

Implementing public policies with user fees that align with partisan ideology: a Canadian example

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Abstract

The Canadian federal government not only provides public services such as infrastructure, healthcare and education that benefit all citizens, but government also provides services on an individual basis to citizens. Through a case study, this paper explores how government makes decisions that support its political party's ideology in deciding whether or not to implement user fees for services that benefit individuals. Using public choice theory, we discuss three actors with each actor striving to maximize their utility: elected officials by obtaining enough votes to form government; citizen-voters by obtaining more benefits than what they finance through general taxation; and pressure groups by spending resources on political activities to secure the group members' preferences. We then apply these three actors to a case study: the decision to increase user fees for criminal record suspensions. The case study brings forth an example of government not acquiescing to the majority of citizen-voters' and pressure groups' demands if these demands do not align with government's self-interest such as furthering their ideological stance.

Résumé

Le gouvernement fédéral canadien ne fournit pas seulement des services publics tels que des infrastructures, des services de santé et d'éducation qui profitent à toutes et tous, il propose également des services individuels à certains de ses citoyens. Grâce à une étude de cas, cet article explore la manière dont le gouvernement prend des décisions fidèles à l'idéologie du parti politique au pouvoir pour imposer, ou non, des frais d'utilisation pour accéder à des services qui ne profitent qu'à une fange de la population. En utilisant la théorie des choix publics, nous présentons trois acteurs qui, chacun, cherche à maximiser son utilité : les élus, en gagnant suffisamment de voix pour former un gouvernement; les citoyens-électeurs, en obtenant plus d'avantages que ce qu'ils payent par la fiscalité générale; et les groupes de pression, en investissant dans des activités politiques afin de garantir les préférences de leurs membres. Nous discutons ensuite de ces trois acteurs dans un cas précis : la décision d'augmenter les frais de service dans le cadre des demandes de suspensions de casier judiciaire. Cette étude de cas démontre qu'un gouvernement n'acquiesce pas à la majorité des demandes des citoyens-électeurs et des groupes de pression si celles-ci ne coïncident pas avec ses champs d'intérêts, tel que le renforcement de sa position idéologique.

Implementing public policies with user fees that align with partisan ideology: a Canadian example

Introduction

The Canadian federal government not only provides public services such as infrastructure, healthcare and education that benefit all citizens, but government also provides services on an individual basis to citizens, such as social insurance numbers, passports, criminal record suspensions,¹ and security clearances. Some of the services provided to citizens on an individual basis are financed through cost recovery and user fees, while other services are provided through general taxation.

From an economic theory perspective, user fees have an efficiency argument with fees seen as more directly linking services to beneficiaries. In addition there is a distributional argument as their incidence may have a greater impact on lower-income individuals (Mishan 1972; Bird 1976; Pal 1997; Norman 2004). While the application of user fees appears straight forward, there has been public criticism by some that these fees can be viewed as a tax (Office of the Auditor General of Canada 2008) and seen as a “revenue grab” by government (Bird and Tsiopoulos 1997), while others see the practice of user fees as a viable policy instrument for the delivery of government services (Aucoin 1995; Bird and Tsiopoulos 1997; OECD 1998).

The Canadian federal government has announced in several budgets (Finance Canada 1985, 1989, 1995, 2003) the intent to charge user fees for government services which benefit individuals versus providing a public benefit to all citizens. Yet, government only charges user fees for certain public services provided to individual citizens with others financed through general taxation. For example, passports and criminal record suspensions have user fees, while social insurance numbers and security clearances do not.

This brings us to the purpose of this paper: how does government make decisions that support its political party’s ideology in deciding whether or not to implement user fees for a public service. One way to explain government decision-making is through public choice theory. Specifically, we apply Buchanan and Tullock’s (1974) model to the Canadian federal government by taking into account three actors. As we shall explain, each actor strives to maximize their utility: elected officials by obtaining enough votes to form government; citizen-voters by attaining more benefits than what they finance through general taxation; and pressure groups by spending resources on political activities to secure the group members’ preferences.

