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## **Who Pays for Municipal Governments? Pursuing the User Pay Model**

**Lindsay M. Tedds**

Canadian municipalities are important drivers of productivity, innovation, and economic growth. To achieve their full economic potential, they need to be able to deliver a wide range of public services. This includes both ‘hard’ services such as water, sewers, and roads, but also ‘soft’ services such as cultural facilities, parks, and libraries. These are the services that will not only meet the social needs and expectations of constituents but are also required to attract high quality businesses and skilled workers and address the challenges that result from a growing and highly diverse population.

Despite the importance of municipal public services, discussions about how to fund municipalities are rarely had, outside of small, and let’s be honest a little nerdy, niche circles. This is despite several facts. First, the first fifty years of Canada’s taxation history (1867-1917) was predominantly focused on local finance,<sup>i</sup> and not federal and provincial taxes, because the only visible tax Canadians encountered was the property tax<sup>ii</sup> and it was municipal governments that interacted most directly with citizens. Second, there are more local governments, currently numbering 5,200,<sup>iii</sup> than any other level of government in Canada. Third, municipal governments account for more than 13% of total government revenue in Canada.<sup>iv</sup> And fourth, municipal governments continue to be directly responsible for many of the services that are necessary for the daily lives of Canadians. Naheed Nenshi, the Mayor of the City of Calgary, famously made this point by stating:

If the federal government disappeared tomorrow it would probably take Canadians a few weeks to notice, he says, and perhaps a few hours, or even days, in the case of a provincial government. If your municipal government disappeared, well, you'd have no

roads, you'd have no transit, you'd have no parks, you'd have no police, you'd have no firefighters, you'd have no clean water. You'd notice pretty quickly. We provide the services that keep people healthy and safe and happy every hour of every day of their life.<sup>v</sup>

These services that municipalities provide that keep people healthy and safe and happy include roads and transit infrastructure, police and fire services, water distribution, garbage and recycling, land development, recreational facilities, libraries, street lights, and snow clearing, to name just a few.

It is undeniable that the goods, services, and privileges that municipalities provide are vital for Canadians' well-being and that municipalities are facing increasing pressure to provide more infrastructure and services to more Canadians at a higher level of service. In order to provide this infrastructure and these services, however, municipalities have to increasingly find a way to pay for them. The key challenge then becomes, how do cities pay for these services and infrastructure? How do cities raise enough revenue to deliver these high-quality public services that will attract and retain businesses and residents in a way that does not undermine their competitive advantage and that is fair, accountable, equitable, and within their authorities? As it turns out the answer to this question is "wherever possible, charge." That is, where possible, the direct users should pay the cost of providing municipal services.

The rest of this chapter will outline what are the two main funding choices, property taxes and user levies, for Canadian municipalities and why. If the choices for municipalities for its own source revenues are between property taxes and user levies, what are these instruments? If the choice then is between user levies and property taxes, what has been the take up of these revenue instruments by municipalities in Canada and what might be driving these decisions?

Finally, which revenue tool is preferred and why, using the principles tax fairness, tax accountability, and tax equality? In essence, it boils down to establishing a strong link between expenditures and revenues, leading to a preference for user levies.

### **Municipal Authorities & Funding Choices**

It is first important to consider what choices Canadian municipalities have amongst revenue instruments. Municipalities in Canada are known as “creatures of the province.” This means they are only allowed to exercise the powers that are delegated to them by provincial governments, who have jurisdiction over municipalities. This has meant that their funding decisions are constrained due to the fact that Canadian municipalities are constitutionally restricted by the provinces to limited revenue sources. While there is some variation across the provinces, in general, municipal own-source revenues<sup>vi</sup> are typically limited to property taxes and user levies, and this limitation to municipal revenue instruments has remained virtually frozen in this state since it was established more than 150 years ago.

### **Defining Funding Choices**

If the choices for municipalities for its own source revenues are between property taxes and user levies, what are taxes? What are user levies? What are the various user levies available to municipalities in Canada? How are user levies different from taxes? How can user levies be differentiated? To what activities do these levies apply? The information presented below is a synthesis of work done by Lindsay M. Tedds, Catherine Althaus, Allen McAvoy, and Kelly Farish,<sup>vii</sup> whereas proprietary charges have yet to be well detailed in the literature.

