experts. These communications, in particular the annual budgets, are also very well covered by the

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<sup>41</sup> Fenster, above n 30, 942.

<sup>42</sup> See, eg, Fenster, above n 30, 937; Woods, above n 33.

<sup>43</sup> Halberstam, above n 31, 1028.

<sup>44</sup> See, eg, Fenster, above n 30; Woods, above n 33, 29–30.

<sup>45</sup> Woods, above n 33, 4.

<sup>46</sup> Fenster, above n 30, 940.

<sup>47</sup> Department of Finance, Government of Canada, *2018 Report on Federal Tax Expenditures* (2018).

<sup>48</sup> See, eg, Jonathan R Kessleman, 'Economics versus Politics in Canadian Payroll Tax Policies' (1998) 24 *Canadian Public Policy* 381; Paul Boothe, 'The Art of Tax Reform' (2002) 50 *Canadian Tax Journal* 2038, 2044.

<sup>49</sup> Gia B Lee, 'Persuasion, Transparency, and Government Speech' (2005) 56 *Hastings Law Journal* 983, 994.

media,<sup>50</sup> and thus are likely have the highest public profile of any of the government's tax communications in Canada.

It is clear that these tax announcements were used to persuade. Why is this the case? Governments must gain legitimacy, must have revenue, and must look forward to the next election. As Marjorie Kornhauser states: 'Legitimacy and a steady source of revenue provide the twin foundations of any enduring government.'<sup>51</sup> The high profile of budgets means that they have an audience, and thus provide an opportunity to gain legitimacy.

Gia B Lee writes that, in its communications, 'a government seeks to shape public awareness, influence public opinion, or secure popular support.'<sup>52</sup> Thus, 'government communications generally entail an element of persuasion.'<sup>53</sup> Paul Boothe, on reviewing Geoffrey Hale's book *The Politics of Taxation in Canada*,<sup>54</sup> describes the political ambitions of governments in the context of tax reform:

The political goal of tax reform is not to reward particular groups for past support, but to capture the hearts and minds of the ever-moving, elusive, median voters by causing them to feel that they will be made better off immediately, in the medium term, or both.<sup>55</sup>

In the discussion below, I argue that multiple tactics are used to persuade, some of which are likely to mislead the reader. This is based on an assumption that the observed communications and policy decisions were deliberate tactics. While it would be very difficult to obtain explicit confirmation that they were done mindfully with the view to persuade, their consistent use and the political environment in which they operate make it likely.

Others have presumed deliberate tactics used in government communications, and some have even argued that it is proper for politicians to take advantage of public misperceptions through 'spin'.<sup>56</sup> Leo P Martinez describes a couple of goals that may underlie this behaviour: 'Some might call this trickery, others might call it paternalism: if the child does not understand what is good for her, it might be necessary to dress the truth up a little.'<sup>57</sup> Martinez then goes on to suggest that the goals may be even more sinister: 'The trouble with these approaches is that they depend on an assumption that politicians, executives, and legislators are in fact interested in sound tax policy and a fiscal system that is capable of responsibly raising revenue.'<sup>58</sup>

In this paper, I argue for a route that does not infantilise citizens, but includes educating and informing citizens. Further, while I do not share Martinez' degree of cynicism about

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<sup>50</sup> While it is acknowledged that the media play an important role in tax policy communications, they are not the focus of this paper. My recommendations, while aimed at the general population, should also result in a better-informed media, and, thus, result in a better-quality policy debate.

<sup>51</sup> Kornhauser, 'Legitimacy', above n 34, 84.

<sup>52</sup> Lee, above n 49, 992.

<sup>53</sup> *Ibid.*

<sup>54</sup> Geoffrey Hale, *The Politics of Taxation in Canada* (University of Toronto Press, 2001).

<sup>55</sup> Boothe, above n 48, 2039.

<sup>56</sup> Leo P Martinez, 'Tax Legislation and Democratic Discourse: The Rhetoric of Revenue and Politics' (2004) 4 *Nevada Law Journal* 510, 516, mentioning the work of Steven Sheffrin.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

the motives of government, it becomes clear throughout the discussion in this Part that political motivations may often prevail over sound decision-making.

In the discussion below, along with identifying the persuasive tactics and their likely motivation, I also analyse the degree to which the documents exemplify the transparency necessary for a strong democratic process, as was set out in Part III.

### ***A Language was chosen carefully***

The term 'rhetoric' is often associated with the language used in government communications. The use of rhetoric in tax debates is not surprising. Nor is it necessarily objectionable. Kornhauser, who has written multiple articles on rhetoric and taxes, points out that the term 'rhetoric', or communicating persuasively, need not be viewed negatively and, in fact, is embedded in all written and spoken communication.<sup>59</sup> However, Kornhauser also writes that the term is sometimes used 'to mean insincere or flowery language used to mislead and emotionally sway an audience'.<sup>60</sup> She further points out that rhetoric can be used to either mask lack of change or proposed changes.<sup>61</sup>

Kornhauser concludes that the tax debate in the United States during a particular period of study was 'rhetorical in the pejorative sense' as its assumptions were unstated, unnoticed, and hidden, and, thus, resulted in confusion rather than illumination.<sup>62</sup> I argue here that much of the same could be said about the government's tax policy announcements in Canada over the past decade: they were intended to persuade, contained hidden assumptions, left a lot unsaid, and were even misleading at times. To the extent that this is the case, transparency is impeded.<sup>63</sup>

It is clear from examining the tax announcements that language was used to persuade. Of the themes that can be seen in the use of language, two of the most notable are setting a deliberate tone and presenting taxes in a negative light.

#### *1 Tone was deliberately set*

The tone of a budget can set the stage for the announced policy changes. Given the less formal style of a budget speech, there is even more freedom to deliberately set a tone. For example, in 2007, when economic times were good and the focus was on cutting taxes, the budget speech tone was aspirational and proud. The writing was poetic at times, and this poem could be named 'That's Our Canada', a refrain appearing 11 times in the budget speech.<sup>64</sup>

The following year, in the face of the economic downturn, the tone of the budget speech was much more subdued, conveying a message that government was 'holding down the

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<sup>59</sup>Marjorie E Kornhauser, 'The Rhetoric of the Anti-Progressive Income Tax Movement: A Typical Male Reaction' (1987) 86 *Michigan Law Review* 465, 469.

<sup>60</sup> *Ibid.*

<sup>61</sup> Marjorie E Kornhauser, 'The Rise of Rhetoric in Tax Reform Debate: An Example' (1996) 70 *Tulane Law Review* 2345, 2347.

<sup>62</sup> *Ibid* 469–70.

<sup>63</sup> Recall, one of the ideal characteristics of transparent policies is that it not mislead: see Part III.A.1, above.

<sup>64</sup> Government of Canada, The Honourable James M Flaherty, *The Budget Speech 2007: Aspire to a Stronger, Safer, Better Canada* (2007).

fort'. By 2009, the government aimed to 'weather the current storm'.<sup>65</sup> This was a time of 'crisis', and the tone was sombre. The government had 'passed through some steep and rocky terrain' but its 'compass ha[d] not failed',<sup>66</sup> and by 2009 there was a tone of cautious self-congratulation and optimism. The 2011 budget speech was particularly boastful of the Conservative tax record to date, likely due to it being an election year. And after winning a majority, the tone in 2012 returned to an aspirational one. Once again, it was a time to dream:

We see young Canadians, confident in their future; retired Canadians, secure in their senior years; Aboriginal Canadians, realizing their vast potential; new Canadians, strengthening our country as they have done in every generation. We see every region of the country, more prosperous than ever in our history. We see Canadian businesses and universities coming up with things no one has thought of before, leading to new opportunities and a better life for Canadians and for people around the world.

...

We see Canada for what it is and what it can be—a great, good nation, on top of the world, the True North strong and free. Our government has been inspired by this vision from the beginning. Today we step forward boldly, to realize it fully—hope for our children and grandchildren; opportunity for all Canadians; a prosperous future for our beloved country.<sup>67</sup>

The government reverted back to a more cautious tone in 2013, advising that there was 'significant risk ahead' given the 'fragile state' of the global economy.<sup>68</sup> The boastful tone re-emerged in 2014 and 2015 – not surprisingly, given the impending 2015 election.

The 2016 Liberal budget speech was hopeful and aspirational, with the tone of their second and third budgets being seemingly more forceful, perhaps as the government gained confidence over time.

## 2 *Taxes were presented in a negative light*

Canadians pay too much tax. This is a constant story told through the tax announcements in the period of study. For example, Finance Minister Flaherty made the following statements regarding high taxes in his 2006 budget speech: 'It's holding families back. It makes it harder for small businesses to create jobs and opportunities. It discourages innovation and investment. It is limiting our productivity.'<sup>69</sup>

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<sup>65</sup> Government of Canada, The Honourable James M Flaherty, *Canada's Economic Action Plan: The Budget Speech 2009* (2009) 4.

<sup>66</sup> Ibid 3.

<sup>67</sup> Government of Canada, The Honourable James M Flaherty, *Jobs Growth and Long-Term Prosperity, Economic Action Plan 2012: The Budget Speech* (2012) 9.

<sup>68</sup> Government of Canada, The Honourable James M Flaherty, *Jobs Growth and Long-Term Prosperity, Economic Action Plan 2013: The Budget Speech* (2013) 2.