Using a case study of the implementation of user fees for criminal record suspensions, we bring forth an example of how government makes decisions based on its ideology in deciding whether or not to implement user fees for a public service. The paper contributes to existing literature (Downs 1957; Buchanan and Tullock 1974; Frey and Schneider 1978b; Tellier 2006) in regards to government decision-making and the implementation of public policies that support its partisan ideology. While conclusions may seem common sensical, they are the result of

¹ A criminal record suspension was previously known as a pardon. The name change was included in Bill C-10 (*An Act to Enact the Justice for Victims of Terrorism Act and to Amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and Other Acts*, 41st Parliament, 1st Session, 2012).

triangulating evidence found in public documents and access-to-information requests made to build upon existing literature and develop a Canadian example.

The paper is divided into three parts: the first part discusses user fees as a policy instrument; the second part builds the theoretical framework; and the third part applies the theoretical framework to the case study.

User fees as a policy instrument

Governments use policy instruments to achieve a desired policy objective or goal *vis-à-vis* target populations (Pal 1997; Howlett and Ramesh 2003; Harman 2005; Althaus, Bridgman, and Davis 2007). Policy instruments may be linked to financial incentives, for instance licensing or taxation in regulatory areas such as economic, social or environmental policy to discourage or encourage a particular behavior or action (Lowi 1972; Baxter-Moore 1987; Pal 1997; Howlett and Ramesh 2003).

Taxation, as a policy instrument, comes in various shapes and sizes, including direct (e.g. corporate and personal income taxes) and indirect (e.g. consumption taxes or benefit-related services) (Bibbee 2008; Tellier 2009). Direct taxation generally has a compulsory aspect that is not tied to financing any specific services or benefits, while indirect consumption taxes or benefit related services are linked to particular goods or services (Bird 1976; McGee 2004; Pal 2006). While it has been argued that user fees for benefit-related services are a form of taxation (Maslove 1994), others argue that user fees are a more efficient method of providing public services because government can determine demand (Bird and Tsiopoulos 1997; McGee 2004); still others provide a distributional argument as the incidence of user fees may have a greater impact on lower-income individuals (Bird 1976; Pal 1997; Norman 2004).

A user fee is charged for a measurable amount of services which the individual benefits from similar to a private market transaction in which individuals choose to voluntarily purchase a service (Maslove 1994; Sproule-Jones 1994; Bird and Tsiopoulos 1997; McGee 1999; Howlett and Ramesh 2003; Pal 2006). However some government services with user fees, such as passports, are a privilege and a necessity for traveling to another country. Other services in which government provides for distinct activities which have user fees include applications for the granting of Canadian citizenship or obtaining a criminal record suspension. As the sole provider of these services, government has a monopoly in that these services cannot be obtained elsewhere.

The introduction of user fees aligns with new public management (NPM) and the notion of bringing private sector management practices into public administration. In NPM, government enhances performance by focusing on efficiency, effectiveness and economy, by placing more awareness on the relationship between expenditures and revenues (Hood 1991; Dunleavy and Hood 1994; Aucoin 1995). Hence some government programs may be funded by the individual user rather than being financed through general taxation. Utilizing a finance-centred approach enhances cost consciousness, value for money, and service quality to citizens (Hood 1991; Aucoin 1995; Glor 2001). In striving to deliver service quality, government engages with citizens to understand the needs and circumstances for public services, implying setting certain service standards and expectations for the delivery of services (Aucoin 1995). The delegation of

responsibility for delivering these services rests with public servants, hence there is a need for elected officials to be able to translate political priorities into clear policy objectives so that public servants understand and can implement the delivery of services accordingly (Aucoin 1995; Glor 2001; Aucoin 2002).

In Canada, the federal government has recognized over the years that, for those public services which benefit individuals rather than all individuals, a cost-recovery approach through user fees may be a more efficient and effective method of delivering public services (Finance Canada 1985, 1989, 1995, 2003). Government has struck various committees to study cost recovery strategies, such as the Ministerial Task Force on Program Review in 1984 (Finance Canada 1985) and the Standing Committee on Finance's study *Challenge for Change, A Study on Cost Recovery* in 2000 (Standing Committee on Finance 2000). Additionally, government instructed the Treasury Board of Canada Secretariat to review departmental policies related to the management of cost recovery (*Ibid.*; Finance Canada 2003). Hence, the Canadian federal government has publicly stated, through a variety of means, that a cost-recovery approach through user fees may be appropriate for some public services provided on an individual basis.