#### *Taxes vs User Levies*

The key distinction between a tax, such as a property tax, and a user levy is that the former is a payment for the purpose of raising revenue with no connection to the activity being

taxed, whereas the latter is a payment connected to the activity being charged. Notably, tax revenues can be used to fund any government activity, whereas user levies are constrained in this area, and the size of the tax is unrelated to any costs of providing the resulting goods or services. For example, revenue from property taxes, which is simply a tax that is imposed on the market value on real property<sup>viii</sup>, can be used to fund police services, public walkways, beautification efforts, street lights, and so forth. Importantly, an individual need not pay taxes in order to benefit from the provision of the goods and services funded through taxes. That is, they cannot be excluded from the benefits. Tax revenues may be earmarked for specific purposes, for example the revenues from a property tax may be earmarked for the purposes of providing municipal infrastructure to benefiting properties, but that earmarking is a political choice rather than a legal constitutional requirement.

#### *User Levies*

A user levy is a charge on users to ensure that those that directly benefit from a service pay. By charging users directly, this ensures that the goods or services are consumed by those who value them the most and the government obtains direct feedback as to whether citizens really desire the provision of the good or service at the cost incurred to provide that good or service. User levies, therefore, are directly comparable to a price charged for a good that is available in the market place.

In Canada, there are three main types of legally recognized revenue instruments that are most in line with the user charge model: user fees, regulatory charges, and proprietary charges (referred to collectively as user levies). These three user levies are available to be used by all levels of government in Canada, including municipalities, having been generally devolved by all the provinces.

## **User Fee**

A user fee is a charge for a publicly provided good or service, the revenues for which must be solely used to fund the provision of that good or service, and the fee charged is dictated by the cost of providing the good or service. Further, payment of the fee is a necessary condition for consuming the good or service. User fees, therefore, are valuable tools related to offsetting the operating costs of municipal services. There are many examples of user fees, particularly at the municipal level, including public transit fares, recreation fees, and garbage collection fees. These conditions have several implications for the design, implementation, and use of user fees in Canada. First, user fees are a cost-recovery revenue tool. This means that the fees must be used to recoup actual costs incurred, the revenues from user fees must be solely used to offset the costs of providing the good or service, and there must be a tight link between the activity being charged and the activities funded by the user fee revenue. That is, there is a need to track the money collected along with how the money is spent. Second, the user fee must be designed to not intentionally generate a surplus of revenues. Ongoing surpluses are a clear indication that the fee charged exceeds the costs incurred, violating the cost-recovery nature of the revenue tool. There is, however, no requirement for the revenue from the user fee to fully offset costs, but any shortfall in revenues must be made up from revenues from taxes. Third, the fee charged must be reasonably connected to the costs incurred by providing the good or service to that user. Notably, if the costs of providing the service are fixed, that is it costs the same amount to provide each unit or it costs the same amount to provide the service to every user, the fee charged cannot vary by unit or user. Unlike taxes, the legal constraints make user fees use as a general revenue tool or their use to cross-subsidize various public provided goods and services very problematic and doing so would not sustain a court challenge.

## **Regulatory Charges**

While a user fee is a charge related to a publicly provided good or service, a regulatory charge is a charge related to a right or privilege granted by a government. Regulatory charges are a broad category of charges imposed by governments on users and include such levies as development charges, local improvement charges, removal and dumping charges (e.g. sand, gravel, water, landfill, electronics, and beverage containers), fines, inspections, environmental protection, and licenses (e.g. liquor, animal, and business).

There are four key components to a regulatory charge: (1) a specific regulatory purpose; (2) a detailed code of regulation; (3) actual costs incurred; and, (4) a relationship between the regulation and the person being regulated.<sup>ix</sup> Under a regulatory charge, the revenues must be used to recover the costs of the regulatory scheme, in whole or in part. That is, much like a user fee, a regulatory charge is a cost-recovery tool and the conditions described above that a user levy must meet must also be met by a regulatory charge.<sup>x</sup> This means that for Canadian municipalities, regulatory charges and user fees differ only in purpose. Both are cost-recovery tools: a user fee is a charge for a good or service (e.g. taking municipal transit, accessing a municipal recreation centre, or taking a load of waste to a municipal landfill), whereas a regulatory charge is for a right or privilege (e.g. serving liquor, owning a dog or cat, and the disposal of specific products).