<sup>69</sup> Government of Canada, The Honourable James M Flaherty, *The Budget Speech 2006: Focusing on Priorities* (2006) 5.

Consistent with this message was the presentation of taxes as a 'burden' from which to be 'relieved'.<sup>70</sup> This language may have been used for a few reasons. First, it is presumed that tax cuts are popular with voters. As Kornhauser explains: 'Because the purpose of rhetoric is to persuade, the particular form the rhetoric takes is important. It must reflect deeply and widely held views or else it will lack the power it needs to persuade.'<sup>71</sup> Second, this language had permeated Canadian tax discourse so deeply that it is used without much thought.<sup>72</sup>

Third, in the case of the Conservatives, it aligns with their ideology of small government and low taxes. In fact, one of Harper's primary policy goals was to reduce taxes, and presenting taxes as a 'burden' and reductions as 'relief' was a subtle way to convince voters that this was the best course of action. However, the fact that the Liberal government's first tax announcement was a 'Tax Cut to Strengthen the Middle Class'<sup>73</sup> indicates the pervasiveness of the tax cut mentality, though it is notable that the terms tax 'burden' and 'relief' were not used nearly as often by the current government (and, in fact, were absent in the latest budget document).<sup>74</sup>

In some announcements, tax expenditures were presented as tax cuts, as opposed to spending programs that happen to be located in the tax act. For example, the 2017 caregiver credit granted 'tax relief for caregivers'.<sup>75</sup> In addition to getting political benefit from the popular notion of a tax cut, this strategy may have been applied because it may be subject to less scrutiny than a direct spending programme.<sup>76</sup>

### ***B Rationales (or lack thereof) were delivered strategically***

A government could choose to rationalise its position by identifying opposing arguments and addressing them head on, in order to head off counterpoints the reader might come up with. However, if the audience is not considered to be interested or knowledgeable enough to detect the counterpoints, omitting to mention them may be a savvy strategy. In fact, a trickster may go one step further and mislead the audience to believe that a position is even stronger than it actually is. These latter strategies appear to have been used in the tax policy announcements studied, as it was rare for a full and candid rationale to be given for a tax policy change. Thus, governments are not as transparent as they should be.<sup>77</sup> The ways in which the government has rationalised policy choices are described below.

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<sup>70</sup> The use of this terminology in Canadian discourse is also observed by Hugh Mackenzie, 'Taxes and Public Services' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 55, 57.

<sup>71</sup> Marjorie E Kornhauser, 'The Morality of Money: American Attitudes toward Wealth and the Income Tax' (1995) 70 *Indiana Law Journal* 119, 138.

<sup>72</sup> Paul Saurette and Shane Gunster, 'Canada's Conservative Ideological Infrastructure: Brewing a Cup of Cappuccino Conservatism' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 227, 227.

<sup>73</sup> Department of Finance, 'Government of Canada Announces Tax Cut', above n 23 [emphasis added].

<sup>74</sup> Government of Canada, Morneau, *Equality and Growth*, above n 28.

<sup>75</sup> Government of Canada, Morneau, *Budget 2017*, above n 25, 160 [emphasis added].

<sup>76</sup> Brooks, above n 29, 78–9.

<sup>77</sup> Recall, transparency demands that governments reveal their rationale for their decisions: see Part III.A.4, above.

## 1 'Fairness' was used as a rationale

The appeal to 'fairness' as a rationale is a common occurrence in the tax announcements. The reality that there is no agreement on tax fairness<sup>78</sup> may actually work to the advantage of the government; this way, readers may agree with the fairness argument for different reasons.

The term 'fairness' is used in a few ways, referred to here as content, compliance, and administrative fairness. 'Content fairness' refers to the substantive rules of tax and is primarily concerned with distribution of the total taxes paid to government. There are various theories about the optimal distribution,<sup>79</sup> and ideas about optimal distribution may be tied to political ideology. For example, the Trudeau government used it to describe its middle-class tax cuts, which would provide 'greater tax fairness for the people who need it most – the middle class'.<sup>80</sup>

'Compliance fairness' refers to citizens abiding by tax laws.<sup>81</sup> Both the Harper and Trudeau governments used the term 'fairness' to justify rules to clamp down on tax avoidance and evasion.<sup>82</sup> Referring to the need to stop those who do not follow tax laws and pay their 'fair share' could be used as a strategy to evoke feelings of solidarity as between the compliers and governments, in their crusade against the enemy evaders/avoiders.

It is interesting that aggressive tax avoidance, which often is 'legal' until the announced tax changes are put into effect, seems to have been put in the same category as evasion.<sup>83</sup> Two examples of policy changes to combat aggressive tax avoidance that were justified, at least in part, on the grounds of fairness were the Conservative changes to eliminate income trust tax advantages vis-a-vis corporations,<sup>84</sup> and the Liberal announcements to eliminate 'loopholes' being used by small businesses.<sup>85</sup> In both cases, the appeals to fairness may have been successful within the general population, but those affected negatively were vehemently opposed and brought up fairness counter-points in both

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<sup>78</sup> Trish Hennessey, 'Tax Cuts and Other Cheap Parlour Tricks' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 137, 142.

<sup>79</sup> For example, David Kamin identifies four theories of distributive justice: '(1) equality of resources, under which a fair tax system would reduce income disparity; (2) the "difference principle," under which a fair tax system would seek to minimize income inequality but would give priority to maximizing the welfare of the least well-off in society; (3) equal sacrifice, under which a fair tax system would impose the same sacrifice, in terms of utility, upon each taxpayer; and (4) utilitarianism, under which the optimal tax system would maximize the summed value of everyone's utility.' (David Kamin, 'What Is a Progressive Tax Change? Unmasking Hidden Values in Distributional Debates' (2008) 83 *New York University Law Review* 241, 266).

<sup>80</sup> Department of Finance, Government of Canada, *Speech on Measures to Strengthen the Middle Class* (7 December 2015) <[http://www.fin.gc.ca/n15/15-086\\_1-eng.asp](http://www.fin.gc.ca/n15/15-086_1-eng.asp)>.

<sup>81</sup> Kornhauser, refers to this as 'fair collection' in 'Legitimacy', above n 34, 873: 'Fair collection means that everyone pays the appropriate amount of tax that the law assesses.'

<sup>82</sup> See, eg, Department of Finance, 'Government Announces Tax Fairness Plan', above n 11; Government of Canada, Morneau, *Budget 2017*, above n 25.

<sup>83</sup> See, eg, Government of Canada, Flaherty, *Budget 2007*, above n 12, 239; Government of Canada, Flaherty, *Budget 2010*, above n 16, 101.

<sup>84</sup> Department of Finance, 'Government Announces Tax Fairness Plan', above n 11.

<sup>85</sup> Government of Canada, Morneau, *Budget 2017*, above n 25, 199–200.

examples.<sup>86</sup> So, while the flexible meaning of fairness can perhaps work in the government's favour in some instances, it has the downfall of being openly challenged by self-interested parties who would be negatively affected by the policy change.

'Administrative tax fairness' refers to the government fairly administering the income tax act, and is not likely to attract hostility as generally citizens will not experience negative tax consequences. It also can be used to foster confidence in government. The Harper government appealed to administrative tax fairness in the 2011 Budget.<sup>87</sup>

## 2 *Ideology was sometimes used to rationalise*

Not surprisingly, one can identify ideological underpinnings in tax policy reforms. Turning first to Harper's government, the primary message was that taxes should be low. This is clearly consistent with conservative ideology. Underlying this is the belief that pre-tax income is the property of the taxpayer, not government,<sup>88</sup> and this is reflected in terminology such as the 'Tax Back Guarantee'<sup>89</sup> and the reference to 'taxpayer dollars'.<sup>90</sup>

Small government is another conservative ideology, and it can be detected in messaging that individuals can better meet their needs through markets and other mechanisms. For example, the Conservatives suggested that charities can better meet community needs: '[t]hese charities now have a powerful set of tools for raising the funds they need to meet the needs of Canadians'.<sup>91</sup> The policy choice to support private (rather than public) caregiving is also consistent with this belief.<sup>92</sup>

Messaging in the budget also supports the belief that hard work is to be rewarded by offering benefits going to 'families working hard',<sup>93</sup> tax changes that will 'make work more attractive'<sup>94</sup> and a budget described as 'reward[ing] effort'.<sup>95</sup> The conservative virtue of wealth accumulation<sup>96</sup> can be seen in the creation of the tax-free saving account, and can be contrasted with the more progressive goal to reduce income inequality,<sup>97</sup> which can be seen in the Liberal government's steepening of the rate structure.

Some of the Liberal government's tax policy changes also reflect other ideological beliefs. For example, the redistribution of wealth is a goal implicit in the trade-off of education

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<sup>86</sup> See, eg, Canadian Association of Income Trust Investors, 'Angus Reid Poll on Tax Fairness Plan- Indicates Canadians Overwhelmingly Believe it to be Unfair' (News Release, 17 March 2007) <<https://www.newswire.ca/news-releases/angus-reid-poll-on-tax-fairness-plan---indicates-canadians-overwhelmingly-believe-it-to-be-unfair-533548971.html>>; David J Rotfleisch, 'Morneau's Tax Changes Are So Complex and Unfair, They'll Turn Accountants Bald – and Rich', *Financial Post* (Canada), 13 September 2017 <<http://business.financialpost.com/opinion/morneaus-tax-changes-are-so-complex-and-unfair-theyll-turn-accountants-bald-and-rich>>.

