Tax and Expenditure Limitations
The Next Step in Fiscal Discipline

Jason Clemens, Todd Fox, Amela Karabegović,
Sylvia LeRoy, and Niels Veldhuis

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About the Authors

JASON CLEMENS is the Director of Fiscal Studies at The Fraser Institute. He has an Honours Bachelors Degree of Commerce and a Masters' Degree in Business Administration from the University of Windsor as well as a Post-Baccalaureate Degree in Economics from Simon Fraser University. His publications and co-publications for The Fraser Institute include *Canada's All Government Debt* (1996), *Bank Mergers* (1998), *The 20% Foreign Property Rule* (1999), *Returning British Columbia to Prosperity* (2001), *Flat Tax: Issues and Principles* (2001), *The Corporate Capital Tax: Canada's Most Damaging Tax* (2002), *Saskatchewan Prosperity: Taking the Next Step* (2002), and *Ontario Prosperity* (2003). His articles have appeared in such newspapers as *The Wall Street Journal*, *The National Post*, *The Globe & Mail*, *The Vancouver Sun*, *The Calgary Herald*, and *The Montreal Gazette.* He has been a guest on numerous radio and television programs across the country and has appeared before committees of both the House of Commons and the Senate as an expert witness.

TODD FOX is the NAFTA Program Coordinator at the Washington Center. He is a former Fulbright Scholar and a former intern at The Fraser Institute. He spent the 2001/02 academic year as a visiting research fellow in North American Studies at McGill University in Montreal. As an undergraduate at Le Moyne College, Mr. Fox held internships at the United States Department of Commerce and the Metropolitan Development Association. He lives in Washington, D.C.

AMELA KARABEGOVIĆ is a Research Economist at The Fraser Institute. She holds a B.M. (Great Distinction) in General Management from the University of Lethbridge in Alberta, and an M.A. in Economics from the Simon Fraser University in British Columbia. She is a co-author of *Economic Freedom of North America* (2002) and *Ontario Prosperity: Is Best of Second Best Good Enough?* (2003).

SYLVIA LEROY is a research analyst at The Fraser Institute's Alberta Policy Research Centre in Calgary and project manager for the Donner Canadian Foundation Awards. She is the co-author of two Fraser Institute studies on national parks and has written extensively on social, legal and environmental issues for the *Calgary Herald*, the *Ottawa Citizen,* and *Fraser Forum*. She received her BA in political science from the University of Western Ontario and is completing her M.A. in Canadian constitutional politics at the University of Calgary.

NIELS VELDHUIS is Senior Research Economist at The Fraser Institute. He has a Bachelors of Business Administration and an M.A. in Economics from Simon Fraser University. Mr. Veldhuis is the primary researcher for Tax Freedom Day, *Tax Facts*, and the Institute's provincial fiscal and state-provincial fiscal comparisons, the *Budget Performance Index* and *the Fiscal Performance Index*. He writes *Questions & Answers* in the *Fraser Forum*, the Fraser Institute's monthly magazine. His work has appeared in such newspapers as *La Presse* and the *Vancouver Sun*.

PATRICK BASHAM is a Senior Fellow in the Center for Representative Government at the Cato Institute. Prior to joining Cato, Basham served as the founding director of the Social Affairs Centre at The Fraser Institute. He completed bachelor's and master's degrees in Political Science at Carleton University and the University of Houston, respectively. His doctoral dissertation was on American and British political marketing and he will receive his D.Phil. from Cambridge University shortly. He has written and edited numerous books, studies, papers, and articles on a variety of policy issues including *This Is Reform? Predicting the Impact of the New Campaign Financing Regulations* (2002), *Does Cleanliness Lead to Competitiveness? The Failure of Maine's Experiment with Taxpayer Financing of Campaigns* (2002), *Election 2002 and the Problems of American Democracy* (2002), *Assessing the Term Limits Experiment: California and Beyond* (2001), *It's the Spending, Stupid! Understanding Campaign Finance in the Big-Government Era* (2001) and *Lessons of Election 2000* (2001).

Acknowledgments

The authors wish to express their sincerest thanks to Patrick Basham, Senior Fellow of the Cato Institute's Center for Representative Government, who generously reviewed the study and wrote the foreword. We would also like to thank Gordon Gibson, a Senior Fellow of The Fraser Institute and author of a number of books and studies on democracy, democratic reform, and federalism, Mark Milke, a doctoral candidate in political philosophy at the University of Calgary and author of *Tax Me I'm Canadian: Your Money and How Politicians Spend It,* and Professor Ted Morton of the University of Calgary and Senior Fellow of The Fraser Institute for providing peer review. The authors, of course, take full and complete responsibility for any remaining errors or omissions. We would finally like to thank all those involved in the production and release of this study. As we have worked independently, the views expressed in this study do not necessarily represent the views of the trustees or members of The Fraser Institute.

Foreword

by Patrick Basham, Senior Fellow, Center for Representative Government, Cato Institute

In certain matters of fiscal policy, the connection between Ottawa and Washington is quite pronounced. In late February, a CBC News commentary on the latest (2003) Canadian federal budget asserted "Spending as a Philosophy" of Liberal government. Two days later, a headline in the *Wall Street Journal* declared, "Republicans Take a Shine to Spending."

The Canadian commentary, by senior journalist Christopher Waddell, observed that federal Finance Minister John Manley "has produced a budget that has increased spending across so many areas and, in total, more than any budget since 1981 ... The budget's underlying philosophy appears to be that Canadians believe that the best thing their federal government can and should do is spend." Highlights of the federal budget included an 11.5% increase in overall program spending in the coming fiscal year (the largest percentage increase since the end of the Trudeau era in the early 1980s) and a 20% spending increase over the next three years.

The American article described "one of the party's worst-kept secrets: Republicans enjoy government—and the spending that comes with it." The most recent evidence supports such a claim. In Washington, where conservatives run the White House and control both houses of Congress, total discretionary spending on domestic and defence programs for fiscal year 2003 will be at least $100 billion *above* fiscal 2001 levels. My colleague, economist Veronique de Rugy, argues that increased government spending is President George W. Bush's Achilles' heel. In its first three years in office, the Bush administration will have increased government spending by 13.5%, surpassing the fiscal profligacy of the Clinton administration.

Whether required by law or constrained by political pressure, most governments—federal, provincial, and state—attempt to balance their books on an annual basis. Hence, the criticism of the Bush administration's nominally large deficit projections. However, a fixation on a balanced budget as an end in and of itself, without regard for the overall size and scope of government activity, frequently encourages the government to increase taxation, as the absence of a budget deficit enables those who govern to seek electoral shelter under the political marketing umbrella labelled "fiscal conservative."

Fortunately, in both Canada and the United States a policy instrument exists for limiting the ability of government to seize ever-greater chunks of private income, thereby limiting the government's ability to penetrate further and intervene deeper into voluntary, civil society. What is this instrument? The authors of this study identify a partial solution, at least. They recommend the use of "tax and expenditure limitations," or TELs. In practice, TELs may originate either in the legislature itself or at the ballot box in those jurisdictions where direct democracy (for example, the right of initiative) is found compatible with a functioning representative democracy.

This study serves as a comprehensive introduction to the history, mechanics, and potential of TELs. Particularly enlightening are the sections on Canadian direct democracy and amending the Canadian constitution. Not only is Canadian direct democracy an understudied area, but there is widespread popular ignorance of the instruments currently available for constitutional reform. To its credit, this study identifies both the policy *and* political routes that need to be taken by Canadians and their political leaders to extricate Canada from its statist morass.

Jason Clemens and his co-authors present a compelling argument that TELs can be an effective tool for limiting government. If a receptive policy-making audience listens to, and acts upon, this argument, the Canadian taxpayer will be the principal beneficiary. Christopher Waddell asserts that, contrary to government spin, "It's no longer clear that Canadians still believe that the best government is the government that spends the most." If TELs are introduced, preferably by popular mandate, as the next phase of fiscal responsibility, Waddell's assertion will constitute fact.

Must government spending and taxes rise inexorably? Is there an available policy instrument that makes it possible to tame the fiscal behemoth? In the valuable study that fills the subsequent pages of this publication, the authors address such questions in impressive detail. Critically, they do so with sufficient clarity and insight to merit the keen attention of policymakers and taxpayers alike.

Executive summary

Canada as a nation and its constituent provinces have travelled a difficult path over the better part of the last decade to achieve balanced budgets. It is critical for Canada and the provinces to take the next step on the continuing path towards fiscal responsibility. That next step is the introduction of constitutionally entrenched laws enforcing tax and expenditure limitations (TELs).

Balanced budgets and TELs in Canada

Balanced budget laws, which exist in eight of the ten Canadian provinces, are substantially different from Tax and Expenditure Limitations (TELs). Balanced-budget laws attempt to achieve just that: the balancing of revenues with expenses such that debt is not accumulated by government. TELs, on the other hand, attempt to constrain the growth of government spending and taxes regardless of fiscal balance.

The presence of balanced-budget laws in Canada has promoted the balancing of expenses and revenues. This study found that seven of the eight provinces (Appendix A) with such laws in place experienced material decreases in the 5-year average deficit. In addition, six of the eight provinces actually moved into surplus positions shortly after adopting laws enforcing balanced budgets.

Adopting balanced-budget laws has not, however, restrained the growth of government, measured by either growth in spending or revenues. The adoption of laws enforcing balanced budgets in Canada has actually coincided with increases in government spending and taxation: seven of the eight provinces with balanced-budget legislation experienced increases in government, as measured by real per-capita consolidated (provincial and municipal) government expenditures and revenues, after the implementation of the balanced-budget laws.

Only two of the ten Canadian provinces (Ontario and Manitoba) have any type of legislation comparable to TELs. Unfortunately, many of the key features of effective TELs are absent from these laws. As American experience with TELs proves, the existence of TELs is not enough: the characteristics of the TELs make a great difference to how effective they are.