## **Proprietary Charges**

In addition to user fees and regulatory charges, a government may invoke charges that are the “exercise of proprietary rights over its public property.”<sup>xi</sup> There are two uses for proprietary charges: first, selling directly or granting permits, leases, licenses, rents, or royalties that permit private firms to extract publicly-owned natural resources;<sup>xii</sup> and second, selling goods and

services that are supplied by government “in a commercial way.”<sup>xiii</sup> Under the Constitution, governments own the natural resources within its boundaries and it often sells off the rights to those resources in exchange for the payment of a resource royalty. Resource royalties and similar regimes fit the definition of a proprietary charge, meeting the first use listed above. However, such examples do not fall under municipal government’s purview, since municipal governments are not devolved ownership of natural resources.

The second use of proprietary charges appears very similar to what user fees are, with the key qualifier being how goods and services are supplied by the government in question, specifically in a commercial way. Notably, that for a proprietary charge to apply as opposed to a user fee, the government must be acting like a private proprietor (a business). Here, the charge may be determined by market forces and the government is free to generate both a profit and flexible general revenues (as opposed to earmarked revenues) from the imposition of the charge. That is, unlike user fees and regulatory charges, revenues from proprietary charges are not required to be solely used for cost recovery.

Examples of proprietary charges include the mark-up (i.e. profit) applied to alcohol that is owned and sold by a government commercial supplier (e.g. the LCBO in Ontario)<sup>xiv</sup>, stumpage levies to harvest timber from public land, and payments made to the government related to a rental (e.g. the rental payment applied for publicly provided housing) or leasing of government-owned land or property (e.g. the lease payment for a daycare to operate out of a school)<sup>xv</sup>. In addition, governments can elect to provide core services, like water, electricity, and natural gas, through proprietary structures like wholly owned subsidiaries in which case they charge proprietary charges for these utilities as opposed to having to charge user fees if they provide these core services directly themselves.



There are, therefore, two main ways that we see proprietary charges employed by municipalities in Canada. First, through core services supplied in a commercial way. An example would be the City of Calgary commercial structure Enmax (a municipal crown corporation), which provides water, electricity, and natural gas to city residents in a commercial way. In this case, charges for water, electricity, and natural gas are proprietary charges and not user fees. In comparison, in the Greater Victoria Regional District, the regional district itself (a form of local government) provides the residents with water services. Since Regional District is not operating in a commercial way, the fees it charges for water services are, instead, user fees. The other way municipalities charge proprietary charges is through franchise or access agreements, which is when the municipality negotiates individual agreements with private companies that sets conditions regarding the use of municipal rights-of-way on municipal property (e.g. roads, laneways, parks). The franchise agreement establishes a fair market rate for the access to the publicly owned right-of-way as permitted under a proprietary charge. Such agreements are common between municipalities and linear property owners, rail property owners, cable property owners, and the like.

### **Take up of Municipal Revenue Instruments in Canada**

If the choice then is between user levies and property taxes, what has been the take up of these revenue instruments by municipalities in Canada? Figure 1 presents the share of own source revenues raised by taxes, user levies, and other revenue sources by the various levels of government in Canada for the year 1998 and 2016. Figure 1 shows that while all three levels of government rely on a mix of taxes and user levies, municipalities have been increasing their reliance on user levies and decreasing their reliance on taxes since 1998, the earliest the data is available. Notably, municipalities, used to raise 21.9% of their revenues from user levies but this

has increased more than 70% to 37.1% in 2016. According to Tindal et al.<sup>xvi</sup> (2012, p 262) the reliance on user levies by municipal governments has increased five-fold from 6.5% in 1965 to 37.1% in 2016.