The federal government has also enacted legislation through the *User Fees Act* (S.C., 2004, c.6) (UFA), outlining the requirements for government user fees. The UFA applies to all federal government user fees provided by a regulating authority charged to an external client in which the:

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

The UFA includes among other criteria, the requirement for public consultation. According to the legislation, consultations are to be with clients who are direct users of the service plus other regulating authorities with a similar clientele. Consultations provide the opportunity for clients to submit ideas or proposals for ways to improve services. The UFA states that government organizations must explain, during the consultation process, how the user fee is determined including costs, revenue elements and service standards. The UFA legislates that user fee proposals require the approval of a parliamentary committee. Parliamentary committee review of a user fee proposal may be done by either the Senate of Canada or the House of Commons (or both), with the appropriate committee submitting its non-binding resolution to the House or Senate who then pass a motion approving, rejecting or amending the recommendation for the user fee proposal (Bernhardt and Dewing 2012).

Thus the Canadian federal government has recognized that at times user fees may be appropriate for benefit-related services provided to individuals and have passed legislation to provide guidance on the implementation of them. However, while we have addressed the rationale of user fees, we have not answered the "why": why does government decide to implement user fees for some services provided to individuals but not for others? One way to explain the "why" is through the lens of public choice theory.

Theoretical framework

One method to explain the choice of a policy instrument such as user fees is through the lens of public choice theory. Public choice is based on the notion that individuals are rational, meaning that rational individual decision-makers calculate the most reasonable way to attain their goals (benefits) by considering their means (costs) (Downs 1957). Specifically, we use Buchanan and Tullock's (1974) model that posits an individual's decisions and actions are driven by self-interest in which the individual expects to maximize his benefits while minimizing his costs whether purchasing a consumer good, voting, or deciding how to finance publicly provided services.

For the purpose of this paper, we take into account three actors: government (elected officials), citizen-voters, and pressure groups. The government, as the first actor in our model, maximizes utility through re-election, thus re-election becomes the primary objective of both the governing party and opposition parties (Downs 1957). To be elected or re-elected, the leaders of political parties position political policy platforms to appeal to the preferences of groups of citizen-voters' (Dunleavy 1991; Steinmo 1993; Good 2008). According to Downs (1957: 28) "parties formulate policies in order to win elections, rather than win elections in order to formulate policies." A political party derives "utility by establishing public policies that meet its ideological stance" (Tellier 2006: 371). Once a political party is elected as government with no effective separation of legislative and executive powers in the Canadian Westminster system, nor a need to reveal how a decision was reached due to Cabinet secrecy, a majority governing political party in their self-interest may shape public policies to reflect party ideology (Dunleavy 1991; Howlett and Ramesh 2003; Felgenhauer 2012; Andersen 2012). Not only is it with a majority government that a governing political party can shape public policies slanted towards its ideology, but also in a minority government through mechanisms such as *ad hoc* arrangements with opposition parties depending upon the support required for particular issues (Russell 2009; Good 2010).

Our second actor, citizen-voters, maximize utility by voting for the electoral candidate that they believe will provide them the most publicly provided benefits (expenditures) at the least cost (taxation) to the citizen-voter (Downs 1957; Coughlin, Mueller, and Murrell 1990; Felgenhauer 2012). Citizen-voters are interested in receiving more publicly provided services, but they do not want to pay more taxes (Steinmo 1993). Except for providing the setting of norms, attitudes and values for policy making, citizen-voters play only a small role in the actual making of policy except when it comes to the electoral process (Howlett and Ramesh 2003; Howlett and Lindquist 2007). In the electoral process, the citizen-voter plays a very important role as electoral candidates "test" their policy platforms, through the use of indicators such as public opinion polls, to assess whether or not their proposed policies resonate with citizen-voters to win their vote (Cross 2004; Petry 2007). As political parties understand that citizen-voters want to receive more publicly provided services and not pay more taxes, in order to win citizens' votes political parties will promise redistributive programs to benefit groups of citizen-voters that appear to favour the political party at the expense of other groups of citizen-voters (Frohlich and Oppenheimer 1990). Some scholars (Frey and Schneider 1978a, 1978b, 1979) argue that a governing party in seeking re-election behaves opportunistically by using economic performance indicators to sway citizen-voters and increase the governing party's popularity at the time of an election. Others (Kramer 1971; Nordhaus 1975; Rogoff 1990) argue that while the governing party may try to use economic performance indicators to sway voters, voters are aware of the

governing party's intent, hence voters base their voting behaviour on the results of the governing party's past experiences to form an expectation of what voters consider to be the "usual" behaviour of the governing party.