<sup>87</sup> Government of Canada, Flaherty, *A Low-Tax Plan*, above n 17, 74.

<sup>88</sup> Kornhauser, 'Rise of Rhetoric', above n 61, 2349.

<sup>89</sup> Department of Finance, 'Government Announces Tax Fairness Plan', above n 11.

<sup>90</sup> See, eg, Government of Canada, Flaherty, *Budget 2006*, above n 9, 51.

<sup>91</sup> *Ibid* 121.

<sup>92</sup> Government of Canada, Flaherty, *A Low-Tax Plan*, above n 17, 114.

<sup>93</sup> Government of Canada, Flaherty, *Budget 2006*, above n 9, 64.

<sup>94</sup> *Ibid* 70.

<sup>95</sup> *Ibid* 63.

<sup>96</sup> Kornhauser, 'Rise of Rhetoric', above n 61, 2349–50.

<sup>97</sup> *Ibid* 2349.

credits in favour of direct government-funded programmes, the universal ‘cash’ system in favour of an income tested child benefit, and higher taxes for the upper class in favour of lower taxes for the middle class.<sup>98</sup> So, while the Liberal budgets also reflected a value of hard work,<sup>99</sup> the ideological differences between the conservative value of equality of opportunity versus the liberal value of equality of need<sup>100</sup> can be detected in the parties’ policy choices. (This is not to say that equality of opportunity is not also a value present in the Liberal budgets, however.<sup>101</sup>)

What is somewhat perplexing is that, aside from the constant tax cut refrain, governments rarely overtly tie tax policies to ideology or values, and instead allow policies to speak for themselves, or use more subtle terminology, as discussed above. Further, in some instances, the government appears avoid tying itself too closely to a particular set of values. For example, both governments targeted families, but it seems that Harper’s government had a particular vision for families where one parent stayed home to raise the children. However, in announcing policies that tended to support this vision, the Conservative government appeared careful to make it known that they would not exclude other versions of families. In the case of the Universal Child Care Benefit, not only would it ‘help parents choose the child care option that best suits their families’ needs’ including ‘a parent staying at home’, but it would also help those using formal and informal care.<sup>102</sup> Similarly, while the expansion of the spousal and dependent credits would help those with a ‘low-income spouse’<sup>103</sup> (providing an example of what could be referred to as ‘traditional’ family, with one spouse staying home to take care of the children),<sup>104</sup> the government was quick to point out that this would also help single parents.<sup>105</sup> Spousal income splitting was packaged together with other measures that would ‘benefit every Canadian family with children’,<sup>106</sup> (although, in reality, spousal income splitting would only benefit spouses in different tax brackets, with greatest benefit to high-income earners with a much lower-income spouse, for example, a spouse staying home to raise children).

Why wouldn’t governments try to appease their party supporters by justifying tax policy changes using ideological beliefs or values? First, there can be costs to this type of transparency, including damage to reputation.<sup>107</sup> The two winningest parties in Canadian federal politics, the Progressive Conservative and Liberal parties, are both considered to be brokerage parties, meaning that they have, historically, ‘adapt[ed] their own positions

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<sup>98</sup> Femke Roosma, Wim van Oorschot and John Gelissen, ‘A Just Distribution of Burdens? Attitudes Toward the Social Distribution of Taxes in 26 Welfare States’ (2015) 28 *International Journal of Public Opinion Research* 376, 380.

<sup>99</sup> See, eg, Government of Canada, Morneau, *Budget 2017*, above n 25, 11; Government of Canada, Morneau, *Equality and Growth*, above n 28, 17.

<sup>100</sup> Kornhauser, ‘Rise of Rhetoric’, above n 61, 2348–9

<sup>101</sup> See, eg, Government of Canada, Morneau, *Equality and Growth*, above n 28, 30.

<sup>102</sup> Government of Canada, Flaherty, *Budget 2007*, above n 12, 227.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid* 228

<sup>105</sup> *Ibid* 227–8.

<sup>106</sup> Department of Finance, Government of Canada, ‘Harper Government Tables Notice of Ways and Means Motion to Implement Tax Cuts for Families’ (News Release, 24 March 2015) <<http://www.fin.gc.ca/n15/15-027-eng.asp>>.

<sup>107</sup> Woods, above n 33, 29–34.



and policies to attract the maximum number of votes ... at times even alternating policy stances.<sup>108</sup> Thus, the parties have historically made weaker ideological commitments and would risk losing potential supporters with opposing ideologies and values if the party makes firm commitments. Second, in the two terms that it was a minority government, the Conservatives would have been sensitive to the need to appease Members of Parliament of opposing parties in order to gain their votes. It would be more difficult to form alliances if it was spouting ideology that was unpalatable to other parties and their supporters.

It is interesting that, in his 2015 budget speech, Finance Minister Joe Oliver made a fairly clear commitment to 'family values' when he stated that '[r]aising a family is hard work, and unlike our opponents, we prefer to leave it to the experts: Mom and Dad.'<sup>109</sup> Was this perhaps because, for the first time, there was a new Finance Minister, who used a different strategic approach? Had the government reached a new level of confidence in its final year of a majority government? Or was it an election year tactic used to distinguish themselves from the Liberals?

The Liberal government had the confidence to overtly tout its values in its decision to release its gender statement: 'an assessment that ensures all budget measures—not just those aimed specifically at women—help us advance the goals of fairness, stronger workforce participation, and gender equality.'<sup>110</sup> In the budget plan, tax policy changes were evaluated based on their effects on women.<sup>111</sup> While this is a laudable advancement, it is easy to see a political motivation considering the significant presence of women among the Liberal base.<sup>112</sup> This strategy was continued in the 2018 Budget, where it was heavily featured in the budget speech,<sup>113</sup> though it has not been apparent yet that the gender lens has actually influenced tax policy.

### 3 *Rationales were insufficient in most instances*

Justifications for tax policy changes were absent, misleading, or vague. For example, when farmers and fishing business owners were given an increased exemption for capital gains on the sale of their property, this was explained in the budget plan as a way to provide an incentive to invest in these businesses and to allow owners to 'maintain more of their capital for retirement'.<sup>114</sup> The obvious question is, why wasn't the limit for other small business owners, who were also entitled to a capital gains exemption, bumped up at the same time? Why wouldn't governments provide a justification for the differentiation?

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<sup>108</sup> Éric Bélanger and Laura B Stephenson, 'Parties and Partisans: The Influence of Ideology and Brokerage on the Durability of Partisanship in Canada' in Cameron D Anderson and Laura B Stephenson (eds), *Voting Behaviour in Canada* (UBC Press, 2010) 107, 115.

<sup>109</sup> Government of Canada, The Honourable Joe Oliver, *Strong Leadership – The Budget Speech* (2015) 9.

<sup>110</sup> *Ibid* 7.

<sup>111</sup> Government of Canada, Morneau, *Budget 2017*, above n 25, 217–42.

<sup>112</sup> See, eg, Forum Research Inc, 'Liberals Widen Gap, Conservatives Stall in Final Poll' (News Release, 18 October 2015) <[http://poll.forumresearch.com/data/dc2e85ea-624f-4377-b2f1-928dc876fef3Federal%20Horserace%20News%20Release%20\(2015%2010%2018\)%20Forum%20Research.pdf](http://poll.forumresearch.com/data/dc2e85ea-624f-4377-b2f1-928dc876fef3Federal%20Horserace%20News%20Release%20(2015%2010%2018)%20Forum%20Research.pdf)>.

<sup>113</sup> Government of Canada, The Honourable William Francis Morneau, *Budget 2018: Equality and Growth for a Strong Middle Class – Remarks by the Honourable Bill Morneau* (2018) 4–8, 13–14.

<sup>114</sup> Government of Canada, Oliver, *Strong Leadership*, above n 22, 122.

One possibility is that omitting details is an attempt to cover up a lack of good policy rationale and avoid the reputational damage<sup>115</sup> that comes along with admitting that this was simply done to gain the political favour of the preferred groups (a tactic described below).

### ***C 'Winners' and 'losers' were identified when politically expedient***

It is clear that any tax policy change comes with a trade-off. That is, there will be winners and losers in the case of any tax policy. As David Kamin explains (in the American context):

The federal government faces a budget constraint ... This has important implications for the permanence of a non-revenue-neutral tax change; any such tax change will be budget neutral over the long term. Tax cuts will be paid for via eventual spending reductions or tax increases; similarly, tax increases will, in the future, finance either lower taxes or greater spending. Thus, if a tax cut creates only winners today by reducing tax revenues, then it must generate losers tomorrow through some combination of increased taxes and reduced spending. This truth comes from the 'iron laws of arithmetic and fiscal solvency.' ... As analysts have noted with regard to the Bush tax cuts, 'Someone, somewhere, at some time will have to pay for them.'<sup>116</sup>

Good tax policy decision-making requires identifying the costs and benefits to various groups, and considering them in light of government goals. If the government does not make citizens privy to this analysis by revealing costs and benefits and winners and losers, it is difficult for the public to assess whether the policy choices were sound. The tax announcements examined in this paper appear to show a common theme of drawing attention to winners and losers only when it would be politically expedient, and, thus, they are only selectively transparent.