The potential savings from implementing effective TELs is substantial. This study calculates hypothetical estimates of the potential savings to be gained from effective TELs in the Canadian provinces and for the federal government after balanced budgets are attained. The potential savings from federal TELs are estimated at $818 per Canadian between 1997/98 when the federal government balanced its budget and 2002/03. The potential savings from effective TELs at the provincial level range from a low of $62 in Ontario to $6,375 in Prince Edward Island. At worst, the implementation of effective TELs would enforce greater transparency and accountability for increased spending and, at best, would return substantial amounts of monies to taxpayers.

TELs in the United States

Laws enforcing tax and expenditure limitations (TELs) have generally proven effective in the United States, at both the state and local level, in constraining the growth of government spending and taxation. Much of the variance in performance among states with TELs can be explained by the design of the TELs themselves. For example, TELs designed and approved by the legislatures have tended to be much less effective than those initiated and approved by citizens. In addition, TELs that are simply statutory in legal status have proven to be much less effective than those that are constitutional in status. The checklist at the top of page 6 lists the characteristics of an optimal TEL.

Constitutional challenges in Canada

There are particular challenges for those wanting to legislate optimal TELs in Canada because of our constitutional structure. Canadian provinces, unlike American states, do not have formal, written constitutions of their own that are

Characteristics of an optimal TEL

- √ initiated by citizens
- √ approved by voters via referendum
- √ constitutional in legal status
- √ applies to spending and revenues, broadly defined
- √ limits growth in government spending to inflation plus population growth
- √ includes municipal spending and revenues
- √ requires mandatory tax refunds when surplus exceeds a prescribed limit
- √ comprehensive in its coverage of government spending and revenue collection

independent from the national constitution. It is, therefore, more complicated to put into place constitutional laws enforcing TELs in Canada than it is in the United States.

Constitutional amendments creating TELs may be more complicated in the Canada but are achievable. There are essentially two constitutional avenues available to Canadian provinces wishing to implement constitutional TELs. The first, available under section 43 of the *Constitution Act, 1982*, is a bilateral amendment to the Constitution of Canada. This option requires both the provincial government interested in the amendment and the federal government to pass legislation. One of the main benefits of using this formula is that it requires two levels of government to approve change and, thus, increases the difficulty of making subsequent changes to reverse the legislation. An emerging constitutional convention (unwritten legal rule) that any amendment of the Constitution of Canada must first be put to the people of the province affected in a referendum also increases the difficulty of future changes.[1]

The second option, available under section 45 of the *Constitution Act,* is a unilateral amendment to the constitution of a province. This formula permits the provincial government unilaterally to alter the portion of the constitution affecting it by a simple act of legislation. Unfortunately, the main weakness of such a unilateral constitutional amendment is that it can just as easily be overturned in the future.

There is also a procedural mechanism that can be used to increase the binding nature of legislation enforcing TELs. It relates to the process by which legislation was passed and how it specifically permits subsequent changes. A legislative body may be bound by self-imposed “manner and form” (procedural) restraints on its legislation. That is, if legislation approved by referendum included stipulations that subsequent changes to the legislation would also have to be approved by referendum, even if the legislation was simply statutory in nature, the manner and form in which the original legislation was enacted would have to be followed in order to enact changes. While scholars remain divided over whether such procedural restrictions are compatible with the principle of parliamentary supremacy in Canada, the added layer of legal protection could further insulate TELs from subsequent politically motivated changes.

Conclusion

The path to balanced budgets has been a difficult one. The next step toward fiscal responsibility for Canada is the implementation of tax and expenditure limitations. It is critical for Canadian provinces and, indeed, the federal government both to protect the gains achieved over the last decade as well as to propel the country forward to greater fiscal discipline. The return to the nation and the provinces that enact such legislation will be enormously positive, both in the short and the long run.

Note

1 The provinces of British Columbia and Alberta have passed legislation to this effect.

Introduction

Canada's fiscal performance has made dramatic improvements since the mid-1990s when most Canadian jurisdictions were experiencing persistent deficits. Currently, most Canadian jurisdictions enjoy surpluses, many have established "rainy-day" funds to ensure balanced budgets in the future, and many have implemented or strengthened laws requiring balanced budgets. Still, the development of fiscal discipline is far from complete. The next step for the provinces and, indeed, the federal government is to implement additional fiscal constraints.

Canadian provinces and the country as a whole continue to struggle with a government that consumes in excess of 40.0% of the entire economy while our southern neighbours enjoy a government sector that is at least one-third smaller—around 30% of their economy—based on total government expenditures. In addition, Canadians have been burdened with instance after instance of government profligacy and waste while facing mounting tax burdens. Finally, Canadians struggle with a government sector that exceeds the historical optimal level of 30.0% and the attendant economic costs of having too large a government.[1] This paper describes a democratic method by which citizens can constrain government while still permitting democratic choice in government spending. The outcome of adopting this method will be smaller, smarter government coupled with higher levels of economic growth and continued democratic choice by citizens.

Outline

This study provides information about measures that impose fiscal discipline on government. The first section describes the differences between balanced budget requirements and tax and expenditure limitation laws. In addition, the first section provides an empirical analysis of the effects of balanced budget laws upon fiscal performance in Canada over the last decade. The second section summarizes the experience with tax and expenditure limitation laws in the United States and presents a checklist delineating the characteristics and design of an ideal TEL. The third section of the study discusses the specific constitutional framework present in Canada and identifies constitutional options available for the implementation of fiscal discipline measures. Appendix A summarizes the various balanced budget laws and tax and expenditure limitation laws that exist in Canada. Appendix B summarizes the TEL laws in the United States.

Notes

1 For a discussion of optimal government and its economic effects, see Clemens et al. 2003.

Balanced budgets and tax and expenditure limitations—clarifying the difference

One of the challenges facing Canadians in the dialogue regarding Canada's on-going development of fiscal discipline is that of understanding the difference between laws enforcing a balanced budget and those enforcing Tax and Expenditure Limitations (TELs). Simply put, balanced-budget laws attempt to constrain governments by requiring that they balance their fiscal affairs by matching expenditures with revenues. Laws enforcing Tax and Expenditure Limitation laws (TELs), on the other hand, attempt to constrain government by limiting growth in allowable spending and revenue without general approval of the voting populace. Unfortunately, many Canadians, including many engaged in public policy, believe that laws enforcing balanced budgets and those enforcing TELs are identical. The reality is that balanced-budget laws are substantially different from those enforcing TELs in that they attempt to constrain government in fundamentally different ways.

Laws prescribing balanced budgets

Laws prescribing balanced budgets, although differing from one jurisdiction to the next, generally attempt to prevent government from operating in a deficit position.[1] Some preclude deficits in any given year and thus require the establishment of so-called rainy-day funds.[2] Jurisdictions with this type of balanced-budget law establish dedicated funds whereby surpluses are saved for years in which the government operates in a deficit position, thus balancing the books annually.

Other jurisdictions maintain balanced-budget laws that focus on balancing the books over the course of the business cycle—the time during which an economy experiences growth, then recession, then returns to growth.[3] These jurisdictions permit deficits (borrowing) in particular years (when there is negative economic growth or recession) but require that no net debt be added to a jurisdiction over a business cycle. In other words, the surpluses experienced in some years must match or exceed the deficits incurred in other years to achieve a balanced budget over the business cycle.

It is critical to note that neither of these types of balanced-budget laws constrain government spending or taxation. In fact, the greatest misunderstanding regarding legislation requiring balanced budgets is that it is not at all intended or designed to limit the growth of government spending or revenues. Governments constrained by balanced-budget laws can raise taxes and spending so long as they balance their books. As many political leaders have demonstrated, a government can balance its books while consuming a large amount of the economy through taxation.

Laws prescribing Tax and Expenditure Limitations

Laws prescribing Tax and Expenditure Limitations (TELs), on the other hand, are singularly focused on constraining the growth in government spending and revenue. In the United States, where they are most common, TELs constrain the growth of government by limiting the growth rate of spending and revenue.[4] For instance, in many American states, the growth rate of government spending cannot exceed that of personal income. In other states, government spending is constrained by the rate of inflation plus population growth. There are a wide variety of options available in designing a TEL but the overriding goal is to constrain the growth in the size of government irrespective of the current fiscal balance. In other words, TELs are concerned with, and focused on, limiting the growth of government spending and taxes, rather than controlling how governments finance their spending, which is the focus of balanced-budget laws.

The difference in the objectives of balanced-budget laws and laws prescribing tax and expenditure limitation (TELs) results in equally stark differences in their effects. As will be demonstrated, the presence of balanced-budget

laws in Canada at the provincial level has done very little, if anything, to stem the growth of government spending and taxation over the better part of the last decade.

Balanced-budget laws in Canada

While most provinces have enacted balanced-budget legislation[5] (see Appendix A, page 27), no Canadian jurisdiction possesses effective tax and expenditure limitations.[6] Empirical evidence from Canada for the last decade supports the argument that balanced-budget legislation achieves little in terms of constraining the growth in government spending and taxation but facilitates fiscal balance.

This study incorporates three measures of fiscal performance to analyze the effect of balanced-budget legislation: real (inflation-adjusted) consolidated[7] per-capita government spending, real consolidated per-capita government revenue, and real consolidated fiscal balance. Real consolidated per-capita spending and revenues are analyzed in order to determine whether or not the presence of balanced-budget legislation affected the growth rate of either government spending or taxation. In addition, we also analyze the real consolidated fiscal balance (surplus or deficit) of each province, an indicator of particular interest since the overriding objective of balanced-budget legislation is to force jurisdictions to balance their books. It is, therefore, important to test whether or not the presence of such legislation affected the fiscal balances of jurisdictions that implemented such legislation.

Table 1: Balanced-budget legislation of the Canadian provinces

Province	Year of Implementation or Major Amendment
British Columbia	1999
Alberta	1995
Saskatchewan	1995
Manitoba	1995
Ontario	1999
Quebec	1996
New Brunswick	1993
Nova Scotia	1993
Prince Edward Island	None
Newfoundland & Labrador	None

Source: Departments of Finance, Canadian Provinces.