As citizen-voters attempt to increase their benefit package in order to maximize their utility, they may join collective action groups (pressure groups) (Buchanan and Tullock 1974). Pressure groups are the third actor in our model. By pressure groups, we mean groups where members act together to influence public policy-making in order to promote their common goals by engaging with government via such measures as advocacy or lobbying (Buchanan and Tullock 1974; Pross 1975; Mueller and Murrell 1986; Schlager 2007; Ostrom 2008). The term 'pressure groups' encompasses interest groups (both socio and economic), social movement groups, business groups, unions and all other such groups; however, this does not say that all pressure groups act the same (Mueller and Murrell 1986; Dunleavy 1991; Heinz *et al.* 1997; Pal 1997; Young and Everitt 2010). Pressure groups maximize their utility by spending resources on political activities to secure the group's preferences (e.g. higher benefits, lower costs) for their citizen-voter members (Olson 1971; Becker 1983, 1985; Thorburn 1985; Mueller and Murrell 1986; Dunleavy 1991). The study of the nature and behaviour of pressure groups in Canada is limited (Jones Dawson 1975; Pross 1992; Phillips 2007). However, Young and Everitt (2004: 3) provide the following rationale – a convincing argument as to why Canadian citizen-voters may choose to participate in pressure groups:

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

In order to influence public policy-making and attain more benefits or reduced costs for their members, pressure groups need to become proficient at bringing their views to the attention of the Cabinet as this is where decision making happens (Jones Dawson 1975; Franks 1987; Smith 2005). However, we must keep in mind that with the Canadian Parliament being characterized as having strong party discipline (Franks 1987) and reliance on Cabinet secrecy by the governing political party (d'Ombrain 2004), pressure groups are challenged to affect changes to policy outcomes (Gillies and Pigott 1982; Young 2000; Pal and Weaver 2003; Smith 2005). A venue where pressure groups can attempt to influence government decision-making is by testifying at parliamentary committees. However, while parliamentary committees have shown a slight inclination to amend government legislation as it works through the committee process to appease opposition parties and pressure groups, in reality this results in little changing of policy (Jones Dawson 1975; Pross 1993; Pal and Weaver 2003; Smith 2005; Tellier 2015).

Citizen-voters and pressure groups also attempt to influence government decision-making by participating in the public consultation process of policy-making. We denote a difference between citizen-voters and pressure groups in the public consultation process as the leaders of pressure groups may be invited to participate at venues such as parliamentary committee meetings to voice the position of their citizen-voter members, whereas individual citizen-voters are unlikely to be invited, as individuals only represent one voice versus the voice of many that a

pressure group may represent. Individual citizen-voters are more likely to participate in the public consultation process through mechanisms such as letters, emails or meetings with their member of Parliament.

Hence we have developed our three actors and explained how each maximizes their utility: elected officials by obtaining enough votes to form government; citizen-voters by obtaining more benefits than what they finance through general taxation; and pressure groups, spending resources on political activities to secure the group members' preferences. Next we discuss a case study to demonstrate how actors attempt to maximize their utility. One needs to be cognizant that, depending upon the self-interest of government such as shaping public policies to reflect its partisan ideology, citizen-voters and pressure groups may not be able to sway government decision-making to benefit certain segments of the population.

Case study: Criminal record suspensions

We have outlined how user fees may be used as a policy instrument to aid government in instilling certain actions among citizens in accessing a public service. We have constructed a model using public choice theory and three actors to consider how decisions might be made by government in choosing whether or not to implement user fees for public services. In this section, we will apply our theoretical framework to an example: the Canadian federal government's decision to increase user fees for criminal record suspensions by moving the program to full cost recovery. An explanatory methodology was used for this case study as the case focuses on contemporary, real behavioural events that are observable through the use of public records such as parliamentary committee studies² and the Parole Board of Canada (PBC) website³ and access-to-information requests.⁴ The information gathered from these various sources was triangulated to develop the case study.