There may be *overall* winners in a budget who are the clear targets for tax changes. In terms of each particular tax policy change, there may be a clear group of direct winners, in the case of a tax cut or advantage, or a clear group of losers, in the case of a tax increase or removal of a tax advantage. However, it must be noted that members of the groups of winners and losers usually do not share equally in the winnings or losses. Finally, there will be indirect winners and losers of policy changes. These points are elaborated on below.

#### ***1 The overall winners were well advertised and fairly consistent***

The targeted beneficiaries under Stephen Harper's tax policies were consistent over the years, with businesses, families, and, perhaps, older Canadians, being the most touted. While the wealthy frequently benefited from the tax policy changes, this was not explicitly made known in the policy announcements.<sup>117</sup> The Liberal government, on the other hand, has vocally targeted the 'middle class and those working hard to join it'<sup>118</sup> as the intended

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<sup>115</sup> See the discussion of reputational costs of transparency in Part III.B, above.

<sup>116</sup> Kamin, above n 79, 263–4 [footnotes excluded].

<sup>117</sup> See Part IV.C.2, below.

<sup>118</sup> See, eg, Government of Canada, Morneau, *Growing the Middle Class*, above n 24, 14, 55, 86.

beneficiaries of its tax policy changes thus far. The latest budget also placed women at the forefront, as was particularly evident in the budget speech.<sup>119</sup>

## 2 *The share in winnings was ignored*

The direct winners of most tax expenditures and tax rate reductions appear obvious in most cases. Anyone meeting the qualification criteria for tax expenditures or who would apply the lower rate would benefit (ignoring, for this moment, questions of corporate tax incidence).

However, among those who would benefit, the demographic or other traits of those who would benefit the most and least were seldom identified. One example of failing to mention those who would benefit the most and least can be seen in the instance of income splitting. The gender and class impacts of income splitting have been discussed thoroughly in the literature.<sup>120</sup> However, when introduced, the Conservative government did not highlight potential negative impacts on lower-class families and women. The class-based impacts were raised by the Liberals in their election campaign in the case of income splitting of parents, but not pensioners<sup>121</sup> (likely because of the political backlash that might result in the case of the latter). It is interesting that the Liberals did not highlight the gender aspects of income splitting, despite their gender focus in the most recent budgets.

The most obvious omission in terms of the share of winnings was the Conservatives' omission to point out that the wealthy were likely to benefit most from the vast majority of their tax policy changes, including introducing the children's fitness tax credit,<sup>122</sup> increasing the small business tax deduction, increasing the lifetime capital gains exemption, introducing spousal income splitting, and introducing exemptions of gains on sale of property where proceeds are donated to charity. While obvious to many tax policy experts and likely the advisors to the wealthy, the Conservatives were very likely counting on their non-wealthy voting base not noticing.

## 3 *Indirect winners were sometimes identified*

Narrow groups of indirect winners of policies were often not revealed in budget announcements, likely because governments wanted to appear to be targeting the more apparent, direct beneficiaries. For example, in the case, of student tax credits, it was not pointed out that parents of those students may indirectly benefit if they were otherwise assisting in covering the cost of education. In the case of corporate tax reductions or expenditures, governments did not point out that the incidence of corporate taxes is unclear and may fall to employees, all holders of capital, consumers, or labour, as opposed

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<sup>119</sup> Government of Canada, Morneau, *Budget 2018 – Remarks*, above n 113, 4–8, 13–14.

<sup>120</sup> Frances Woolley, 'Liability Without Control – The Curious Case of Pension Income Splitting' (2007) 55 *Canadian Tax Journal* 603, 607–12.

<sup>121</sup> Liberal Party of Canada, *Ending Unfair Tax Breaks* <<https://www.liberal.ca/realchange/ending-unfair-tax-breaks>>.

<sup>122</sup> Koren L Fisher et al, 'Awareness and Use of Canada's Children's Fitness Tax Credit' (2013) *Canadian Tax Journal* 599, 628–9.

to only shareholders.<sup>123</sup> Why wouldn't governments point out that many groups potentially bear the corporate tax, which might help to gain favour among the many who bear it and thus benefit from reduced taxes? One reason might be that if the incidence questions were raised, the public might start to question the corporate tax in its entirety. This would be a very real threat to government revenues. Further, if decisions were made to raise corporate taxes in the future, there could be larger resistance.

Broader groups of indirect winners of a tax policy were more often identified, however. For example, Harper's government pointed out that tax evaders and avoiders would leave 'working Canadians and small businesses, among others' paying more taxes,<sup>124</sup> who would therefore benefit from a crackdown. In the case of the tax expenditures eliminated by the Liberal government (the Child Tax Benefit, tuition and textbook tax credits and the children's fitness and art tax credits), the government identified the middle class as the overall, indirect 'winners', because the tax savings could be used to implement programmes that were 'better targeted'.<sup>125</sup> Also, both parties in power during the period under study, but especially the Conservatives, were quick to justify policy changes by referring to the economic growth that would result,<sup>126</sup> vaguely suggesting that all Canadians would benefit.

#### 4 *Indirect losers were rarely identified*

Governments tend not to identify the non-obvious losers of a particular expenditure or tax reduction, likely with the hopes that those negatively affected will not otherwise figure it out. In this case, there are special circumstances that make it more likely that the losers will not protest loudly.

One could assume that the losers of a tax preference include anyone who does not get to use the lowered rate or other tax preference. However, rate reductions are often justified as helping the economy, suggesting wider positive implications. For example, reduced corporate taxes would 'create new and better jobs and increase living standards for Canadians.'<sup>127</sup> Where tax preferences were granted to a particular industry – for example, the home construction and businesses – it was suggested that many would benefit, as the industries were 'major sources of jobs and growth'.<sup>128</sup> It is nearly impossible for citizens themselves to determine if, and to what extent, they will benefit in these circumstances.

Although all tax policy choices involve a trade-off, the losers of tax advantages are widely disbursed, and the extent of the loss would be nearly impossible to calculate. While we could say that 'the rest of society' will pay, at some point, this does not identify which members of society pay how much, and when. What tax policy would have been in place

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<sup>123</sup> Kenneth J McKenzie and Egrete Ferede, 'The Incidence of the Corporate Income Tax on Wages: Evidence from Canadian Provinces' (2017) 10(7) *The University of Calgary School of Public Policy Technical Paper* 1.

<sup>124</sup> Government of Canada, Flaherty, *Budget 2007*, above n 12, 239. And, later in 2011, a similar message was sent: measures to close loopholes would 'protect the Government's revenue base – which helps keep tax rates low.' (Government of Canada, Flaherty, *A Low-Tax Plan*, above n 17). See also a similar message in the 2012 Budget: Government of Canada, Flaherty, *Action Plan 2012*, above n 18, 203.

<sup>125</sup> Government of Canada, Morneau, *Growing the Middle Class*, above n 24, 68.

<sup>126</sup> See, eg, Department of Finance, 'Speech on Measures', above n 80; Government of Canada, Flaherty, *Budget 2010*, above n 16, 76; Government of Canada, Flaherty, *Budget Speech 2009*, above n 65, 10.

<sup>127</sup> Government of Canada, Flaherty, *Budget 2010*, above n 16, 76.

<sup>128</sup> Government of Canada, Flaherty, *Budget Speech 2009*, above n 65, 10.

if that tax advantage was not implemented? Would there have been a different tax or direct spending measure in its place? Would certain other public programmes have grown or not been cut back? Would there have been broad-based tax reductions? Since the implications are so unknown, the best that can be said is some members of society will eventually pay for this cost. Because of the vague nature of this statement, there is no identifiable group to mobilise around this issue and question the government on the policy.<sup>129</sup>

##### 5 *Winners and losers were at times misrepresented*

Yet again presuming some degree of taxpayer ignorance, the winners and losers of tax policy changes were sometimes misrepresented. While omitting to identify the winners and losers might lead to misinformation, in the instances discussed here in this section, the government more overtly misled readers.

In the case of the Harper government lowering the lowest marginal personal rate and increasing the basic personal amount, the government stated that ‘the majority of personal income tax relief ... goes to Canadians with incomes in the two lowest tax brackets.’<sup>130</sup> This statement suggests that these tax reductions favour low- to middle-income earners. However, from a careful read of the document, it appears that the dollar value of the tax measures would be greatest for the highest income earners.<sup>131</sup> Along the same lines, in 2009 the Conservative government claimed to provide ‘additional tax relief, especially for lower- and middle-income Canadians.’<sup>132</sup> The increase of the basic personal amount and raising of the upper limit of the lowest two tax brackets were supposedly aimed at this group,<sup>133</sup> but of course would have maximum dollar value to anyone whose income fell above the former upper limit of the second highest tax bracket.

When the ‘family tax cut’ package was announced leading up to the 2015 election, the Conservative government suggested that low and middle income earners were the big ‘winners’ as they ‘will receive two-thirds of the overall benefits provided by the package’.<sup>134</sup> However, this is misleading as the income splitting would have the greatest impact for families with an earner in the highest income bracket, particularly where one spouse had a very low income.