The dates presented in Table 1 often refer to updates rather than the original implementation of balanced-budget legislation. The 1995 laws implemented in Manitoba and Alberta are the best known in Canada. British Columbia's and Ontario's laws were the most recently enacted (1999). Newfoundland and Prince Edward Island are the only two Canadian provinces to have no balanced budget legislation.

Real consolidated fiscal balance

Table 2 presents data on the consolidated deficit or surplus (hereafter simply referred to as the fiscal balance) of the eight provinces that have balanced-budget legislation. Table 2 shows the average fiscal balance per capita for the five years prior to the enactment of balanced budget legislation, the fiscal balance per capita in the year of enactment, the fiscal balance per capita the year after enactment, the average fiscal balance per capita from the year after enactment to the present, and the fiscal balance per capita for the current year, 2002/03. The final two columns of table 2 show how many years each province ran a deficit in the five years[8] prior to the enactment of balanced-budget legislation and how many years each province ran a deficit after the enactment of balanced-budget legislation.

It is clear from the data presented in table 2, particularly regarding the number of years in deficit after enactment, that the balanced-budget legislation in eight Canadian provinces has had the expected effect of promoting fiscal balance. Every province, save for British Columbia, recorded material decreases from the five-year average deficit recorded prior to the implementation of balanced-budget legislation to the average fiscal balance present after the implementation of such legislation. Five of the eight provinces recorded surpluses in the year following the enactment of balanced-budget legislation and four of the eight provinces have recorded average surpluses since the implementation of balanced-budget laws.

Saskatchewan, Manitoba, and Alberta, the three provinces that implemented balanced-budget legislation in 1995, provide further evidence of the impact of balanced-budget requirements. All had deficits in four of the five years prior to enacting the legislation but only a single year of deficit within a seven-year period after enactment—a period that included the economic slowdown after September 11, 2001.

The data contained in table 2 indicate that balanced-budget legislation in Canada has resulted, in general, in balanced budgets or, at the very least, in a material decrease in the size of the consolidated deficit.

Table 2: Consolidated (provincial-local) fiscal balance (deficit or surplus, 2002$) per capita before and after enactment of balanced-budget legislation (BBL)

	Average for the 5 years before BBL	Year of BBL	Year after BBL	Average for the years after BBL	Current year	Number of years* of deficit before BBL	Number of years of deficit after BBL
BBL 1993/94	**1989/90–1992/93**	**1993/94**	**1994/95**	**1994/95–2002/03**	**2002/03**	**(4 years)**	**(9 years)**
New Brunswick	(401)	(420)	(313)	(138)	(238)	4	6
Nova Scotia	(698)	(805)	(277)	(40)	(50)	4	6
Canadian avg.	(586)	(826)	(81)	(1)	(163)	4	5
BBL 1995/96	**1990/91–1994/95**	**1995/96**	**1996/97**	**1996/97–2002/03**	**2002/03**	**(5 years)**	**(7 years)**
Alberta	(797)	667	1,330	1,140	710	4	1
Saskatchewan	(508)	(63)	245	231	(132)	4	1
Manitoba	(262)	189	150	89	10	4	1
Canadian avg.	(581)	(85)	28	22	(163)	5	3
BBL 1996/97	**1991/92–1995/96**	**1996/97**	**1997/98**	**1997/98–2002/03**	**2002/03**	**(5 years)**	**(6 years)**
Quebec	(972)	(734)	(543)	(167)	(305)	5	4
Canadian avg.	(521)	28	118	21	(163)	5	3
BBL 1999/90	**1994/95–1998/99**	**1999/00**	**2000/01**	**2000/01–2002/03**	**2002/03**	**(5 years)**	**(3 years)**
British Columbia	(353)	150	120	(554)	(1,011)	5	2
Ontario	(560)	233	161	12	(66)	5	2
Canadian avg.	(6)	77	426	(20)	(163)	3	2

Source: Statistics Canada, Public Institutions Division, Financial Management System (FMS); calculations by the authors. Note *out of the five years before BBL; analysis is limited to the four years before BBL for Nova Scotia and New Brunswick as comparable consolidated data is only available from 1989/90–2002/03.

Real consolidated per-capita government expenditures

Table 3 shows real (inflation-adjusted) consolidated per-capita government expenditures (hereafter simply referred to as per-capita spending) for the eight provinces that have balanced-budget legislation. Table 3 presents the average per-capita government spending for the five years prior to the enactment of balanced budget legislation, the per-capita government spending for the years proceeding enactment to the present, the per-capita government spending for the year of enactment and the year after enactment as well as per-capita government spending for the most current year available (2002/03). In addition, the final three columns of table 3 show the average growth rates of real per-capita government expenditure before and following the balanced budget legislation, along with the change in the average growth rates.

The findings contained in Table 3 indicate that the average growth rates in real consolidated per-capita government expenditures actually increased in provinces after balanced-budget legislation was introduced. For example, Alberta, Saskatchewan, and Manitoba, which all implemented balanced budget legislation in 1995/96, went from having declines in the average growth rates in real consolidated per-capita expenditures before balanced budget requirements to recording increases once the legislation

Table 3: Consolidated (provincial-local) expenditure (2002$) per capita before and after enactment of balanced-budget legislation (BBL)

	Average for the 5 years before BBL	Year of BBL	Year after BBL	Average for the years after BBL	Current Year	Average year-to-year growth rate (%) for the 5 years before BBL	Average year-to-year growth rate (%) for the years after BBL	Change in average year-to-year growth rate after enactment of BBL
BBL 1993/94	**1989/90–1992/93**	**1993/94**	**1994/95**	**1994/95–2002/03**	**2002/03**	**1989/90–1992/93***	**1994/95–2002/03**	
New Brunswick	8,142	8,256	8,514	8,692	8,980	1.0	1.0	0.0
Nova Scotia	8,315	8,088	8,120	8,194	8,643	(1.9)	0.8	2.7
Canadian avg.	8,968	9,006	8,771	8,845	9,188	0.3	0.3	(0.1)
BBL 1995/96	**1990/91–1994/95**	**1995/96**	**1996/97**	**1996/97–2002/03**	**2002/03**	**1990/91–1994/95**	**1996/97–2002/03**	
Alberta	10,377	8,585	8,230	8,909	9,094	(3.4)	1.0	4.4
Saskatchewan	9,839	9,050	8,772	9,321	9,397	(2.1)	0.6	2.7
Manitoba	9,265	8,969	8,703	9,239	9,546	(0.6)	0.9	1.6
Canadian avg.	8,946	8,640	8,412	8,885	9,188	(0.3)	0.9	1.2
BBL 1996/97	**1991/92–1995/96**	**1996/97**	**1997/98**	**1997/98–2002/03**	**2002/03**	**1991/92–1995/96**	**1997/98–2002/03**	
Quebec	9,189	8,986	8,897	9,328	9,711	0.6	1.3	0.7
Canadian avg.	8,888	8,412	8,378	8,964	9,188	(0.7)	1.5	2.2
BBL 1999/00	**1994/95–1998/99**	**1999/00**	**2000/01**	**2000/01–2002/03**	**2002/03**	**1994/95–1998/99**	**2000/01–2002/03**	
British Columbia	8,748	8,857	8,823	9,036	9,087	1.5	0.9	(0.6)
Ontario	8,849	8,700	8,761	8,683	8,683	(1.3)	(0.1)	1.3
Canadian avg.	8,586	9,037	9,070	9,212	9,188	(0.6)	0.6	1.2

Source: Statistics Canada, Public Institutions Division, Financial Management System (FMS); calculations by the authors. Notes * Analysis is limited to the four years before BBL for Nova Scotia and New Brunswick as comparable consolidated data is only available from 1989/90–2002/03; ** figures may not add due to rounding.

was enacted. From 1990/91 to 1994/95, Alberta had a five-year average growth rates in real consolidated per-capita government spending of −3.4%, Saskatchewan, of –2.1%, and Manitoba, of −0.6%. All three provinces then experienced positive growth rates in real consolidated per-capita spending of 1.0%, 0.6%, and 0.9%, respectively between the year of enactment (1995/96) and the most recent fiscal period for which data is available (2002/03). All three prairie provinces, then, went from decreases in the growth rate of real per-capita consolidated spending before balanced budget legislation was implemented to increases in the growth rate once legislation was enacted.

In fact, six of the eight provinces with balanced-budget legislation experienced *increases* in the growth rate of real consolidated per-capita government expenditures after the introduction of balanced-budget legislation.[9] New Brunswick's growth in real consolidated per-capita government spending remained constant at 1.0%.

Equally as telling of the upward trend in spending is the fact that only three of the eight provinces maintained per-capita spending levels below the 5-year average value maintained before the implementation of balanced-budget legislation. In fact, several of the provinces even maintain higher average per-capita spending after the implementation of such legislation compared with average values predating the legislation.

Balanced-budget legislation in Canada seems to have promoted fiscal balance insofar as the provinces are collecting sufficient revenues to finance government spending (table 2). However, this legislation has not achieved any measurable constraint in the growth of government spending. In fact, the exact opposite occurred and provinces with balanced-budget legislation actually experienced an *increased* rate of growth in real consolidated per-capita government spending after the introduction of balanced-budget legislation.

Real consolidated per-capita government revenues

Table 4 shows real consolidated per-capita government revenues (hereafter simply referred to as per-capita government revenues) for the eight provinces with balanced-budget legislation. Column by column, it shows average per-capita government revenues for the 5 years prior to the enactment of balanced budget legislation, the average per-capita government revenues for the years proceeding enactment to the present, the per-capita government revenues for the year legislation was enacted and the year after enactment as well as real consolidated per-capita government revenues for the most current year available (2002/03). In addition, the final three columns present the average growth rates of real per-capita government revenues before and following the introduction of balanced-budget legislation, along with the change in the average growth rates.