[INSERT FIGURE 1 HERE]

Figure 2 shows the share of own source revenue raised by taxes, user levies, and other revenues by the municipalities across each of the ten Canadian provinces for the year 2016. The share of own source revenues raised by user levies varies from a low of 26% in Quebec to a high of 57.8% in Saskatchewan. It is interesting to note that municipalities in the four Western provinces all show the highest reliance on user levies, averaging 47.1%, while municipalities in the eastern provinces all show a lower reliance on user levies. In fact, there does appear to be a high degree of correlation between the reliance on user levies at the provincial level and the municipal level in the provinces. Regardless, the municipalities in all the provinces all show a higher reliance on user levies than their provincial and federal counterparts.

[INSERT FIGURE 2 HERE]

What the data shows is that municipalities are relying more and more on user levies to fund their priorities. This move towards greater reliance on user levies has long been predicted, and is a more applicable funding model for municipal governments, for several reasons. First, property taxes, long considered the mainstay public finance tool for municipalities, are increasingly becoming politically unfavourable because of the perception regarding the municipal government process: that municipal governments determine how much they are going to spend and then determine the property tax rates necessary to pay for that spending with little consideration about the affordability of the property tax increase on the property owner or accountability for the tax increase. User levies, on the other hand have a large degree of

accountability associated with them. As noted previously, user levies are a charge on users which means that only those that directly benefit from a service pay. From an accountability perspective it is, therefore, heartening to see an increase in user levies by Canadian municipalities.

Second, municipalities that are home to federal or provincial properties (including universities) and other tax exempt properties like churches face the burden of having to provide goods, services, and privileges for those properties and their associated workers and constituents, yet those properties are exempt from paying property taxes, though they are not exempt from paying user levies. While historically payments-in-lieu-of-taxes (also known as grants-in-lieu) from these high order levels of government to affected municipalities are supposed to compensate municipalities for the forgone property tax revenues, these payments in lieu of taxes have been declining<sup>xvii</sup>, eliminated<sup>xviii</sup>, or disputed<sup>xix</sup> in recent years. As a result, many municipalities are moving to user levies in lieu of property taxes to ensure these tax exempt entities contribute to municipal goods, services, and privileges which they consume and rely on.

Finally, as noted in this introduction, municipalities, especially when compared to provincial and federal governments, are increasingly likely to be in matters where the direct beneficiary, the user, is well defined and it is a simple process to extract payment from the user. In fact, these two criteria, easily identifiable individual beneficiary from whom payment can be extracted (or, more importantly, can be excluded from benefiting if they do not pay for the good, service, or privilege) are essential characteristics for determining if a user levy is an appropriate policy instrument. Public transit is an example of a service that meets these criteria. By having a token collection system, non-payers are generally excluded from using public transit. The same is true for recreation facilities, municipal water, and refuse collection. On the other hand, other municipal services, such as police and fire services, are not as amenable to user levies as

this link is lost. Those that do not pay for the police or fire services are hard to exclude from the benefits of a safe and secure community and fire safety. This means that municipalities are not suitable to be fully funded through user levies, as demonstrated in Figure 1, and that there is a balance that must be struck between taxes and user levies. How should a municipalities determine the appropriate balance between property taxes and user levies?

### **Property Taxes or User Levies: Which is Preferred?**

The municipal funding decision, in essence, boils down to who should bear the burden for the costs of their goods, services, and privileges. Should it be users, through some form of user levy, or local taxpayers, through property taxes? Public finance experts generally agree that governments should prefer to solve their funding problem by using revenue instruments that minimize distortions (in the language of economists, revenue tools that are efficient) and maximize fairness. Based on this principal, many argue that the best way to design a municipal revenue system is to provide the goods, services, and as we learned above, even rights, that resident's desire and want access to and then put in place the funding system that matches those desires.<sup>xx</sup> The way to do this, to link expenditures to revenues, is to ensure that the costs of providing a good or service is borne as directly as possible by those benefiting from the goods, services, and privileges.