A record suspension is evidence that a criminal conviction for a federal offence should no longer reflect negatively on a person who has demonstrated to be a law-abiding citizen (Parole Board of Canada 2012). A record suspension does not erase a conviction and it does not allow a person to say that they do not have a criminal record, but rather a person can say that they have received a record suspension for a particular offence (Library of Parliament 2010). Receiving a record suspension is not automatic and is determined on a case-by-case basis by the PBC (Standing Senate Committee on Legal and Constitutional Affairs 2010).

User fees were first introduced for record suspensions in 1994-95 as part of Program Review (Finance Canada 1995) to reduce the overall costs to government by having those individuals

² Parliamentary committee studies (reports and meeting testimony) include: the Standing Committee on Finance's *Challenge for Change. A Study of Cost Recovery* (36th Parliament, 2nd Session); plus the Standing Senate Committee on Legal and Constitutional Affairs' studies *National Parole Board User Fee Proposal* (40th Parliament, 3rd Session) and the *Parole Board of Canada User Fees Proposal*, (41st Parliament, 1st Session).

³ From PBC's website, information was gathered related to the *User Fees and Service Standards for the Processing of Pardon Applications*; the *Public Consultation: Proposed Increase to the Pardon Application User Fee*; the *Parole Board of Canada: Performance Monitoring Report*; and *Reports on Plans and Priorities* (2012–2013, 2013–2014).

⁴ Access-to-information requests yielded responses from PBC, including: the public consultation process regarding the user fee increase to \$631 (1213 pages released with some redactions); the Cost Benefit Analysis by RIAS Inc. (193 pages with some redactions); plus the online consultation form which PBC used for its public consultations between February 1-27, 2011 for the pardon increase to \$631 (15 pages released).

that require a record suspension pay a portion of the cost with the \$50 user fee covering approximately 50 percent of PBC's direct costs (Parole Board of Canada 2011). Since the introduction of the initial \$50 user fee, the cost to the PBC to process a record suspension application has risen substantially partly due to changes in the *Criminal Records Act* (R.S.C., 1985, c. C-47) as a result of Bill 23A (*An Act to Amend the Criminal Records Act*, 40th Parliament, 3rd Session, 2010).

Bill 23A was passed as legislation to support the Conservative Government's *Tough on Crime Agenda* which it had campaigned on in both 2006 and 2011 to attract citizen-voters' support (Conservative Party of Canada 2006, 2011). As a political party faces an electoral constraint, in that it needs to secure enough votes from citizen-voters to form government (Tellier 2006), the Conservatives needed to be elected as the governing party to actively pursue its policy goals. In 2006, the Conservatives campaigned on ensuring effective and appropriate justice is administered to criminals (Conservative Party of Canada 2006). In 2011, the party's policy platform included that since first elected in 2006, the Conservatives made tackling crime one of its highest priorities (Conservative Party of Canada 2011: 45). Further the party campaigned on supporting victims of crime and not putting the rights of criminals ahead of the rights of victims (Conservative Party of Canada 2011: 46). Specifically related to record suspensions, the Conservative platform promised to "limit the granting of pardons, to better reflect the severity of the crimes committed" and to "eliminate pardons for serious criminals" (Conservative Party of Canada 2011: 47, 50). The platform resonated with citizen-voters as the Conservative Party was able to maximize its utility by winning enough seats to form minority governments in 2006 and 2008 and a majority in 2011.

According to PBC documents (Parole Board of Canada 2011), board members review approximately 30,000 applications annually. Prior to Bill 23A, it administratively cost the PBC \$231 to process a record suspension application with PBC only charging a \$50 user fee. To more directly align costs in 2010, PBC applied to increase the user fee to \$150. Among other changes, Bill 23A legislated that a written report must be provided for each decision regarding a record suspension, thus increasing the administrative cost to the PBC for processing a record suspension application. Post Bill 23A with the present need to provide a written report for each decision, PBC determined that the administrative cost to process a record suspension application had risen from \$231 to \$631.