The data in table 4 corroborates the findings of the previous discussion of real consolidated per-capita government spending, namely, that balanced budget legislation is completely ineffective in constraining growth in government. For example, Nova Scotia and New Brunswick, the two provinces that implemented (updated) their balanced-budget laws the earliest, experienced increases in the average year-to-year growth of real consolidated per-capita government revenues of 1.9% and 1.3% after the introduction of balanced-budget legislation. This compares with declines in the average year-to-year growth of real consolidated per-capita government revenue of 0.3% and 0.8% in Nova Scotia and New Brunswick prior to the enactment of such legislation. In other words, real consolidated per-capita government revenues in Nova Scotia and New Brunswick experienced a reversal in growth rates, from negative growth rates prior to the existence of balanced-budget requirements to positive growth rates after such legislation was implemented.

Similarly, Alberta, Saskatchewan, and Manitoba, the three provinces that implemented balanced budget legislation in 1995/96, recorded 0.0%, −0.7%, and 0.5% average year-to-year growth in real consolidated per-capita government revenues prior to the enactment of balanced budget laws but 1.7%, 1.0%, and 0.6% growth in real consolidated per-capita revenues after the balanced-budget legislation was enacted. In fact, six of the eight provinces with balanced-budget legislation experienced an *increase* in the growth rate of real consolidated per-capita revenues after the introduction of their respective balanced-budget legislation. The two provinces that did not experience an increase in the real consolidated per-capita revenue growth rate, British Columbia and Ontario, were both in the process of aggressively reducing taxes.

Another indication of the shift towards higher per-capita revenues is the fact that all eight provinces maintained average per-capita revenues after the implementation of balanced-budget legislation that were higher than average revenues before the legislation was put into effect. In other words, on average, the amount of per-capita revenues extracted by all eight provinces has increased after the implementation of balanced-budget legislation.

Conclusion

Evidence from jurisdictions in Canada that have enacted balanced-budget legislation suggests that it is relatively effective in achieving fiscal balance but ineffective in constraining the growth of government, measured by either spending or revenues. This should not be surprising since balanced-budget laws are designed to force governments to balance their fiscal affairs, not to constrain the growth of government spending and taxation.

What could have been?

The following analysis calculates the per-capita savings from actual spending increases by government that could have accrued to Canadians had provincial and federal governments implemented effective laws enforcing tax and expenditure limitations in the year in which they balanced their budgets.[10] Table 5 presents an estimate of the per-capita savings that could have been generated had effective

Table 4: Consolidated (provincial-local) revenue per capita (2002$) before and after enactment of balanced-budget legislation (BBL)

	Average of the 5 years before BBL enactment	Year of BBL	Year After BBL	Average of the years after BBL enactment	Current Year	Average year to year growth rate (%) for the 5 years before BBL	Average year to year growth rate (%) for the years after BBL	Change in average year to year growth rate after enactment of BBL**
BBL 1993/94	**1989/90–1992/93**	**1993/94**	**1994/95**	**1994/95–2002/03**	**2002/03**	**1989/90–1992/93***	**1994/95–2002/03**	
New Brunswick	7,741	7,838	8,200	8,554	8,742	(0.3)	1.3	1.6
Nova Scotia	7,617	7,283	7,845	8,154	8,593	(0.8)	1.9	2.7
Canadian avg.	8,382	8,181	8,690	8,843	9,025	(1.3)	1.2	2.5
BBL 1995/96	**1990/91–1994/95**	**1995/96**	**1996/97**	**1996/97–2002/03**	**2002/03**	**1990/91–1994/95**	**1996/97–2002/03**	
Alberta	9,580	9,251	9,561	10,048	9,804	(0.0)	1.7	1.7
Saskatchewan	9,331	8,987	9,017	9,553	9,530	(0.7)	1.0	1.7
Manitoba	9,004	9,157	8,853	9,327	9,556	0.5	0.6	0.1
Canadian avg.	8,365	8,555	8,440	8,907	9,025	0.3	0.8	0.5
BBL 1996/97	**1991/92–1995/96**	**1996/97**	**1997/98**	**1997/98–2002/03**	**2002/03**	**1991/92–1995/96**	**1997/98–2002/03**	
Quebec	8,217	8,251	8,354	9,161	9,406	0.6	2.3	1.6
Canadian avg.	8,367	8,440	8,495	8,984	9,025	0.1	1.2	1.1
BBL 1999/00	**1994/95–1998/99**	**1999/00**	**2000/01**	**2000/01–2002/03**	**2002/03**	**1994/95–1998/99**	**2000/01–2002/03**	
British Columbia	8,395	9,007	8,943	8,492	8,076	(0.9)	(3.6)	(2.6)
Ontario	8,289	8,933	8,922	8,695	8,617	0.9	(1.2)	(2.1)
Canadian avg.	8,580	9,114	9,498	9,192	9,025	1.3	(0.3)	(1.6)

Source: Statistics Canada, Public Institutions Division, Financial Management System (FMS); calculations by the authors. Notes * Analysis is limited to the four years before BBL for Nova Scotia and New Brunswick as comparable consolidated data is only available from 1989/90–2002/03; ** figures may not add due to rounding.

TELs been in place after budgets were balanced. Specifically, it shows estimates of the real, per-capita amounts spent by governments beyond the rate of inflation plus population growth, after balanced budgets were attained.[11]

There are substantial potential savings available if governments were constrained in their ability to increase spending. Let us assume, for example, that no government in Canada, whether federal or provincial, increased spending on a real, per-capita basis after it balanced its budget. Let us further assume that all dollars were returned to citizens in the form of rebates. Federal savings alone would have amounted to $818 per Canadian. In other words, since balancing its budget, the federal government of Canada has increased real, per-capita spending by $818.

The potential savings from similar restrictions on provincial governments range considerably, from a low of $62 in Ontario to a high of $6,375 in Prince Edward Island.[12] The variance is largely due to the time that has

passed since the provincial governments balanced their respective budgets: those that balanced their budgets earlier obviously have had more time to accumulate potential savings. The key insight from this hypothetical discussion is that there is a tremendous opportunity for Canadians to receive additional monies from their federal and provincial governments if spending is controlled.

It is overly optimistic to assume that the savings that could have resulted from precluding real spending increases that are not popularly approved would translate into full tax relief and there are a number of reasons to believe that the tax relief would be less than the full amount of the potential savings.

For instance, a government could initiate a referendum in order to authorize additional spending, presenting spending proposals for popular approval. This, at least, would increase the accountability and transparency of government spending and would make spending driven by special interests much more difficult to undertake. On the other hand, governments could, depending on the specific rules governing the use of surplus funds, attempt to defer full tax relief and use the funds to reduce debt; the Canadian federal government has consistently indicated its preference for reducing debt rather than refunding tax money to taxpayers.

Table 5: Potential savings per capita from effective TELs

Jurisdiction	Year of Balanced Budget	Savings Estimate
Federal Government	1997/98	$818
British Columbia	1999/00	$571
Alberta	1994/95	$1,283
Saskatchewan	1996/97	$3,848
Manitoba	1994/95	$2,430
Ontario	1999/00	$62
Quebec	N/A	N/A
New Brunswick	1996/97	$2,824
Nova Scotia	1999/00	$621
Prince Edward Island	1994/95	$6,375
Newfoundland	1995/96	$4,492

Source: Statistics Canada, Public Institutions Division, Financial Management System; calculations by authors.
Notes: [1] A consolidated definition of balanced budgets was used. [2] Calculations were made from the year in which the government balanced its budget to 2002/03.

The ability of governments to avoid providing full tax relief when they have surpluses is an important reason that legislation enforcing TELs must include mandatory tax rebates once surplus funds exceed a prescribed threshold (discussed in the following section). Such a requirement guarantees that the lion's share of surplus funds are returned to taxpayers.

The estimates from table 5 provide ample evidence that Canadian governments continue to spend. The implementation of effective TELs in Canada at both the federal and provincial levels would result in material savings for Canadians and more accountable, transparent spending by government.

Notes

1 For a discussion of balanced budget laws, see Poterba 1994a, 1994b, 1995a, and 1995b.

2 For instance, Saskatchewan established the Fiscal Stabilization Fund from which funds are drawn in years when revenues are not adequate to finance spending fully; further information is available at http://www.gov.sk.ca.

3 For a discussion of business cycles, see *The New Palgrave: A Dictionary of Economics*, vol. 1: 302, *s.v.* business cycles; Ebeling 1996; and Schumpeter 1964.

4 For an overview of American states that have TELs in place and the nature of these TELs, see http://www.limitedgovernment.org and click on the link, "Limitations on Government."

5 Of the 10 Canadian provinces, only Newfoundland and Prince Edward Island do not have balanced-budget legislation. In the United States, 43 states require the governor to submit a balanced budget and 40 require that the budget passed (implemented) be balanced. However, 11 of the 40 that require an implemented budget to be balanced also allow the government to carry forward deficits, thus rendering the balanced budget law ineffective (Appendix B, page 32).

6 Some provinces, such as Manitoba and Ontario have passed TEL-like legislation. However, as can be seen in Ontario's 2002 provincial budget, this type of legislated TEL is easily circumvented and yields little effective constraint on government spending and taxing activities.

7 Consolidated (combined provincial-local) figures are used rather than just provincial figures in order to compensate for inter-provincial differences in local

and provincial spending and taxation. The use of consolidated figures allows for more accurate inter-jurisdictional comparisons.

8 Only four years prior to the enactment of balanced-budget legislation are available for analysis for Nova Scotia and New Brunswick as a consistent data series from Statistics Canada is only available from 1989/90 onwards.

9 Ontario's growth rate in real consolidated per-capita spending went from −1.3% for the five years prior to the enactment of legislation to −0.1% after enactment. In other words, the declines in real consolidated per-capita spending were reduced by more than 96% once balanced budget legislation was introduced.

10 For the purposes of this study, a consolidated definition of balanced budgets, including provincial and local revenues and expenditures was used. In addition, only provinces that recorded sustained surpluses, defined as two consecutive years, were deemed to have achieved a balanced budget. This resulted in the exclusion of New Brunswick and Quebec.