This leads to the argument that governments approach to solving this problem should generally be "wherever possible, charge!" That is, where possible, the direct users, the beneficiaries, of the goods, services, and privileges should pay the price of providing the goods, services, and privileges. By charging beneficiaries directly, this ensures that the goods, services, and privileges are consumed by those who value them the most and the government obtains direct feedback as to whether citizens really desire the provision of the goods, services, and

privileges at the cost incurred to provide that good or service. This is what economists call an efficient outcome. Efficiency is achieved when goods and services are produced at the lowest possible cost to the producer and the quantities that are provided are of the greatest possible benefit to the consumer.

That is, efficiency is supported when goods and services are consumed by those who value them the most and those consumers demonstrate that value through a willingness to pay for the use of the good or service. When goods and services are instead funded through property taxes then the implicit price of using a particular good, service, or privilege is zero. When something is free, people tend to use more than they would otherwise, thereby imposing higher costs on everything through increased property taxes. Consider, for example, if a user has to pay \$5.00 for each bag of garbage they set out for pick-up and disposal. This pricing scheme incentivizes the user to reduce their waste production to avoid having to pay the fee or to minimize the fees they incur. When garbage collection is, instead, funded through property taxes, there is not similar incentivizing effects. The taxpayer can readily set out as many bags of garbage as they want without incurring additional costs.

There are a few additional things to consider. This efficient outcome, the best use of available resources, also leads to an equitable outcome, a fair outcome, as defined by the benefits received principal: you pay for what you get. Municipalities, especially when compared to provincial and federal governments, are increasingly likely to be involved in the provision of goods, services, or rights where the direct beneficiary is well defined, such as public transit and community pools. However, while user levies are equitable based on benefit-based principles, they may not be equitable based on ability to pay. With user levies, all consumers pay for the cost of the good or service regardless of their income, a key measure for ability to pay. In terms of the

ability to pay principle, the most frequent, and likely the strongest argument against user levies, is that they are argued to be a regressive revenue instrument. This means that the cost of user levies is a heavier burden on lower income individuals because the levy will take up more of their income relative to a higher income individual.

The literature, however, is not conclusive regarding the regressive nature of user levies. In fact, the evidence suggests three main arguments against user levies's regressivity. First, upper-income households benefit disproportionately from free public services. For example, upper-income households are more likely to live in large households and consume more than their share of sewage, water, and refuse collection than lower income households when these services are funded through property taxes and not user levies. Second, user levies allow low-income consumers to adjust their consumption to lower levels, thereby paying less than they would under a property tax system. Third, any regressive or disproportionate effects can be minimized or even reversed with careful design, revenue uses, and compensation mechanisms, particularly discounts and exemptions for readily identifiable groups. If the public places a high value on the provision of the good or service and its broad accessibility, the imposition of a user levy may not be appropriate unless access to the good or service by low income individuals can be accommodated through such tools as discounts. Most economists take the position that good user levy design dictates that equity concerns based on ability to pay should not be taken into account initially but rather after the regime is designed through discounts.

But it is also important to understand that property taxes also suffer from similar arguments of regressivity. Property taxes are tied to the assessed value of a property, which is only loosely tied to the income of the property owner. This incongruence has led to property tax circuit breaker programs that provide property tax relief to low income residents and

cancellations of planned property tax increases. Suffice to say, while user levies dominate on efficiency concerns, both instruments carry concerns regarding equity on the ability to pay side of things, but user levies at least gain some credibility on the benefits received measure of equity.

User levies also have built in visibility and accountability with them that taxes do not. This is because when user levies are used consumers are more aware of how much they are paying for a specific good or service compared to when they are paying taxes and users can associate themselves with the benefits they receive from paying the user levy, which is more difficult with a general property tax. As user levies are applied to a specific good or service it is easier for the consumer paying a user levy to know what benefit was received and how much it cost as a result. By contrast, with property taxes the link is much more tenuous. Property taxes are collected and applied to a broad range of goods and services, making it difficult for the consumer to know what benefits they are paying for and receiving.

Finally, property taxes mean only residents within the boundaries of the municipality pay for the goods, services, and privileges provided by the municipality. User levies, on the other hand, have to be paid by all users, regardless of their residency. Municipalities provide many goods, services, and privileges that can be enjoyed by non-residents, including public transit, libraries, recreation facilities, and the like, and user levies ensure that non-resident beneficiaries pay the cost of providing these.