The Liberal’s ‘middle class tax cut’ asked ‘the wealthiest ... to contribute a little more’.<sup>135</sup> While it is true that the very wealthiest would pay more because of the introduction of a new highest tax bracket, the greatest tax benefits would go to those earning between the upper limit of the reduced income bracket (CA\$90 000) and the lower limit of the new

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<sup>129</sup> Richard Eccleston and Ian Marsh, ‘The Henry Tax Review, Cartel Parties and the Reform Capacity of the Australian State’ (2011) *46 Australian Journal of Political Science* 437, 441: ‘organised economic interests will lobby for self serving tax concessions resulting in a policy debate dominated by concentrated and politically powerful groups which tend to drown out the disorganized and politically ineffective majority’ [citations omitted].

<sup>130</sup> Department of Finance, *Strong Leadership*, above n 13, 85.

<sup>131</sup> *Ibid* 87.

<sup>132</sup> Government of Canada, Flaherty, *Budget Speech 2009*, above n 65, 4.

<sup>133</sup> *Ibid* 9.

<sup>134</sup> Department of Finance, ‘PM Announces Tax Cuts’, above n 21.

<sup>135</sup> Department of Finance, ‘Strengthen the Middle Class’, above n 73.

highest bracket (CA\$200 000). Many people would not identify those people as 'middle class', particularly on the higher end.

Another example of misleading taxpayers was where the arts and cultural community was singled out as benefiting from new charitable donation rules,<sup>136</sup> where it was equally likely that other types of charities would benefit. In this case, the government clearly wanted to appear to place importance on the arts.

Although perhaps 'misrepresentation' would be too strong a word in the following examples, it does appear that by failing to give prominence to some issues, taxpayers were likely to be misled about the winners and losers of some other tax changes. For example, the Conservative government could be accused of 'burying' the tax rate changes for testamentary trusts in 2014 when the graduated rates were replaced with the top marginal rate. This change was very quietly put in the Budget paper, and was only explained in detail in the tax annex.<sup>137</sup> The government may have been counting on the public not noticing this, perhaps aided by the fact that the repercussions would only be experienced upon death.

A second example of an omission can be seen in the 2017 Budget, where the Liberal government removed the tax exemption on non-accountable allowances for provincial and territorial legislative assemblies and some municipal bodies in order to 'improve consistency' and fairness.<sup>138</sup> The government explained: 'certain tax measures allow some individuals to pay less than their fair share of taxes on such benefits. These measures are unfair and they lack a strong policy rationale ... This exemption [on expense allowances] ... provides an advantage that other Canadians do not enjoy.'<sup>139</sup> Since the government neglected to mention it, most readers would be surprised to find out that this move to greater consistency and fairness did not involve removing the equivalent tax advantage for federal Members of Parliament. To call this omission self-serving may be an understatement.

#### ***D Only infrequent and often vague links were made between tax revenues and spending***

Taxes have two functions: public provision and redistribution.<sup>140</sup> Himelfarb and Himelfarb explain that we have had a more 'benign' view of taxes in Canada as compared to our American neighbours, and traditionally:

[W]e have understood that taxes, however irksome, are the price we pay for civilization and a better future, for the privilege of living in Canada and the opportunities that provides. While there are legitimate disputes regarding how much tax and of what sort, we have generally accepted higher taxes as a way of funding valued public goods and

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<sup>136</sup> Flaherty, *Budget 2006*, above n 9, 123.

<sup>137</sup> Government of Canada, Flaherty, *The Road to Balance*, above n 20, 259.

<sup>138</sup> Government of Canada, Morneau, *Building a Strong Middle Class*, above n 25, 206.

<sup>139</sup> *Ibid* 208.

<sup>140</sup> Liam B Murphy and Thomas Nagal, 'Taxes, Redistribution, and Public Provision' (2001) 30 *Philosophy & Public Affairs* 53.

services, redistributing income to avoid the worst excesses of inequality, and shaping the future to the extent we can.<sup>141</sup>

So, while collection of taxes can be linked to redistribution and government spending on public services, and Canadians know this is the case, over the past decade the governments have not made this link explicit.<sup>142</sup> This is rather curious, as budgets are replete with spending measures, and it would seem logical to link the collection mechanism – taxes – to the spending. However, there are ideological and tactical reasons that may motivate this omission.

Where governments are ideologically opposed to high taxes, as Harper's Conservatives certainly were, failing to connect taxes and spending is consistent with the message of taxes as a burden. As Hugh Mackenzie points out, '[i]t is easier to sell the idea of taxes as a 'burden' if they are presented as disconnected from any of the purposes for which they are raised.'<sup>143</sup> Hennesy, quoting Penn the Magician, puts it this way: 'Nothing fools you better than the lie you tell yourself', and then explains: 'Part of the magic of tax cuts is that we want to believe we can have them without any great sacrifice on our part.'<sup>144</sup>

Mackenzie explains why governments get away with failing to link tax cuts to public spending. He points out that public services are so pervasive that they become practically invisible, particularly when governments have not shone a spotlight on them, as has been the case in recent decades.<sup>145</sup> He argues that this can lead to underinvestment in public services and provides a 'smokescreen to obscure the fact that while tax cuts go disproportionately to those with high incomes, the costs of the public expenditure restraint needed to pay for them are born disproportionately by lower- and middle-income Canadians.'<sup>146</sup>

Hugh Mackenzie chastises the tax cutting advocates for their short sightedness through this tongue-in-cheek analogy:

Conversations that separate actions from consequences are familiar to any parent. They are the kinds of conversations you have with a four-year-old at the supermarket checkout as you try to explain he can't just grab that back of Smarties [candy]; the kinds of conversations that any toddler understands.<sup>147</sup>

Himelfarb and Himelfarb also criticise the debate in recent times on similar grounds: 'Gone is the language of the citizen, replaced by the atomizing language of consumer and taxpayer. These taxpayers, we are told, know far better than some distant bureaucrat how

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<sup>141</sup>Himelfarb and Himelfarb, 'Introduction', above n 3, 1–2.

<sup>142</sup> Mackenzie, 'Taxes and Public Services', above n 70. At best, it is possible to find some insinuation that the two are linked. For example, at one point in the 2014 Budget, the Minister of Finance states that reducing government debt will '[e]nsure taxpayer dollars are used to support important social services – such as health care – rather than paying interest costs' (Government of Canada, Flaherty, *The Road to Balance*, above n 20, 243).

<sup>143</sup> Mackenzie, 'Taxes and Public Services', above n 70, 57.

<sup>144</sup> Kornhauser, 'Rise of Rhetoric', above n 61, 2371.

<sup>145</sup> Hugh Mackenzie, 'Benefits from Public Services' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 69, 81.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid 55.

to spend their money – as if roads, bridges, public schools, hospitals, and the like arise spontaneously.<sup>148</sup> More generally, others have noted that the conversation of taxes, particularly the conversation around cutting taxes, has been devoid of ‘any serious reference to the reason we have taxes in the first place – to pay for public services’.<sup>149</sup> This debate could be transformed from a tax bashing affair to talk about obligations, benefits, how taxes ‘tie us to one another and the common good’.<sup>150</sup>

The long-term tax cuts cannot be sustained without the public noticing reductions in public services, and implementing or even maintaining current tax rates can be made easier if, as Leo P Martinez puts it, ‘more attention were given to the many benefits and necessities of daily life (for rich, poor, and everyone in between) that depend on tax revenue (including roads, schools, police and fire services)’.<sup>151</sup> Mackenzie’s proposed solution is to be more attentive to the value Canadians receive from public service.<sup>152</sup>

So long as taxpayers see value in public spending, a consequence of linking taxes and spending may be that taxes will be elevated in status from a burden to a responsibility. This should help to motivate tax compliance.<sup>153</sup> The government’s anti-tax and tax-cutting rhetoric of late can threaten legitimacy,<sup>154</sup> and presenting taxes in a more positive light through tying taxes to the provision of government goods and services could help to reduce this threat.

Hugh Mackenzie suggests that there can be political value in greater government focus on public investment, as ‘public opinion surveys report repeatedly that respondents indicate a preparedness to pay more in tax in return for better public services in a wide range of areas.’<sup>155</sup> On the other hand, Frank Graves point out that sorting out public opinion is complex. For example, Graves points to surveys showing that the public would rather governments cut spending than increase taxes to address a deficit,<sup>156</sup> but, somewhat contradictorily, they have a strong preference for a government priority of investing in social areas as opposed to keeping taxes as low as possible.<sup>157</sup> Not surprisingly, non-Conservative supporters show stronger support for investment in services.<sup>158</sup> Along similar lines, while Conservative and Green party supporters prefer a smaller government with lower taxes and fewer services, NDP, Liberal and Bloc supporters prefer a larger government with higher taxes and more services. Thus, the Conservative government’s focus on small government and lower taxes, while ignoring effects on public service, likely play to its voter base. The Liberal government, on the other

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<sup>148</sup> Alex Himelfarb and Jordon Himelfarb, ‘The Conversation Today’ in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 15, 15.

<sup>149</sup> Mackenzie, ‘Taxes and Public Services’, above n 70, 55.

<sup>150</sup> Himelfarb and Himelfarb, ‘The Conversation Today’, above n 148, 15.