11 The estimates in table 5 only include increases in real per-capita spending since the attainment of balanced budgets in each of the jurisdictions. In other words, it excludes decreases in real per-capita spending. This is an important differentiation since TELs do not preclude spending decreases but require popular approval for spending increases.

12 Due to the presence of direct and indirect transfers between the federal and provincial governments, it is not accurate simply to sum the federal and provincial potential savings available as this would cause double-counting.

American experiments with Tax and Expenditure Limitations

For the past quarter century, the United States has been a laboratory of experimentation with measures to ensure fiscal discipline, well beyond any minor experiments undertaken in Canada. Line-item vetos, balanced-budget requirements, super-majority voting requirements, term limits, citizen initiatives, and tax and expenditure limitations (TELs) have, with varying degrees of success, attempted to protect citizens from government profligacy. This section assesses, in the light of American experiments, how well laws enforcing tax and expenditure limitations constrain the growth of government.

Measures ensuring fiscal discipline

Prior to discussing the experience of American states with TELs, it is important to look at the larger issue of measures that ensure fiscal discipline. James M. Poterba (1996) undertook a broad evaluation of budgetary rules, which he referred to as fiscal institutions, in order to assess whether or not they affected fiscal outcomes. To do so, he examined experience in the United States with the Gramm-Rudman-Hollings balanced-budget law[1] as well as experiments in individual states' with balanced-budget laws and borrowing limitations. His conclusion was that the "preponderance of the evidence suggests that these rules matter" (4). He also noted that the rules can encourage self-control on the part of political participants (Poterba 1996).

Dale Bails and Margie A. Tieslau (2000) examined a whole set of rules-based restrictions on government activity: TELs, line-item vetos, balanced-budget requirements, super-majority voting requirements (where more than a simple majority is required to pass legislation), term limits, length of the budget cycle, citizen initiatives, and state referendums. They identified three categories of measures designed to encourage fiscal discipline: (1) budget constraints that relate directly to spending and taxing levels (TELs, line-item vetos, balanced-budget requirements, and super-majority voting requirements); (2) administrative constraints that focus on the budgetary process (term limits, limits on the introduction of bills, and the length of the budget cycle); and (3) mechanisms of direct democracy that allow citizens to engage in the budgetary process directly (citizen initiatives and state referendums)

Bails and Tieslau (2000) examined the fiscal performance of 49 states between 1969 and 1994 based on the presence of different types of fiscal-discipline measures. They found that states that maintained TELs, super-majority voting requirements, balanced-budget requirements, terms limits, and citizen-initiative legislation had real per-capita spending $473 lower than states that did not.[2]

Bails and Tieslau (2000) concluded that spending decisions are clearly influenced by the presence of certain mechanisms of fiscal discipline: states that maintain TELs, citizen-initiatives, and term limits face lower levels of per-capita state and local spending. On the other hand, they found that certain fiscal-discipline measures, such as balanced-budget requirements and super-majority voting requirements appear relatively ineffective in constraining the growth of the public sector when used by themselves.[3] However, they found that balanced-budget requirements become effective when coupled with TELs and that super-majority voting requirements become marginally effective when coupled with balanced-budget requirements.

General findings on Tax and Expenditure Limitations

Dean Stansel of the Cato Institute (Washington, DC) published one of the first mainly empirical analyses of TELs in *Taming Leviathan: Are Tax and Spending Limits the Answer?* (Stansel 1994). He found that American states with TELs in place significantly improved their performance in constraining the growth of government compared with the national average. Specifically, he found that the average level of per-capita spending in states with TELs fell from 6.4% above the US average in the year that the law enforcing TELs was enacted to only 1.7% above the national average in 1992, the most recent year for which data was available at the time of publication. The findings of Bails and Tieslau

(2000) support Stansel's conclusion. They found that states with TELs in place maintained combined state and local real per-capita spending $41 lower than states without TELs.[4] Stansel further found that the five-year growth rate of per-capita state spending in states with TELs fell from 0.8 percentage points above the US national average in the five years before TEL laws were enacted, to 2.9 percentage points below the US average in the five years after enactment (Stansel 1994).

Stansel went beyond comparing states with TELs with the national average to compare states with and without TELs. The results were similar: TEL states exhibited more restraint in the growth of government than did non-TEL states: there was a 5.3 percentage point improvement (restraint) in the level of per-capita state spending. TEL states went from spending 4.7% more on a real per-capita basis relative to non-TEL states in the year of TEL enactment to 0.6% less than non-TEL states after the enactment of the TEL.

Richard Krol of California State University, writing for the Milken Institute for Job and Capital Formation (1996) as well as in the *Cato Journal* (1997), investigated a host of fiscal-discipline measures, including TELs, to determine their effect on government spending and taxing behaviour.[5] Krol concluded that TELs did in fact effectively constrain growth in government expenditures, although he does raise concerns about off-budget resources and spending (1996). He makes specific note of several studies that come to similar conclusions, including Reuben (1995), who concluded that TEL states experienced a net 1.8% decease in spending due to the presence of TEL laws.

The doubters

There are many studies that concluded that Tax and Expenditure Limitation (TELs) were ineffective in constraining government or the growth in government. For instance, one of the early criticisms of TELs came from scholars Kenyon and Benker (1984), who wrote in the *National Tax Journal* that "for most US states, TELs have not been a constraint on growth in taxing or spending" (438).

Marcia Howard (1989), one of the more frequently cited sceptics about TELs, found that there was generally a lack of strong evidence indicating the successfulness of TELs in limiting taxes and spending. Similarly, James Cox and David Lowery (1990) writing in *Social Science Quarterly*, concluded that fiscal caps, such as TELs, had little impact on state finances.

Dale Bails (1990), updating his 1982 study, reiterated his earlier findings that the presence of TELs had virtually no impact on the growth of state-wide expenditures or revenues. He further stated that TELs, as currently constructed, were ineffective as a means of limiting growth in state budgets (Bails 1990).

Philip Joyce and Daniel Mullins (1991) found that TELs imposed on state governments had little or no impact on general tax revenues. They also concluded that TELs had little impact on the relative amount each level of government spent in various functional areas with the exception of spending on public welfare.

Finally, Ronald Shadbegian (1996) echoed the findings of previous studies in that he found "no significant effect on the size or growth of government" due to the presence of TELs (22).

Rebutting the critics

Robert Krol (1996, 1997) examined many of the studies critical of TELs and found them to be "empirically weak" (297). He specifically criticized Abrams and Dougan (1986) and Cox and Lower (1990) for using only cross-sectional data. He further criticized Bails (1990) for failing to control adequately for other factors that might affect government expenditures and taxation.

Michael New's (2001) analysis of TELs included a broad review of studies critical of TELs. He found that, in general, the papers concluding that TELs were ineffective suffered from three shortcomings. One, many of the studies reviewed examined a small number of states over a short period of time and some, in fact, only looked at one year of results. Two, many of the studies fail to account for other factors affecting a state's budget. This is parallel to Krol's criticism of Bails' analysis of TELs. Michael New cites several studies criticizing TELs, including Marcia Howard's (1989) oft-cited paper, as examples of studies that failed to include factors that affect state budget performance outside of the confines of constitutional restrictions. Finally, and perhaps most importantly, New found that previous investigations into the effectiveness of TELs did not, in general, take into account differences among types of TELs. He specifically cited Joyce and Mullins (1991) and Shadbegian (1996) as examples of studies that did not differentiate among different types of TELs.

Differentiating among types of TELs

A number of studies (Stansel 1994, Bails and Tieslau 2000, and New 2001) have noted that the performance of TELs in constraining government can be significantly explained by the specific design of a TEL. Such differences include

whether the TELs were initiated by citizens or by the legislature, whether the law is constitutional or statutory in legal status, whether the TELs include local governments, and how the limitations are enforced. Following is a look at these and other facets of TELs to determine what constitutes optimal TELs.

The importance of citizen initiatives

John Matsusaka (1995) attempted to isolate the effects of citizen initiatives in the American states using data for the years 1960/61 to 1989/90 in five-year intervals. He found that states where citizen initiatives are used[6] have lower combined state and local direct expenditures, spend more locally (and less at the state level), and rely less on taxes and more on charges to generate revenue than states with a purely representative system. He also found that the easier it was to use voter initiatives, the larger the difference in fiscal outcomes between states allowing voter initiatives and those with a purely representative system. For example, states that require signatures from 5% of voters to actualize an initiative[7] had state and local direct spending per capita roughly 4% lower and taxes marginally lower than states that did not allow citizen initiatives (Matsusaka 1995).[8]

New (2001) concluded that TELs passed by citizen initiatives are likely to include structural features that result in a more effective constraint on government than TELs passed by legislatures. Stansel reached similar conclusions in his 1994 analysis. He noted that whether TELs are initiated by voters or by the legislature can make a "significant difference in its ultimate effectiveness" (15) and that TELs written by politicians tend to be "more vague, less restrictive, and more easily circumvented" (15).[9] New (2001) further determined that there were four central characteristics citizen-initiated TELs exhibited that explained, at least partially, their success relative to TELs not initiated by citizens: (1) the type of limit placed on spending and taxes, (2) treatment of devolvement to localities, (3) legal status, and (4) disposition of surplus revenues.

(1) The type of limit

The majority of TELs in the United States use income growth as the method by which to constrain spending and taxes. In other words, increases in government expenditures are limited by growth in personal income. A more stringent restriction on the growth of government limits it to inflation plus population growth, which effectively precludes real per-capita increases in government spending or taxes.

New's 2001 analysis indicates that citizen-initiated TELs were far more likely to contain the more restrictive limit than were legislatively initiated TELs: 29% of citizen-initiated TELs used inflation plus population growth as a limit to increases in government spending[10] while none of the legislatively-initiated TELs imposed this tougher restriction (New 2001).