In February 2011, the Minister of Public Safety, an elected official and member of Cabinet, announced that criminals should be held fully accountable for their crimes and thus pay the full administrative costs for processing record suspensions (Public Safety Canada 2011). Subsequently, the government decided that the record suspension program should operate on a full cost-recovery basis and not be subsidized through general taxation, thus the user fee would increase to \$631 (Standing Senate Committee on Legal and Constitutional Affairs 2011a). In making the announcement, the Conservatives, through the elected official, were attempting to maximize its utility by appealing to citizen-voters to secure votes.

What is interesting for the purpose of this paper are the interactions between government, citizen-voters and pressure groups which led to the decision to move to full cost recovery which we shall explore next.

Public consultations

As mentioned previously, a requirement of the *User Fees Act* (UFA) is to consult with clients who are direct users of the public service when going through the process of altering user fees. During a two-week period of public consultations to increase the record suspension user fee to \$631, PBC received 1,086 responses (Parole Board of Canada 2011) from citizen-voters and pressure groups. The 1,086 responses represented two “opposing” sides. One side represented those that have committed crimes either citizen-voters themselves or pressure groups and did not support the proposed fee increase to \$631 (1,074 responses) and the other side being victims of crimes comprised of citizen-voters and pressure groups agreeing with the fee increase (12 responses).

In attempting to maximize their utility and receive more benefits than what they pay for through general taxation, citizen-voters may put forth a variety of arguments as to why a user fee increase may not be warranted. In the case of record suspensions, rationale from the 1,074 public consultation responses plus testimony at parliamentary committee meetings to not increase the user fee to \$631 included: the benefit to society, an individual’s ability to pay, and the fee being a revenue grab by government.

In regards to benefiting society, while the PBC’s primary objective is the long-term protection of Canadians, record suspensions are viewed as a socio-economic program in that an individual upon being issued a record suspension may secure a job to support the economy and reduce reliance on social programs (Parole Board of Canada 2013). Responses during the public consultation process from pressure groups not supporting the fee increase included that an individual granted a record suspension contributes to society by paying taxes through “meaningful” employment therefore is less likely to reoffend. Additionally, testimony from a pressure group not supporting the fee increase at a parliamentary committee meeting included:

A record suspension facilitates social integration ... the board’s proposal goes against social reintegration, against the personal development of those concerned, as well as against reconciliation between the offender and society (Standing Senate Committee on Legal and Constitutional Affairs 2011b: 42-43).

The arguments put forth by these pressure groups centre around the notion that government should subsidize record suspensions through general taxation rather than full cost recovery because society benefits by the individual paying taxes thus contributing to the economy. Testimony by a senior public servant at the Standing Senate Committee on Legal and Constitutional Affairs (Committee) (2011b) proceedings, which reviewed PBC’s user fee proposal, stated that a cost-benefit analysis concluded that record suspensions do benefit both society and the individual; however, the benefits are significant to the recipient hence the charging of an increased user fee may be appropriate.

Citizen-voters, through public consultations and pressure groups’ appearances at parliamentary committee meetings, also used a distributional argument in regards to why the increased user fee to \$631 was not appropriate. Ability to pay was one of the top three reasons as to why 1,074 respondents did not agree with the \$631 user fee, “*it would pose a financial burden for applicants, with many unable to pay the increased fee*” (Parole Board of Canada 2011).

Responses received from citizen-voters during the public consultation process included: “*the cost ...should ... be based on your income;*”⁵ “*raising the fees will make it impossible for the poor;*”⁶ and “*record suspensions that are accessible only to people with money is unfair.*”⁷ The distributional argument appears to have merit as typically lower income individuals do spend more of their income on the consumption of goods, resulting in these individuals having a heavier financial burden than higher-income individuals (Mishan 1972).