<sup>151</sup> Martinez, above n 56, 510, 517. See also Mackenzie, ‘Benefits from Public Services’, above n 145, 81.

<sup>152</sup> Mackenzie, ‘Benefits from Public Services’, above n 145, 81.

<sup>153</sup> Kornhauser, ‘Tax Morale’, above n 35, 638.

<sup>154</sup> Kornhauser, ‘Legitimacy’, above n 34, 906.

<sup>155</sup> Mackenzie, ‘Taxes and Public Services’, above n 70, 66.

<sup>156</sup> Frank Graves, ‘Canadian Public Opinion on Taxes’ in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 82, 84–5.

<sup>157</sup> *Ibid* 85–6.

<sup>158</sup> *Ibid* 86.



hand, might be better off concentrating more on the linkage between taxes and public services, particularly if it can convince the public of a less wasteful, accountable and transparent use of funds.<sup>159</sup>

Neglecting the link between taxes and spending impedes fulsome policy discussions, and leaves governments less accountable. The potential for being subject to less scrutiny concerning the taxing/spending trade-offs could motivate governments to stay silent.<sup>160</sup> However, there is some indication in the most recent budget that the conversation may change as the Liberal government has linked taxes to public services. In the context of targeting those not paying their 'fair share', the 2018 Budget plan reads:

After all, the taxes we pay as Canadians build the infrastructure that gets our goods to market, and helps create good, well-paying jobs ... The taxes we pay help to set broken bones, and push cancer into remission. And the taxes we pay mean that if a hard-working Canadian loses her job, she might not have to lose her house.<sup>161</sup>

While this message was not prominent in the budget materials, it is likely a welcome change in the discourse to those promoting a robust welfare state. It is notable, however, that the current government still seems to subscribe to a 'have our cake and eat it too' attitude, as demonstrated in the following statement: '[d]elivering the programs and services that Canadians need, while keeping taxes low for small businesses and middle-class families, is important to this Government, and to all Canadians'.<sup>162</sup> And even though the current Liberal government does not appear to share the same unyielding disdain for taxes, it must be cognisant of the political pitfalls of raising taxes after decades of anti-tax messaging.<sup>163</sup>

### ***E Little attempt was made to educate citizens about the tax system***

Education can complement transparency in that citizens with greater background knowledge will be able to more intelligently use government-provided information to hold governments accountable.<sup>164</sup> However, it is clear that the tax policy announcements studied rarely included general background information about the tax system. This is rather unfortunate as, other than tax returns themselves, budget documents are the best publicised government documents. Unlike other tax-related government documents targeted at researchers and tax specialists (such as tax expenditures, backgrounders, technical documents), budgets, and especially budget speeches, are directed at general citizens and media. This presents an opportunity to help citizens understand our tax system.

There are multiple examples of how the budget could be used to educate readers about the tax system. Tax credits could be presented as choices about public spending.

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<sup>159</sup> Ibid 97–8.

<sup>160</sup> Mackenzie, 'Taxes and Public Services', above n 70, 57–8.

<sup>161</sup> Government of Canada, Morneau, *Equality and Growth*, above n 28, 68.

<sup>162</sup> Ibid 68.

<sup>163</sup> See, eg, Himelfarb and Himelfarb, 'Introduction', above n 3, 2. For a historical account of anti-tax sentiments in the 1960s and 1970s in Canada, see Shirley Tillotson, 'The Politics of Carter-era Tax Reform: A Revisionist Account' in Kim Brooks (ed), *The Quest of Tax Reform Continues: The Royal Commission on Taxation Fifty Years Later* (Carswell, 2013).

<sup>164</sup> See Part III.A.5, above.

'Fairness' rationales could lead to an explanation about tax equity. However, just as is the case with details about the justification for tax policy changes, governments choose less content and more rhetoric and strategic messaging.

Although governments may find taxpayer ignorance convenient when implementing unsound policies, they actually may find that a better educated populace makes it easier to gain political support for increases in taxes and increasing tax equity. For example, the government could have perhaps gained more support from the general population for the recent changes to close loopholes used by small businesses or to eradicate the tax advantages of income trusts. Perhaps those negatively affected may have objected out of self-interest anyway, but a better educated populace would have been more equipped to join the government and academics in arguing that, for the most part, these were good policy choices.

### ***F Tax advantages were offered to appeal to self-interest***

The foregoing discussion of language, rationales, winners and losers, and education were centered on how things were communicated in the policy announcements. The discussion now shifts to focus on the content of the tax policy changes.

#### *1 Small groups were given advantages to gain political favour*

The governments studied here often hoped to gain the favour of particular groups by offering them tax advantages, thus capitalising on self-interested behaviour.<sup>165</sup> For example, the 'Home Accessibility Tax Credit' was offered as part of a commitment to 'supporting seniors, whose efforts have helped make Canada the strong and prosperous country that it is today.'<sup>166</sup> Harper's 'boutique tax cuts', including the children's fitness tax credit and income splitting for pensioners have been described as 'little more than backdoor tax cuts aimed at winning middle-income voters over to the Conservative Party'<sup>167</sup> (although researchers have shown that most of the benefits went to higher-income earners<sup>168</sup>).

The Liberals eliminated a number of credits and promised further review of tax expenditures in order to promote simplicity, efficiency, fairness, and better targeted support.<sup>169</sup> This would suggest that the era of boutique credits was over. However, offering a classroom supplies tax credit to teachers in that very same budget shows just

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<sup>165</sup> This assumption of self-interest has complex and mixed support in empirical studies: see, eg, Takornori Sumino, 'Level or Concentration? A Cross-national Analysis of Public Attitudes towards Taxation Policies' (2016) 129 *Social Indicators Research* 115.

<sup>166</sup> Government of Canada, Oliver, *Strong Leadership*, above n 22, 241.

<sup>167</sup> Matt Fodor, 'Taxation and the Neo-Liberal Counter-Revolution: The Canadian Case' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 101, 113.

<sup>168</sup> *Ibid* 114.

<sup>169</sup> Government of Canada, Morneau, *Growing the Middle Class*, above n 24, 64, 68.

how irresistible this tactic of capitalising on self-interest can be, even where its use is blatant hypocrisy.<sup>170</sup>

Governments may be able to get away with targeted policies without backlash by combining them with the strategy of not mentioning trade-offs or giving full rationales, and counting on a lack of citizen knowledge or interest. Governments can also rely on a sort of 'puppy dog effect',<sup>171</sup> recognising that there are certain causes or recipients that evoke an emotional response such that others, including critics, cannot oppose for emotional, political, or tactical reasons. This emotional response may be linked to reverence, sympathy, respect, appreciation, or even, as with the case of puppy dogs, adoration. This has allowed governments to introduce targeted policies advantaging groups such as firefighters, persons with disabilities and their caregivers, and perhaps even teachers, with relatively low risk of criticism.

## 2 Tax advantages were offered to appease losers

The reason for offering tax advantages could be to appease those negatively affected by other tax policy changes. For example, when Harper's government announced its plan to eliminate the tax advantages previously afforded to income trusts, it surely knew very well that it was breaking an election promise they had made earlier that year.<sup>172</sup> To help to soften the blow, these changes were announced along with measures to lower the corporate rate (which would now apply to the income trusts) and extend greater tax benefits to seniors through an enhanced age credit and pension income splitting. The focus on pensioners was undoubtedly due to the negative impact of the income trust changes on their pension or personal investment portfolios.<sup>173</sup>

The Liberals have also used this strategy. When there was vocal opposition to the proposals to tighten up the small business taxation rules, the government quietly announced a reduction of the small business tax rate.<sup>174</sup> Although it was presented as a previous commitment, it was actually commitment by the previous Conservative government, and the Liberals had previously declared it would not reduce the small business tax as promised by its opponents.<sup>175</sup> Quite possibly this was done to appease small business owners without drawing attention to potential supporters who would oppose it.

Compensating the losers of a change in tax policy might not always be purely political. That is, there could be good policy reasons for doing this where direct spending was considered superior to tax expenditures, such as in the case of the elimination of textbook

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<sup>170</sup> Leslie Young, 'Federal Budget 2016: Trudeau Eliminates Harper-era Tax Credits', *Global News*, 22 March 2016 <<https://globalnews.ca/news/2594044/federal-budget-2016-trudeau-eliminates-harper-era-tax-credits>>.

<sup>171</sup> See, eg, Joanne Sauder, *Canada's Experiment with Children's Fitness and Activity Tax Credits* (LLM Thesis, University of Saskatchewan, 2014) 69, 124.

<sup>172</sup> 'Sensible Move on Income Trusts', *Edmonton Journal* (Canada), 2 November 2006, A16.

<sup>173</sup> *Ibid.*

<sup>174</sup> Department of Finance, 'Government Moves to Reduce Small Business Tax Rate', above n 27 and accompanying text.