Stansel (1994) also looked at the types of limits used in various TELs. He found that by and large the accepted wisdom is that the cap or limit should be personal income growth, which prevents government from growing faster than the private economy. Stansel found that 14 of the 18 TELs in place at the time limited growth in government spending to the growth in personal income in the state. Stansel concluded that this type of cap was substantially less effective than the more stringent cap on spending based on population growth plus inflation (Stansel 1994).

(2) Devolvement to municipalities[11]

TELs also differ in their treatment of devolution to municipalities. One common method used to get around TELs is to devolve state responsibilities to localities (municipalities). Some TELs, however, prevent this by automatically reducing the state limits when it devolves a function of the state government to the localities.

Stansel (1994) investigated the issue of how TELs treat municipal government. He found only 5 of the 18 existing TELs had prohibitions against state-imposed unfunded mandates on local governments.[12] Stansel controlled for state and local spending to account for possible shifting of expenditure between state and local governments and found similar results, namely, that the growth in expenditures was reduced after the implementation of TELs.[13] He concluded that TELs should include municipal spending to ensure that the growth in consolidated state and local government is effectively constrained.

(3) Legal status—constitutional or statutory

Another area of differentiation is the legal status of TELs, that is, whether the TELs' status in law is of a statutory or constitutional nature. TELs passed by the legislature are by definition statutory, meaning that they can be circumvented, altered, or rescinded by successive legislators.[14] On the other hand, constitutional amendments are much more difficult to alter. The legal status of TELs is a critical issue in Canada given that our constitutional structure differs considerably from that of the United States (see section 3).

Stansel (1994) found that the legal status of TELs matters. He concluded that constitutional TELs were much

more difficult to change whereas statutory TELs left open the possibility that legislatures would simply change the rules. He found that the five-year growth rate of real per-capita state spending in states with constitutional TELs fell from 0.8 percentage points below the US average before the introduction of TELs to 5.6 percentage points below the US average after enactment (Stansel 1994). In contrast, the five-year growth rate of real per-capita state spending in states with statutory TELs fell from 2.9 percentage points above the US average before the introduction of TELs to 0.6 percentage points above the US average after enactment (Stansel 1994). Put differently, in states with constitutional TELs, the growth rate of per-capita state spending fell by 4.8 percentage points relative to the US average whereas, in states with statutory TELs, the decline was 2.3 percentage points.[15]

(4) Disposition of surplus revenues

Disposition of surplus revenues is another area of differentiation among TELs. Most TELs require the allocation of surpluses to reserve funds and require rebates to taxpayers if the surpluses persist for a number of years. A small number of TELs require immediate tax rebates for surpluses that exceed a prescribed limit.[16]

New (2001) concluded that a requirement placed in TELs for the immediate return of surplus tax revenue exceeding a prescribed limit results in effective constraint of government.[17] He noted that such a requirement had a second effect: it increased the incentive for state legislators to cut taxes when it appeared that revenues would exceed the surplus limit. In other words, it forced legislators to be proactively reduce taxes.[18]

Additional factors

There are many other factors that researchers have indicated may increase the effectiveness of TELs. Following is a brief discussion of some of these.

Approval by voters or legislature

Stansel (1994) found that it is important whether TELs are approved by voters or the legislature. This is materially different from the question of who initiates the process, as discussed above. He found that spending growth slowed compared to the national average in the five states where TELs were initiated and approved by voters whereas spending growth actually increased relative to the national average in the eight states where TELs were initiated and approved by the legislature (Stansel 1994).

Circumventing TELs

An issue related to a TELs' legal status and a critical factor in the success of TELs is how easily they can be circumvented by legislators. For example, two of the TELs in place (Nevada and Rhode Island) are not binding on either the budget or the legislature. They only apply to the governor's submitted or proposed budget. In addition, most states with TELs, except for Oklahoma, provide a mechanism by which the state can waive provisions of the TELs for various reasons. Finally, nine of the 18 states that had TELs when Stansel conducted his research had emergency declaration clauses that allowed legislators or the state governors to circumvent the requirements (Stansel 1994). Obviously, the more a governor or state legislature is permitted to circumvent the rules imposed by the TELs, the less effective TELs will be in constraining growth in government.

Characteristics of an optimal TEL

- √ initiated by citizens
- √ approved by voters via referendum
- √ constitutional in legal status
- √ applies to spending and revenues, broadly defined
- √ limits growth in government spending to inflation plus population growth
- √ includes municipal spending and revenues
- √ requires mandatory tax refunds when surplus exceeds a prescribed limit
- √ comprehensive in its coverage of government spending and revenue collection

How much of the budget is covered?

Stansel (1994) asked an additional question: how much of the budget is covered by TELs. He found that even the most stringent TELs did not apply to the entire budget. Most TELs applied to the general revenue and expenditure fund, which, on average, only included 56% of state-appropriated resources (Stansel 1994). Expenditures outside of the general fund included special funds for highways, education, and other capital spending, federal aid, insurance trust funds, and specifically earmarked projects. Stansel further found that 6 of the 18 TELs in existence at the time applied to revenues from taxation only; that is, they excluded all revenues from sources such as charges, fines, and user fees. Stansel (1994) concluded that the most effective TELs covered a large portion of the state's expenditure budget and that TELs would be more effective as they covered a greater percentage of state-allocated resources.

Conclusion

Tax and Expenditure Limitation (TEL) laws have been effective at the state and local level in constraining the growth of government spending and taxation. Much of the variance in the success and effectiveness of TELs from state to state can be explained by the design of the TELs and well-designed TELs are an effective and appropriate rules-based tool for constraining the growth of government.

Notes

1 For a thorough discussion of the Gramm-Rudman-Hollings law, see Poterba 1996, Gramlich 1990, and Hahm et al. 1992.

2 Bails and Tieslau (2000) found that states with TELs in place maintain combined state and local real per-capita spending $41 lower than states without TELs; that states with both TELs and balanced-budget requirements maintain real per-capita spending of nearly $135 lower than other states; that states with super-majority requirements coupled with balanced-budget requirements have real per-capita spending $96 lower than other states; that states with term limits have real per-capita spending $105 lower than states without term limits; and that states that have citizen-initiated legislation have real per-capita spending $96 lower than states that do not allow citizen initiatives.

3 It is interesting to note that the two most supported measures for congressional approval, namely the line-item veto and balanced-budget requirements, are ineffective if implemented in isolation (Bails and Tieslau 2000).

4 Note that Stansel compares states with TELs to the national average while Bails and Tieslau compare them to states without TELs.

5 Krol argues that the special-interest model of government (Stigler 1971, Peltzman 1976, and Becker 1983), the monopoly model (Niskanen 1975), and the Leviathan model (Brennan and Buchanan 1979) all suggest the need for budgetary rules since equilibrium spending exceeds the optimal level. In other words, regardless of the model of government decision-making incorporated, all lead to the conclusion that budgetary rules are required to achieve optimal government spending and taxation.

6 Twenty-four US states permitted direct citizen legislative initiatives at the time of this study.

7 Matsusaka found that initiatives become ineffective when the signature requirement reaches 10%. In comparison, British Columbia, the only Canadian jurisdiction to allow citizen initiatives requires signatures of 10% of voters in every constituency in order to actualize an initiative.

8 Specifically, state-level general spending was about 12% lower, local expenditure was about 10% higher, general taxes were about 8% lower and fees about 7% higher.

9 New (2001) offered the theoretical explanation that, compared with groups of concerned citizens, legislators have less incentive to effectively constrain their own ability to spend and transfer.

10 Colorado and Washington are two states with more stringent limits in place.

11 Some of the early empirical work on TELs was completed at the municipal level. Preston and Ichniowski (1991) and Dye and McGuire (1995) both investigated the effect on property taxes of legislation similar to TELs. Both concluded that local property-tax limitation laws had important constraint affects on the level of local taxes.

12 New found that citizen-initiated TELs were far more likely to include provisions regarding devolution to municipalities. Specifically, he found that 71% of citizen-initiated TELs include a municipal provision while only 33% of legislatively initiated TELs provided such a mechanism (New 2001).

13 Specifically, he found that the five-year growth rate of real per-capita state and local spending in states with TELs fell from 2.3 percentage points above

the US average before introduction of TELs to 1.2 percentage points below the US average after enactment (Stansel 1994).

14 This is exactly what happened in Ontario in 2002. The Eves' Conservative government directly violated their own legislation, the *Taxpayer Protection Act*, which precluded tax increases without popular approval, simply by changing the law.

15 New concluded that citizen-initiated TELs were more likely to be constitutional in legal status than those passed or initiated by legislatures. He found that 56% of citizen-initiated TELs are constitutional in nature rather than statutory, making them much more difficult to alter or circumvent (New 2001).

16 New found that citizen-initiated TELs are much more likely to include immediate rebate provisions: 44% of citizen-initiated TELs contained such a provision while only 8% of legislatively initiated TELs did (New 2001).

17 TELs in Colorado, Michigan, Missouri, and Oregon have such requirements (see Appendix B).

18 Part of the explanation for this secondary effect are the logistical and political problems associated with tax refunds, namely, that it is difficult to refund sales taxes in the United States and politicians try to avoid refunding property or income taxes since a large percentage of the dollar total will go to high-income earners (New 2001).

Canada's constitutional framework—options for TELs in Canada

Unfortunately for Canadians concerned with the growth in government, many of the mechanisms required for the implementation of an effective TEL are absent or significantly constrained in Canada. Canada lacks national mechanisms for citizen initiatives and only British Columbia has provisions for citizen initiatives on the provincial level.[1] Further, the Canadian constitutional system is vastly different from that of the United States.

Although both Canada and the United States have federal constitutions that divide power between national and sub-national governments, only the American division of powers is reinforced by the existence of discrete, written state constitutions without which the Constitution of the United States "cannot be understood or acted upon" (Kincaid 1988:13; Tarr 1998: 3). Indeed, state constitutions define and implement many of the provisions of the US Constitution, structuring the broad domestic powers that it reserves to the states and to the people.