Another argument that citizen-voters opposed to the fee increase used during the public consultation process to try and stop the fee increase from \$150 to \$631 was the notion that the large fee increase represented a “revenue grab” by the government. Citizen-voters’ responses, as obtained through an access-to-information request, included responses which referred to the increased user fee to \$631 as a “cash” grab as indicated by: “*it is a nasty cash grab*” “*really just another way for our government to make more money;*” “*I believe such a high administrative fee would be just another cash grab;*” and “*raising the fee for getting a pardon is just yet another greedy cash grab.*”⁸

The arguments put forth by citizen-voters and pressure groups not to increase the fee to \$631 were persuasive. However, during the two-week public consultation period for the increased fee for record suspensions, not only were there responses from citizen-voters who were potential users of the service but also from citizen-voters who were victims of crimes and pressure groups who represented victims of crime. Within the 1,086 responses, there were 12 responses from the side representing victims that were supportive of government’s proposal to move to full cost recovery. These responses argued that a person who commits a crime should be responsible for the costs associated with processing the record suspension application and that the record suspension program should not be subsidized by hardworking, law-abiding citizens (Parole Board of Canada 2011). Pressure groups representing victims testified and voiced their approval to increase the fee to \$631 during parliamentary committee meetings with the argument that:

It must not be the responsibility of victims and law-abiding Canadians to subsidize the application-process for pardons for those who choose, of their own free will, to engage in criminal activity (Standing Senate Committee on Legal and Constitutional Affairs 2011b: 83).

It’s curious that citizen-voters and pressure groups representing victims were permitted to participate in both the public consultation process and parliamentary committee meetings as public consultation, as per the UFA, is to be with the direct user of a service, or we could suggest potential users of a service. Sub-section 4(1)(a) of the UFA requires a government organization “*to notify clients, and other regulating authorities with similar clientele*” of a user fee proposal. Given that pressure groups representing victims testified that there is no subsidized support for victims of crime (*Ibid.*), the similar clientele requirement of the UFA does not appear to provide justification for victims’ groups to speak out in support of the fee increase to \$631. There is nothing mentioned in the UFA which addresses having those that are not direct users of a service

⁵ Information obtained through an Access to Information request through the Parole Board of Canada. File number A-2013-00004.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

(or potential users of a service) having a right to provide responses during the public consultation process or to testify at parliamentary committee meetings when reviewing user fee proposals. Interestingly, in its report to Parliament, the Committee recommended that the UFA should be amended to

... require all such future notifications to be provided more broadly to members of the general public, and in relation to user fees for pardon applications, to include organizations and groups that represent victims of criminal offences (Standing Senate Committee on Legal and Constitutional Affairs 2011c).

Parliamentary committees can call whomever they deem appropriate to testify when the committee is studying an issue. Allowing pressure groups who represent victims of crime to appear at parliamentary committee hearings further supports the Conservative Government's *Tough on Crime Agenda* and the party's ideology.

Further supporting the Conservative Government's *Tough on Crime Agenda*, government tabled legislation titled Bill C-32 (*An Act to Enact the Canadian Victims Bill of Rights and to Amend Certain Acts*, 41st Parliament, 2nd Session, 2013) which received Royal Assent on April 23, 2015, and which provides victims the right to information, the right to participation, the right to restitution, and the right to protection. Further, Bill C-32 states that victims may be provided decisions of PBC regarding an offender. The full impact of Bill C-32 may not be known until the law is tested in the judicial system.

Senators who represent victims' groups

Not only were pressure groups that represent victims allowed to testify at committee meetings for the review of the record suspension user fee proposal, but two senators on the committee were supporters of victims' rights. One such committee member was Senator Boisvenu who is the founding president of the Murdered or Missing Persons' Families' Association, an association he founded after the murder of his daughter in 2002 (Parliament of Canada 2013b). Additionally, Senator Meredith, an anti-crime advocate, as the executive director of the GTA Faith Alliance, which promotes finding solutions to youth violence (Parliament of Canada 2013a), was a member of the committee. Both of these senators voiced their personal positions during committee meetings on whether or not to increase the record suspension user fee to \$631. Senator Boisvenu indicated:

Social equity does not always require that the State bear all of the costs. Social equity also means responsibility and accountability... the victims themselves bear all of the costs involved after a criminal act. The victim has not chosen to be a victim, but the criminal has decided to be one (Standing Senate Committee on Legal and Constitutional Affairs 2011b: 51).

Senator Meredith stated:

You look at the responsibility of the government to ensure they have institutions that are adequate and up-to-date and ensure that the protection of these same individuals who have caused an offence to society is taken care of... I completely disagree with your statement that we should be paying more. I believe that the state has already

paid a lot (Standing Senate Committee on Legal and Constitutional Affairs 2011b: 52).