<sup>175</sup> Government of Canada, Morneau, *Growing the Middle Class*, above n 24, 220; 'Liberals Pledge to Cut Small Business Tax Rate to 9% Amid Backlash over Proposed Tax Reforms', *CBC News* (Canada), 16 October 2017 <<http://www.cbc.ca/news/politics/small-business-tax-1.4356229>>.

and education tax credits in favour of direct spending programmes to assist low- and middle-class students.<sup>176</sup> Similarly, when the research and development credit was reduced in the 2012 Budget, it was tied to an increase in direct spending.<sup>177</sup>

### ***G Direct losers were often easy targets***

In some cases, policy changes with direct losses may have been implemented because the losers were easy targets. Both the Liberals and the Conservatives likely viewed avoiders and evaders as easy targets<sup>178</sup> because most of the general population would loathe them for shirking their obligations. However, although the general public might agree with these policy changes, governments do take some political risk in doing so as those targeted may not appreciate being portrayed as avoiders, or ‘cheats’, which appears to have been the case during the recent crackdown on small business owners using aggressive tax planning.<sup>179</sup>

Also, the wealthy appear to have been viewed as easy targets. The Conservatives often mentioned in their tax announcements that the avoiders and evaders were usually also wealthy,<sup>180</sup> suggesting that wealthy tax cheats and free riders were particularly reprehensible. In the case of the Liberals, the wealthy were deliberate targets in the case of their middle-class tax cuts. They had successfully campaigned on the issue of redistribution,<sup>181</sup> and therefore they had the political authority to work towards eliminating the tax advantages of the wealthy.

### ***H Rhetoric abounds and other conclusions***

Rhetoric is prevalent in annual budgets and other tax announcements. As Kornhauser points out, good rhetoric clarifies issues, while bad rhetoric obscures them.<sup>182</sup> The tax announcements studied here demonstrate an unwillingness for governments to reveal the reasons for and effects of their policy choices. The assumption that readers can be persuaded through ‘flowery language’, misleading statements, and blatant pandering carries with it a dim view of the readers’ capacity.

In Part III, I put forth these six aspects of an ideal tax policy announcement: the announcement should (1) not mislead, (2) explain the content, (3) explain the impact, (4) reveal the rationale, (5) be accessible, and (6) be timely. The final aspect, timeliness, is not typically an issue with budget announcements. As for the other five aspects, the discussion in the previous Part shows that the announcements are often lacking. The announcements do, in fact, mislead at times, and they do not adequately explain the

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<sup>176</sup> Government of Canada, Morneau, *Growing the Middle Class*, above n 24, 68.

<sup>177</sup> Government of Canada, Flaherty, *Action Plan 2012*, above n 18, 15–16.

<sup>178</sup> See the discussion in Part IV.B.1, above.

<sup>179</sup> Joahn Ivison, ‘Surprise! Doctors Don’t Like Being Branded Tax Cheats’, *The National Post* (Canada), 29 August 2017 <<http://nationalpost.com/news/politics/john-ivison-surprise-doctors-dont-like-being-branded-tax-cheats>>; CBC News, above n 175.

<sup>180</sup> Government of Canada, Flaherty, *Budget 2007*, above n 12, 239.

<sup>181</sup> Liberal Party of Canada, *Real Change – A New Plan for a Strong Middle Class* (2015) 4 <<https://www.liberal.ca/wp-content/uploads/2015/10/New-plan-for-a-strong-middle-class.pdf>>.

<sup>182</sup> Kornhauser, ‘Rise of Rhetoric’, above n 61, 2346–7.

content, impact, or rationale. Clearly, much could be done to improve the announcements in terms of providing information to the public.

Throughout this part, I have speculated about the reasons that governments may be less than transparent. It would seem that these reasons are politically motivated. Thus, tension between the government's quest for political favor and democracy's reliance on transparency is apparent. However, if citizens insist upon it, political motivations may shift towards greater transparency.

Governments should not view these calls to action as a threat. In fact, clear communication about the need for the tax law changes, the possible options for reform, and the reasons for selecting one particular option, has been described as a recipe for successful tax reform.<sup>183</sup>

## V CONCLUSION

Tax policy announcements over the past dozen or so years reveal a number of tactics to gain political favour. The main themes are an intentional use of language; strategic, sparse, and sometimes misleading communication of rationales and effects of the policies; failure to educate citizens about the tax system; and a blatant use of tax policies to buy votes. There is no way to know if all of the examples identified were intentional tactics, but the frequency with which these were used suggests that they were often deliberate.

Kornhauser's description of government rhetoric in the US is fitting here in the Canadian context as well: 'current rhetoric seeks only to evoke knee-jerk reaction rather than reflection. It is cheerleading, not thought. What we need, however, is a debate, not a sports competition.'<sup>184</sup> Our democratic system requires healthy debate. This, though, depends on appropriate information from the government.

Canadians should, first, recognise the nature of tax policy announcements as persuasive and politically motivated, and they should scrutinise them with this in mind. Second, they should pressure the federal government to increase transparency in tax policy announcements with the goal of strengthening democracy. This requires the government to provide more complete rationales for the policy change, describe the effects of the changes, and connect taxes with spending. Further, governments should use budgets and other high-profile tax policy announcements to educate the public about the tax system. With greater knowledge and information, citizens would be better equipped to hold governments accountable.

Politics, rhetoric, and taxes may indeed all go hand in hand. However, it is possible for citizens to eschew smoke and mirrors and demand governments place more trust in their ability to properly evaluate policy choices, rather than being treated as self-interested, ignorant, and naive. If successful in their calls for more transparent, respectful, and meaningful communication from governments, or if the current government makes a

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<sup>183</sup> Boothe, above n 48, 2040.

<sup>184</sup> Kornhauser, 'Rise of Rhetoric', above n 61, 2371.

decision to take this more morally responsible route on its own, all members of our society would be 'winners'.

## REFERENCES

### *A Articles/Books/Reports*

- Bélanger, Éric and Laura B Stephenson, 'Parties and Partisans: The Influence of Ideology and Brokerage on the Durability of Partisanship in Canada' in Cameron D Anderson and Laura B Stephenson (eds), *Voting Behaviour in Canada* (UBC Press, 2010) 107, 115
- Boothe, Paul, 'The Art of Tax Reform' (2002) 50 *Canadian Tax Journal* 2038, 2044
- Brooks, Neil, 'Policy Forum: The Case Against Boutique Tax Credits and Similar Tax Expenditures' (2016) 64 *Canadian Tax Journal* 65
- Canadian Association of Income Trust Investors, 'Angus Reid Poll on Tax Fairness Plan- Indicates Canadians Overwhelmingly Believe it to be Unfair' (News Release, 17 March 2007) <<https://www.newswire.ca/news-releases/angus-reid-poll-on-tax-fairness-plan---indicates-canadians-overwhelmingly-believe-it-to-be-unfair-533548971.html>>
- Department of Finance, Government of Canada, *The Budget Speech 2006: Focusing on Priorities* (2006)
- Department of Finance, Government of Canada, 'Canada's New Government Announces Tax Fairness Plan' (News Release, 31 October 2006) <<https://www.fin.gc.ca/n06/06-061-eng.asp>>
- Department of Finance, Government of Canada, *Strong Leadership. A Better Canada: Economic Statement* (2007)
- Department of Finance, Government of Canada, 'PM Announces Tax Cuts, Increased Benefits for Families' (News Release, 20 October 2014) <<http://www.fin.gc.ca/n14/14-155-eng.asp>>
- Department of Finance, Government of Canada, 'Harper Government Tables Notice of Ways and Means Motion to Implement Tax Cuts for Families' (News Release, 24 March 2015) <<http://www.fin.gc.ca/n15/15-027-eng.asp>>
- Department of Finance, Government of Canada, 'Government of Canada Announces Tax Cut to Strengthen the Middle Class' (News Release, 7 December 2015) <<http://www.fin.gc.ca/n15/15-086-eng.asp>>
- Department of Finance, Government of Canada, *Speech on Measures to Strengthen the Middle Class* (7 December 2015) <[http://www.fin.gc.ca/n15/15-086\\_1-eng.asp](http://www.fin.gc.ca/n15/15-086_1-eng.asp)>
- Department of Finance, Government of Canada, 'Government Moves to Reduce Small Business Tax Rate and Support Fairness for the Middle Class' (News Release, 16 October 2017) <<http://www.fin.gc.ca/n17/17-097-eng.asp>>
- Department of Finance, Government of Canada, 'Government Thanks Canadians for Helping Get Tax Fairness Right' (News Release, 17 October 2017) <<http://www.fin.gc.ca/n17/17-098-eng.asp>>