Provincial constitutions

The nature, authority, and rules for amending Canadian provincial constitutions are far less clear than their American counterparts. While section 92(1) of the *British North America Act, 1867*[2] authorizes amendments to the "constitution of the province," the definition of a provincial constitution appears nowhere in the Constitution of Canada.

The lack of a written definition or discrete constitutional document does not mean that Canada's provinces lack constitutions of their own. For instance, sections 69 to 87 of the *BNA Act, 1867*, which created the provinces of Ontario and Quebec, are essentially the constitutions of these two provinces. Section 88 incorporates the pre-Confederation constitutions of Nova Scotia and New Brunswick into the Constitution of Canada. Likewise, the enactments admitting or creating the other six provinces are also part of the Constitution of Canada (Hogg 2000: 4.5).[3] These enactments are now scheduled to the *Constitution Act, 1982*, and included in the definition of the "Constitution of Canada."[4]

Other parts of the Canadian Constitution that apply to one or more but not all provinces, can also be understood as the constitution of a province. For instance, the education rights described in section 93 of the *BNA Act, 1867* apply to only six of the ten provinces.[5] Section 94, providing for the uniformity of laws across provinces, excluding Quebec, would be part of those provincial constitutions. The Constitution of Canada also includes various language provisions that apply only to Quebec, Manitoba, or New Brunswick.[6]

Only the province of British Columbia has a distinct, separate constitution called the British Columbia *Constitution Act*. Despite its name, however, this *Constitution Act* has none of the characteristics that normally protect constitutional rules, values and principles from easy repeal or amendment. In fact, the *Act* is a simple statute that can and has been repeatedly and substantially altered by successive governments enacting new legislation.[7]

Entrenching provincial tax and expenditure limitations

While the ambiguities surrounding provincial constitutions may complicate the matter of entrenching binding provincial tax and expenditure limitations, it does not make it impossible. Since provincial constitutions form part of the Constitution of Canada, they can be changed by using one of the amending formulas included in Part V of the *Constitution Act, 1982*. Of the five amending procedures permitted, only the amending formulas contained in sections 43 and 45 give provinces the flexibility to initiate amendments to their own constitutions.[8]

Bilateral amendment—section 43

The "some-but-not-all-provinces" procedure of section 43 is used for amendments to the Constitution of Canada that are peculiar to specific provinces. It requires the assent of the federal Parliament and those provinces affected. In other words, if a province wanted to change aspects of the constitution affecting it alone, it would have to pass said

amendment through both the federal parliament and its own legislative assembly.

Scott Reid has suggested that "it should be an easy matter" for a province to pass, pursuant to section 43, a constitutional resolution incorporating TELs that would subsequently be presented to the federal government with a request to pass an identical resolution (Reid 1995a). While it would be well within the authority of a subsequent provincial government to repeal the newly entrenched TELs using the same amending formula, the political costs—any constitutional amending process involving more than one level of government is slow, laborious, and public—would act as a deterrent.

While no province has invoked section 43 to entrench tax and expenditure limitations, there have been six requests by provinces for bilateral amendments under section 43 since 1982.[9] The most recent of these was an amendment to the terms of the Union of Newfoundland that provided for the abolition of the province's denominational school system. The amendment, supported by 73% of the population in a referendum, was approved by a unanimous resolution in the Newfoundland House of Assembly. This popular provincial support was influential in recommending the amendment to federal Parliament,[10] and provides a strong argument for a province to involve the public in the process of entrenching provincial TELs.

In fact, it has been argued that a constitutional convention has developed requiring direct citizen involvement in the amendment process. According to Peter Hogg, Dean of Osgoode Hall Law School, "There is no escape from the conclusion that the Constitution's requirement of legislative ratification of the text of any amendment must be supplanted by ample opportunities for public participation before the text has been settled" (2000: 4.8(d); see also Russell 1992: 5). While referring specifically to amendments affecting the country as a whole, the same applies to amendments affecting one or several, but not all of the provinces, as evidenced in Newfoundland's use of a referendum prior to enacting the most recent changes to its Terms of the Union. The provinces of British Columbia[11] and Alberta[12] have formalized this by passing laws requiring any constitutional amendment to be put to a referendum prior to the assent of the Legislature.

Unilateral amendment—section 45

A second constitutional option available to the provinces is the use of section 45, which provides that "the legislature of each province may exclusively make laws amending the constitution of the province," with a few exceptions. This authorizes a province to amend any part of its constitution—even those provided for in the *BNA Act*—unilaterally. The Supreme Court of Canada has held that a law is an amendment to the constitution of a province if "it bears on the operation of an organ of government of the province,"[13] such as laws respecting the provincial public service, and the powers and privileges of the legislative assembly (Hogg 2000: 4.7).[14]

There is an added complication, however, to the use of section 45 in altering a provincial constitution. A constitutional change under section 45 can be affected by a simple act passed by the respective provincial legislature. As such, it can just as easily be repealed: a legislative body is not bound by self-imposed restraints regarding the content, substance, or policy of its enactments (Hogg 2000: 12.9). Even if a province were to use section 45 to entrench TELs into its constitution, the law enforcing TELs could be repealed just as easily as an ordinary statute. This lies in sharp contrast to the constitutions of most American states, whose amendment most often requires the direct participation or involvement of the electorate. This ease of amendment significantly reduces the costs involved in repealing TELs and, consequently, their usefulness.

Conclusion

Of the two constitutional amending formulas available, it seems clear that an amendment under section 43, specifically requiring enabling legislation approved at both the provincial and federal levels is the more secure from subsequent alteration and would be more insulated from subsequent political changes and obfuscation.

Procedural restraints—"manner and form"

Legislatures may also be bound by self-imposed procedural restraints as to the "manner and form" in which statutes (laws) are to be enacted. In other words, an additional layer of legislative protection can be offered to laws by stipulating the manner in which they can be altered. While scholars remain divided over whether anything short of a constitutional rule can bind a "sovereign" legislature,[15] self-imposed procedural restraints have been upheld by the courts.[16] However, it is important to recognize that ambiguity and uncertainty surround the applicability of "manner and form" procedural constraints on parliaments.

An example of how a "manner and form" restriction can influence legislation is the procedural restriction on future changes to the *Constitution of Alberta Amendment Act, 1990*.[17] This Act, passed unilaterally by the provincial

legislature pursuant to section 45 of the *Constitution Act, 1982*, recognized an accord between the province and the Métis Settlement General Council, granting the Métis title to 1.28 million acres of provincial land. In order to protect this accord, section 7 stipulated that a bill that would amend or repeal this Act could only be passed by the provincial legislature if first approved by a majority of the members of each Métis settlement in a plebiscite.

Accordingly, a province could implement a law enforcing TELs that required the government to call a referendum before amending the legislation, being careful to stipulate in the original tax and expenditure legislation itself that this manner-and-form requirement is unmistakably addressed to the future *action* of the enacting legislative body and not the *substance* of their legislation.[18] In other words, if a law enforcing TELs were passed in conjunction with a referendum, the act repealing the fiscal legislation would also have to be approved in a referendum.[19]

Conclusion

The existence of discrete, written state constitutions in the United States has facilitated experimentation with different solutions to national problems, as well as the resolution of problems peculiar to particular states (Duchacek 1988, Friedman 1988, Galie 1988, Kincaid 1988, Tarr 1998). Their relevance becomes particularly clear when comparing the record of states with constitutionally entrenched TELs, debt limits, or balanced-budget requirements with a federal government with no such constraints.

While the implementation of TELs built on the American model may be complicated by the fact that Canada's provinces do not have distinct written constitutions, provinces do have constitutions that are within their power to amend by using either the unilateral amending formula of section 45 or the bilateral amending formula of section 43.

Despite legal and academic uncertainty surrounding the question of whether a legislature may be bound by self-imposed procedural restraints, a "manner and form" referendum stipulation in a law enforcing tax and expenditure limitations has the potential to increase the political costs of repealing such a measure. If upheld, this restriction would force the government to go directly to the electorate to justify their proposed constitutional amendment. In the absence of war or national emergency, citizens would likely not easily be convinced of the need for new spending and taxes.

The most certain way of entrenching effective TELs, however, would be the amending formula of section 43. If a section-43 amendment were to be accompanied by a referendum, as is required in the provinces of British Columba and Alberta for amendments to the Constitution of Canada, the federal Parliament would have no grounds upon which to refuse the request. The involvement of citizens in a referendum also means that no future government could take the decision to repeal the constitutional TELs lightly.

Notes

1 *Recall and Initiative Act* [R.S.B.C. 1996] Chapter 398. While other provinces (Alberta in 1913 and Manitoba in 1916) have passed legislation making initiatives possible, Manitoba's legislation was struck down by the courts in 1922 and Alberta's legislation was repealed in 1958 after the Deputy Attorney General gave the opinion that the legislation was unconstitutional. For further discussion, see Boyer 1982, Connacher 1991, Hogg 2000: 14.2(d), and Cooper 2001.

2 Supplanted by section 45 of the *Constitution Act, 1982*.

3 Christian Wiktor and Guy Tanguay have used ten categories to classify the various statutes that make up provincial constitutions, including general constitution acts, intergovernmental relations, executive and legislative power, fundamental and language rights, and emergency measures (Wiktor and Tanguay 1997).

4 According to section 52(2) of the new 1982 Act, the Constitution of Canada includes the *Constitution Act* itself, the 30 acts and orders scheduled to this Constitution, as well as any amendments to any of the above. Relatively recent decisions of the Supreme Court of Canada suggest that the definition of section 52(2) may not be exhaustive. See *New Brunswick Broadcasting Co. v. Nova Scotia* [1993] 1 S.C.R. 319. This has raised "the possibility of future additions, which destroys the constitutional certainty afforded by the list of 30 constitutional instruments and amendment scheduled to section 52(2)" (Hogg 2000: 1.4).