According to the Senate of Canada's *Conflict of Interest Code*, while a Senator may participate in outside activities

... when performing parliamentary duties and functions, a Senator shall not act or attempt to act in any way to further his or her private interests, or those of a family member, or to improperly further another person's or entity's private interests (Senate of Canada 2012: 8).

One could surmise after reading the Senate of Canada's *Conflict of Interest Code* that the senators quoted above may not be impartial given their public affiliations with victims' groups. As well to consider is that both of these senators have a political party affiliation with the governing Conservatives, who have been implementing its *Tough on Crime* agenda since 2006.

Alternatives

To appease both sides of the increased record suspension user fee issue, the government could have found a middle of the road solution by examining alternatives for the record suspension program. For example, in June 2011 government announced a strategic and operating review to examine direct program spending to find savings of \$4 billion (Finance Canada 2011). In September 2011, during Committee meetings an alternative approach to full cost recovery and to decreasing the number of applications to PBC was provided by pressure groups opposed to the user fee increase:

If cost cutting is the single largest interest for the government, the fastest way to do cost cutting is to create a rebuttable presumption that after five, ten, or fifteen years of no criminal behaviour, someone can have a record suspension" (Standing Senate Committee on Legal and Constitutional Affairs 2011b).

Additionally, the Independent Advisory Board that had been convened to deal with the 16 formal complaints to the user fee increase to \$631, recommended that PBC should maintain its current fee of \$150 or consider a revised approach such as charging the full fee of \$631 only if a record suspension was approved (Standing Senate Committee on Legal and Constitutional Affairs 2011b).

In its report to Parliament, the Committee recommended that government should:

... explore the possibility, and merits, of establishing a 'two-tier' pardon user fee structure whereby the pardon application fee that would be paid by an offender convicted by way of indictment, would differ from that paid by one who was convicted summarily.⁹ The committee is of the view that such a change would be entirely consistent with the rationale behind the Minister's 'full cost recovery approach for pardons' (Standing Senate Committee on Legal and Constitutional

⁹ Summary offences are generally for less serious crimes such as 'driving under the influence' while indictable offences generally correspond to felony convictions such as manslaughter.

Affairs 2011c).

Thus while alternative approaches to handling record suspension applications were put forward, government declined to act upon them demonstrating that the Conservatives were interested in taking a tough stance on criminals to support the Conservatives' *Tough on Crime Agenda* and support victims of crime.

Concluding remarks

The purpose of this paper was to use public choice theory to examine how government makes decisions that support its political party's ideology in deciding whether or not to implement user fees for a public service by analyzing a specific example. Although policy instruments such as user fees are recognized as a means to deal with a defined policy problem, there is little agreement in the literature as to how and when particular instruments should be used (Pal 1997), with no predetermined guidelines for the use of policy instruments results in government decision-making revolving around its political messaging.

The criminal record suspension case is an example of how a political party as government utilizes public policies that align with the party's ideology. We found there were a significant number of citizen-voters (1,074) who opposed the fee increase to \$631 as these citizen-voters attempted to maximize their utility by obtaining more public service benefits provided through general taxation rather than citizen-voters having to pay a higher user fee. We found that some citizen-voters supported the fee increase to \$631 as they wanted criminals to pay for their crimes and not have a subsidized record suspension. Pressure groups, both for the fee increase and against the fee increase, maximized utility by spending resources on political activities to secure the group members' preferences. The government decided to move the record suspension to full cost recovery regardless of the opposition by some. Government also decided not to implement any of the alternative solutions that were proposed by citizen-voters and pressure groups opposing the fee increase.

According to Downs (1957: 98), voters find party ideologies useful as voters know what to expect from the platforms of different parties. Hence, political parties formulate policies to position themselves to win elections (Ibid.: 28). There is a common assumption that right-wing political parties' ideology favour lower general taxes by instilling consumption taxes such as user fees (Tellier 2006). By pursuing public policies that align with its *Tough on Crime Agenda*, the Conservatives formed a minority government in both 2006 and 2008, and a majority government in 2011, thus the Conservatives maximized utility by receiving enough votes from citizen-voters to form government.

The case study contributes to existing literature (Downs 1957; Buchanan and Tullock 1974; Frey and Schneider 1978b; Tellier 2006) in regards to government decision-making and implementing public policies that support its partisan ideology.

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