- Department of Finance, Government of Canada, *2018 Report on Federal Tax Expenditures* (2018)
- Eccleston, Richard and Ian Marsh, 'The Henry Tax Review, Cartel Parties and the Reform Capacity of the Australian State' (2011) *46 Australian Journal of Political Science* 437, 441
- Fenster, Mark, 'The Opacity of Transparency' (2006) *91 Iowa Law Review* 885, 897, 949
- Fisher, Koren L et al, 'Awareness and Use of Canada's Children's Fitness Tax Credit' (2013) *Canadian Tax Journal* 599, 628-9
- Fodor, Matt, 'Taxation and the Neo-Liberal Counter-Revolution: The Canadian Case' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 101, 113
- Forum Research Inc, 'Liberals Widen Gap, Conservatives Stall in Final Poll' (News Release, 18 October 2015) <[http://poll.forumresearch.com/data/dc2e85ea-624f-4377-b2f1-928dc876fef3Federal%20Horserace%20News%20Release%20\(2015%2010%2018\)%20Forum%20Research.pdf](http://poll.forumresearch.com/data/dc2e85ea-624f-4377-b2f1-928dc876fef3Federal%20Horserace%20News%20Release%20(2015%2010%2018)%20Forum%20Research.pdf)>
- Genest-Grégoire, Antoine, Luc Godbout and Jean-Herman Guay, 'The Knowledge Deficit about Taxes: Who It Affects and What to Do about It' (Commentary No 484, C D Howe Institute, 2017) 3-4
- Government of Canada, The Honourable James M Flaherty, *The Budget Plan 2006: Focusing on Priorities* (2006)
- Government of Canada, The Honourable James M Flaherty, *The Budget Speech 2006: Focusing on Priorities* (2006) 5
- Government of Canada, The Honourable James M Flaherty, *The Budget Plan 2007: Aspire to a Stronger, Safer, Better Canada* (2007)
- Government of Canada, The Honourable James M Flaherty, *The Budget Speech 2007: Aspire to a Stronger, Safer, Better Canada* (2007)
- Government of Canada, The Honourable James M Flaherty, *The Budget Plan 2008: Responsible Leadership* (2008)
- Government of Canada, The Honourable James M Flaherty, *Canada's Economic Action Plan: Budget 2009* (2009)
- Government of Canada, The Honourable James M Flaherty, *Canada's Economic Action Plan: The Budget Speech 2009* (2009) 4
- Government of Canada, The Honourable James M Flaherty, *Budget 2010: Leading the Way on Jobs and Growth* (2010)
- Government of Canada, The Honourable James M Flaherty, *A Low-Tax Plan for Jobs and Growth* (2011)
- Government of Canada, The Honourable James M Flaherty, *Jobs, Growth and Long-Term Prosperity: Economic Action Plan 2012* (2012)
- Government of Canada, The Honourable James M Flaherty, *Jobs Growth and Long-Term Prosperity, Economic Action Plan 2012: The Budget Speech* (2012) 9

- Government of Canada, The Honourable James M Flaherty, *Jobs, Growth and Long-Term Prosperity: Economic Action Plan 2013* (2013)
- Government of Canada, The Honourable James M Flaherty, *Jobs Growth and Long-Term Prosperity, Economic Action Plan 2013: The Budget Speech* (2013) 2
- Government of Canada, The Honourable James M Flaherty, *The Road to Balance: Creating Jobs and Opportunities* (2014)
- Government of Canada, The Honourable Joe Oliver, *Strong Leadership: A Balanced-Budget, Low Tax Plan for Jobs, Growth and Security* (2015)
- Government of Canada, The Honourable Joe Oliver, *Strong Leadership – The Budget Speech* (2015) 9
- Government of Canada, The Honourable William Francis Morneau, *Growing the Middle Class* (2016)
- Government of Canada, The Honourable William Francis Morneau, *Building A Strong Middle Class: Budget 2017* (2017)
- Government of Canada, The Honourable William Francis Morneau, *Equality and Growth: A Strong Middle Class* (2018)
- Government of Canada, The Honourable William Francis Morneau, *Budget 2018: Equality and Growth for a Strong Middle Class – Remarks by the Honourable Bill Morneau* (2018) 4–8, 13–14
- Graves, Frank, 'Canadian Public Opinion on Taxes' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 82, 84–5
- Halberstam, Michael, 'Beyond Transparency: Rethinking Election Reform from an Open Government Perspective' (2015) 38 *Seattle University Law Review* 1007, 1107–8
- Hale, Geoffery, *The Politics of Taxation in Canada* (University of Toronto Press, 2001)
- Hennessey, Trish, 'Tax Cuts and Other Cheap Parlour Tricks' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 137, 142
- Himelfarb, Alex and Jordon Himelfarb, 'The Conversation Today' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 15, 15
- Himelfarb, Alex and Jordon Himelfarb, 'Introduction: Tax is Not a Four-Letter Word' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 1
- Iverson, Joahn, 'Surprise! Doctors Don't Like Being Branded Tax Cheats', *The National Post* (Canada), 29 August 2017 <<http://nationalpost.com/news/politics/john-iverson-surprise-doctors-dont-like-being-branded-tax-cheats>>
- Kamin, David, 'What Is a Progressive Tax Change? Unmasking Hidden Values in Distributional Debates' (2008) 83 *New York University Law Review* 241, 266
- Kessleman, Jonathan R, 'Economics versus Politics in Canadian Payroll Tax Policies' (1998) 24 *Canadian Public Policy* 381



- Kornhauser, Marjorie E, 'The Rhetoric of the Anti-Progressive Income Tax Movement: A Typical Male Reaction' (1987) 86 *Michigan Law Review* 465, 469
- Kornhauser, Marjorie E, 'The Morality of Money: American Attitudes toward Wealth and the Income Tax' (1995) 70 *Indiana Law Journal* 119, 138
- Kornhauser, Marjorie E, 'The Rise of Rhetoric in Tax Reform Debate: An Example' (1996) 70 *Tulane Law Review* 2345, 2347
- Kornhauser, Marjorie E, 'Legitimacy and the Right of Revolution: The Role of Tax Protests and Anti-Tax Rhetoric in America' (2002) 50 *Buffalo Law Review* 810, 929–30
- Kornhauser, Marjorie E, 'A Tax Morale Approach to Compliance: Recommendations for the IRS' (2007) 8 *Florida Tax Review* 599, 638
- Lang, Eugene and Philip DeMont, 'A Brief Potted History of Ottawa's Tax Cut Mania' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 119
- Lee, Gia B, 'Persuasion, Transparency, and Government Speech' (2005) 56 *Hastings Law Journal* 983, 994
- Liberal Party of Canada, *Ending Unfair Tax Breaks* <<https://www.liberal.ca/realchange/ending-unfair-tax-breaks>>
- Liberal Party of Canada, *Real Change – A New Plan for a Strong Middle Class* (2015) 4 <<https://www.liberal.ca/wp-content/uploads/2015/10/New-plan-for-a-strong-middle-class.pdf>>
- 'Liberals Pledge to Cut Small Business Tax Rate to 9% Amid Backlash over Proposed Tax Reforms', *CBC News* (Canada), 16 October 2017 <<http://www.cbc.ca/news/politics/small-business-tax-1.4356229>>
- McCaffery, Edward J, 'Commentary – Are We Asking the Right Questions?' (2014) 67 *New York University Tax Law Review* 669, 674
- Mackenzie, Hugh, 'Benefits from Public Services' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 69, 81
- Mackenzie, Hugh, 'Taxes and Public Services' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 55, 57
- McKenzie, Kenneth J and Egrete Ferede, 'The Incidence of the Corporate Income Tax on Wages: Evidence from Canadian Provinces' (2017) 10(7) *The University of Calgary School of Public Policy Technical Paper* 1
- Martinez, Leo P, 'Tax Legislation and Democratic Discourse: The Rhetoric of Revenue and Politics' (2004) 4 *Nevada Law Journal* 510, 516
- Murphy, Liam B and Thomas Nagal, 'Taxes, Redistribution, and Public Provision' (2001) 30 *Philosophy & Public Affairs* 53
- Roosma, Femke, Wim van Oorschot and John Gelissen, 'A Just Distribution of Burdens? Attitudes Toward the Social Distribution of Taxes in 26 Welfare States' (2015) 28 *International Journal of Public Opinion Research* 376, 380

- Rotfleisch, David J, 'Morneau's Tax Changes Are So Complex and Unfair, They'll Turn Accountants Bald – and Rich', *Financial Post* (Canada), 13 September 2017 <<http://business.financialpost.com/opinion/morneaus-tax-changes-are-so-complex-and-unfair-theyll-turn-accountants-bald-and-rich>>
- Sauder, Joanne, *Canada's Experiment with Children's Fitness and Activity Tax Credits* (LLM Thesis, University of Saskatchewan, 2014) 69, 124
- Saurette, Paul and Shane Gunster, 'Canada's Conservative Ideological Infrastructure: Brewing a Cup of Cappuccino Conservatism' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax Is Not a Four-Letter Word: A Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 227, 227
- 'Sensible Move on Income Trusts', *Edmonton Journal* (Canada), 2 November 2006, A16
- Sumino, Takornori, 'Level or Concentration? A Cross-national Analysis of Public Attitudes towards Taxation Policies' (2016) 129 *Social Indicators Research* 115
- Tillotson, Shirley, 'The Politics of Carter-era Tax Reform: A Revisionist Account' in Kim Brooks (ed), *The Quest of Tax Reform Continues: The Royal Commission on Taxation Fifty Years Later* (Carswell, 2013)
- Woods, Andrew Keane, 'The Transparency Tax' (2018) 71 *Vanderbilt Law Review* 1, 6
- Woolley, Frances, 'Liability Without Control – The Curious Case of Pension Income Splitting' (2007) 55 *Canadian Tax Journal* 603, 607–12
- Young, Leslie, 'Federal Budget 2016: Trudeau Eliminates Harper-era Tax Credits', *Global News*, 22 March 2016 <<https://globalnews.ca/news/2594044/federal-budget-2016-trudeau-eliminates-harper-era-tax-credits>>

### **B Legislation**

*Income Tax Act*, RSC 1985, c 1 (5<sup>th</sup> Supp)

*Constitution Act 1982* (UK), 30 & 31 Vict, c 3