With aspects of efficiency, equity, and accountability settled in favour of user levies, possibly the most important complexity to tackle is the overlapping nature of these user levies. What is a service? What is a right or privilege? What is a commercial purpose? When do you favour a user fee over a regulatory charge or a proprietary charge? A parking levy, for example, can be all of these things: on street parking can be a service, a permit related to parking

privileges can be a right, and parking can also be provided on a commercial basis via parking lots and parking garages. It was also previously discussed that a municipality can deliver the same services either through a user fee or through a proprietary charge, the latter charge applicable if it forms a commercial entity within which to administer the charge. While the lines can be and often are blurred between these three types of user levies, the limitations placed on these charges means that the blurring may simply pose a choice burden on a municipality that can be addressed by being clear about the intention of the levy, the objectives of the levy, and the legislative mandate of the body collecting the levy. In the end, regardless of the form of the user levy, it is still a direct charge to the direct beneficiary.

## **Conclusion**

Municipal governments deliver vital goods, services, and privileges to Canadian citizens on a daily basis, yet how they fund these goods, services, and privileges receives little attention in debates on taxation. While municipal governments rely on property taxes, user levies are becoming an increasingly important portion of their revenues that are used to fund goods and services. User levies are efficient, equitable from a benefits received principal, and accountable. And can ensure that non-resident beneficiaries pay for the goods, services, and privileges they enjoy. Given the strengths of user levies to fund Canadian cities, it is worthwhile to consider new and novel ways in which user levies can be deployed by municipalities. It may be that the best time to convince users that they should pay for the services they consume is when the initial investment needs to be made or when something has changed to elevate the importance of increased investment in or highlight the pressure on existing infrastructure. Such novel uses for new user levies include storm water levies and electric vehicle levies.





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## Chapter 9

<sup>i</sup> Elsbeth Heaman, *Tax, Order and Good Government* (Montreal: McGill-Queens University Press, 2017).

<sup>ii</sup> The first income tax was not introduced until September 1917, more than 100 years ago.

<sup>iii</sup> Statistics Canada. 2017. *Census in Brief: Municipalities in Canada with the Largest and Fastest-growing population between 2011 and 2016*. Statistics Canada Catalogue no. 98-200X2016001. Ottawa, Ontario. March 7 2017: <http://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016001/98-200-x2016001-eng.cfm> (accessed June 14, 2018).

<sup>iv</sup> Statistics Canada. 2018. *Table 10-10-0020-01 Canadian government finance statistics for municipalities and other local public administrations (x 1,000,000)*. Statistics Canada. Ottawa, Ontario. June 2018: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1010002001> (accessed June 14, 2018).

<sup>v</sup> Geordon Omand. 2016. Big-city Mayors see themselves at heart of issues closest to people. *CTV News* April 21.

<sup>vi</sup> Own source revenues are revenues that are raised directly by governments. For Canadian municipal governments, this excludes intergovernmental transfers (grants) and borrowing. While historically both intergovernmental grants and borrowing were important sources of funding for municipal governments in Canada, that is no longer the case due to both federal and provincial governments retreating from intergovernmental grants and provincial governments imposing significant borrowing limits on municipalities.

<sup>vii</sup> Catherine Althaus, Lindsay M. Tedds, and Allen McAvoy, “The Feasibility of Implementing a Congestion Charge on the Halifax Peninsula: Filling the “Missing Link” of Implementation, *Canadian Public Policy*, 37, 4, (2011): 541-561; Kelly Farish and Lindsay M. Tedds, “User

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Levy Design by Canadian Municipalities: Considerations Arising from Case Law,” *Canadian Tax Journal* 62, 3 (2014); Catherine Althaus and Lindsay M. Tedds, *User Levies in Canada: A Municipal Design and Implementation Guide* (Toronto: Canadian Tax Foundation, 2016); Lindsay M. Tedds. 2017. “Municipal User Levies in Western Canada,” in Enid Slack and Richard Bird, eds., *Financing Municipal Infrastructure: Who Should Pay?* (Montreal and Kingston: McGill-Queen’s University Press, 2017); Lindsay M. Tedds, “Non-tax Revenue for Funding Municipal Governments: User Levies—Adoption, Constraints, and Emerging Opportunities,” in Enid Slack, Lisa Phillips, Lindsay M. Tedds, and Heather L. Evans eds. *Funding the Canadian City* (Toronto: Canadian Tax Foundation, 2019).

<sup>viii</sup> To calculate the property tax, the assessed value of the property is multiplied by the mill rate which is then divided by 1,000. For example, a property with an assessed value of \$100,000 located in a municipality with a mill rate of 5 mills would have a property tax bill of \$500.

<sup>ix</sup> Farish and Tedds, “User Levy Design,” 658; Althaus and Tedds, *User Levies in Canada*, 53.

<sup>x</sup> There is a second permitted use of a regulatory charge. One where the size of the charge levied on persons is set to proscribe, prohibit, or encourage a specific behaviour. If the purpose of the regulatory charge is to change behaviour, then a surplus of revenues may be a permitted outcome. However, the presence of a behavioural modification aspect has been found by the courts to mean the regulatory charge meets the criteria of an indirect tax. The authority to charge indirect taxes, however, is not delegated to the provinces and, therefore, cannot be delegated to municipalities. Therefore, a regulatory charge enacted by a municipality must still meet the definition of a direct tax, which, according the courts, means that the objective of behavioural modification as a principal objective of a regulatory charge may not be available to Canadian municipalities, or provinces for that matter.

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<sup>xi</sup> Peter W. Hogg, *Constitutional Law of Canada*, 5<sup>th</sup> ed. (Toronto: Carswell, 2014).

<sup>xii</sup> In comparison, a levy on the extraction and production of privately-owned resources would be a tax.

<sup>xiii</sup> Hogg, *Constitutional Law*, 31.10.

<sup>xiv</sup> *Toronto Distillery Co. v. Ontario (Alcohol and Gaming Commission)* 2016 CarswellOnt 19995; 2016 ONCA 960; 135 O.R. (3d) 637; 274 A.C.W.S. (3d) 138 Ontario Court of Appeal Ontario December 20, 2016

<sup>xv</sup> *Québec (Procureur général) v. Algonquin développements Côte Ste-Catherine inc. (Développements Hydroméga inc.)* 2011 CarswellQue 11739; 2011 QCCA 1942; [2011] R.J.Q. 1967; 211 A.C.W.S. (3d) 461; 343 D.L.R. (4th) 272; J.E. 2011-1853; EYB 2011-197199 Cour d'appel du Québec Quebec October 21, 2011 Docket: C.A. Qué. Montréal 500-09-019625-094 Subject: Constitutional; Natural Resources; Public.

<sup>xvi</sup> C. Richard Tindal, Susan Nobes Tindal, Kennedy Stewart, and Patrick J. Smith, *Local Government in Canada*, 8<sup>th</sup> ed (Toronto: Nelson Education, 2012).

<sup>xvii</sup> For example, in British Columbia, the pool of funds set aside for payments-in-lieu of taxes has not increased since its inception. As a result, the payments have not kept pace with inflation, let alone with the expansion of services offered. The payments per property have also been reduced because the pool of properties, particularly the number of post-secondary institutions, covered by the funds has expanded.

<sup>xviii</sup> For example, in the 2017 provincial budget, the Government of Saskatchewan eliminated payments-in-lieu of taxes to municipalities for properties owned by SaskPower and SaskEnergy, eliminating \$36 million in annual funding to municipalities in the province.

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<sup>xix</sup> The City of Halifax provides an example of such a dispute. The federal government owns the Halifax Citadel National Historic site. In calculating the amount of the payment-in-lieu of taxes, the federal government valued the 42 acres of land in downtown Halifax at \$10, despite a local assessment of the land of \$19 million. The nominal value set by the federal government reduced the amount of the grant-in-lieu of taxes by millions of dollars.

<sup>xx</sup> Enid Slack and Richard Bird, “Municipal Taxation in Canada’s Federal System: Linking Taxes and Expenditures?” in Slack, Phillips, Tedds, and Evans eds, *Funding the Canadian City*.