5 Similar but separate provisions exist in the Manitoba, Alberta, Saskatchewan, and Newfoundland Acts.

6 For further discussion about the problem of defining provincial constitutions, see Banks 1986 and 1991: 34–40.

7 In the case of British Columbia, the ease of amendment has actually encouraged the growth of government. For instance, the British Columbia Constitution

Act has been amended to remove any limits on the size of the cabinet, a development described as "a rather brutal expression of the executive dominance of the parliamentary process" (Sharman: 102–03). This illustrates the importance of entrenching, with special amending procedures, constitutional limitations on the scope and size of government.

8 The general amending formula (section 38), requires the assent of the federal Parliament and two-thirds of the provinces representing 50% of the population. The unanimity procedure (section 41) requires the assent of Parliament and all of the provinces. The federal Parliament alone (section 44) can amend provisions relating to the executive, House of Commons, or Senate (Hogg 2000: 4.2).

9 These include: (1) a 1987 amendment initiated by the province of Newfoundland to extend to Pentecostals the same educational rights enjoyed by seven other constitutionally protected denominations; (2) a 1993 amendment to the Canadian Charter of Rights and Freedoms to entrench the equality of the English and French in New Brunswick; (3) a 1993 amendment to Prince Edward Island's Terms of Union to substitute a bridge or fixed link for the ferry service guaranteed in the Constitution; (4) another amendment to Newfoundland's Terms of Union, in 1996; (5) a resolution passed unanimously by the National Assembly of Quebec to remove the requirement for publicly funded denominational schooling in Quebec; (6) a 1997 amendment to Newfoundland's Terms of Union to abolish the province's denominational school system.

10 Senate of Canada (1997), *Report of the Special Joint Committee on the Amendment of Term 17 of the Terms of the Union of Newfoundland*, December.

11 *Constitutional Amendment Approval Act* [RSBC 1996] Chapter 67. British Columbia's law was first passed in 1991.

12 *Constitutional Referendum Act* [RSA 2000] Chapter C-25.

13 *OPSEU v. Ont*. [1987] 2 S.C.R. 2, at 33.

14 While section 45 may not expressly authorize amendments to the Constitution of Canada, one of Canada's foremost constitutional experts, Peter Hogg, argues that it does authorize amendments to those parts of the Constitution of Canada that are considered part of the constitution of a province (Hogg 2000: 4.7). According to Hogg, if section 45 did not extend to provisions also making up the Constitution of Canada, it would have "very little work to do."

15 The traditional camp of academic opinion maintains that parliamentary sovereignty is "continuing" in all respects and that a legislature can amend or repeal any legislation whatsoever by a simple majority (Wade 1955; Elliott 1991). Since the 1950s, this orthodox view has been increasingly challenged by academics who argue that parliamentary sovereignty is "self-embracing" so that a legislature is obliged to obey the current law with respect to the procedure or "manner and form" in which laws are passed (see Winterton 1980: 175–77; Hogg 2000 12.3(b)).

16 The leading case is *R. v. Mercure* [1988], in which the Supreme Court of Canada struck down a Saskatchewan statute enacted in English only, because of the existence of a bilingual requirement that had been passed by the legislature's predecessor. According to the court, the Saskatchewan Legislature was free to repeal, but not ignore, the bilingual requirement, which would stand unless expressly repealed by the correct manner and form—in this case, by a statute enacted in both English and French. The Mercure ruling was consistent with the Parliamentary rule that dictates no legislature can bind a successor. The case simply required the successor to act in accord with already established procedures. For further discussion, see Hogg 2000 12.3(b).

17 *Constitution of Alberta Amendment Act*, 1990 [RSA 2000], Chapter C-24.

18 See *Re Canada Assistance Plan* [1991] 2 S.C.R. 525. In this case, which considered the effect of a statutory requirement that provinces must consent to any amendment to certain cost-sharing agreements between Ottawa and the provinces, the Court determined that provincial consent was not a manner-and-form requirement because it expressly applied to amendments to the agreements rather than the legislation itself. According to the Court, a statute—especially a non-constitutional statute—must be very clear in indicating "an intention of the legislative body to bind itself in the future" (*Ibid*., at 563).

19 One caveat that must be considered when drafting a law enforcing TELs is to include a manner-and-form provision and that it must be drafted in such a way that it could not possibly be regarded as an attempt to restrict the substance of future legislation. Peter Hogg gives the example of "an ostensibly procedural requirement which is virtually impossible of fulfillment, such as approval by eighty per cent of voters in a referendum." Presumably the courts would determine what was an unreasonable or "virtually impossible" requirement (Hogg 2000: 12.3(b)).

Conclusion

Canada and most of the provinces have achieved balanced budgets but must now embark on the next step towards fiscal discipline. Laws enforcing balanced budgets have promoted the balancing of expenses and revenues but have not constrained the growth of government. The nation's next step toward fiscal development is the introduction of constitutionally entrenched tax and expenditure limitations.

Laws enforcing tax and expenditure limitations have generally proven effective in the United States at both the state and the local level in constraining the growth of government spending and taxation. Generally, those states that have implemented TELs have experienced reductions in the growth rate of government spending and taxation.

Although Canada's constitutional system is not as open to such types of initiatives, there are options. The best alternative available at this point, given our constitutional development, is a bilateral amendment approved by the respective provincial legislature as well as the federal legislature. This process should be buttressed by a "manner and form" provision requiring any subsequent change to the legislation to be approved by referendum. In addition, the initial legislation itself should be approved provincially via a referendum.

The path to balanced budgets has been a difficult one; Canada's next step towards fiscal discipline is the implementation of tax and expenditure limitations. It is a critical development, necessary both to protect the gains achieved over the last decade as well as to propel the country forward to greater fiscal discipline. The return to the nation and the provinces that enact such legislation will be enormously positive, both in the short and the longer run. The implementation of TELs in Canada is not the final step in the journey towards fiscal responsibility but it is the next step.

Appendix A: Provincial laws prescribing balanced budgets and TELs

Appendix A provides a brief overview of the laws in Canadian provinces that prescribe balanced budgets and tax and expenditure limitations.

British Columbia

Balanced Budget Legislation—*Balanced Budget and Ministerial Accountability Act*

- enacted on April 1, 2002 (replaced the *Balanced Budget Act* of 2000)
- re-established prohibition against annual budget deficits beginning in 2004/05
- sets no limit on budgeted deficits in the interim except that the budgeted deficit amount cannot be exceeded
- requires that in years when a surplus is budgeted, at least 50% of that surplus amount be achieved
- allows for up to 20% salary penalties for members of the Executive Council if budget objectives are not achieved

Tax and Expenditure Limitations—none in place

Alberta

Balanced Budget Legislation—*Fiscal Responsibility Act*

- enacted in Spring, 1999 (replaced the *Balanced Budget and Debt Retirement Act* of 1995)
- deficits are specifically precluded on a consolidated annual reporting basis
- each fiscal plan must contain a cushion, calculated as a minimum 3.5% of estimated revenue, to provide for contingencies
- three quarters of any surplus is earmarked for debt reduction; specifically, the legislation states that no more than 25% of any unexpected surplus can be used for expenditure or revenue reduction purposes
- the Lieutenant Governor can declare an emergency enabling additional spending
- a specific debt-reduction plan was included in the legislation and called for the elimination of net debt (direct debt in excess of financial assets—referred to as “Crown debt”), no later than fiscal year 2009/10
- requires a minimum payment of $100 million until such time as the Crown debt was completely eliminated unless the province was ahead of its debt retirement schedule
- 1999 amendment further required that gross debt be fully amortized no later than 25 years after the elimination of net debt

Tax and Expenditure Limitations—none in place

Saskatchewan

Balanced Budget Legislation—*Balanced Budget Act*

- enacted May 18, 1995 and amended in 2001
- requires the Minister of Finance to submit a four-year fiscal and debt management plan
- under the 1995 law, the deficit calculation was made over the course of the four-year plan: total forecasted revenues for each four-year plan must have exceeded total expected spending; the 2001 amendments changed the deficit calculation to an annual estimate
- the Government of Saskatchewan is precluded from operating in a deficit position in any given fiscal year
- legislation allows for three circumstances within which deficits may occur:

    - natural disaster
    - state of war
    - reduction in revenues of more than 5% due to something other than changes in taxation
- proceeds from the sale of Crown Corporations cannot be used to augment operating expenses
- a deficit not authorized by the legislation (see deficit cases permitted above) requires an equal or larger surplus in the following fiscal year
- the 2001 amendments also instituted penalties ranging between 20% and 40% of pay for members of the Executive Council when spending exceeds revenues in a manner not permitted by the Act
- in a separate but related piece of legislation, the Government of Saskatchewan established the Fiscal Stabilization Fund, from which funds can be drawn in periods of slow revenue growth (decline) in order to ensure continued balanced budgets

Tax and Expenditure Limitations—none in place

Manitoba

Balanced Budget Legislation—*Balanced Budget, Debt Repayment and Taxpayer Accountability Act*

- enacted November 3, 1995
- prohibits the Government of Manitoba from incurring a negative balance
- transfers from the Debt Retirement Fund and proceeds from the sale of Crown Corporations are precluded from revenue calculations when determining fiscal balance
- allows for three circumstances within which deficits may occur:
    - natural disaster;
    - state of war;
    - reduction in revenues of more than 5% due to something other than changes in taxation
- a deficit in any particular year, outside of the confines of the allowable deficits delineated above, requires an equal or larger surplus to be recorded in the following year
- penalties ranging from 20% to 40% of pay for members of the Executive Council were implemented for periods when spending exceeds revenues in a manner not permitted by the Act
- also created the Debt Retirement Fund
- transfers from the operating fund of the government will be made to the Debt Retirement Fund in an amount equal to, or greater than, the following amounts:
    - $96.4 million
    - 1% of the total net general purpose debt and the net pension liability
- adjustments are permitted to the amounts transferred as established in the Act
- any surpluses remaining are to be transferred to the Fiscal Stabilization Fund, the purpose of which is to assist in stabilizing the fiscal position of the government from year to year

Tax and Expenditure Limitations—*Tax Referendum Requirement*, section 10 of *The Balanced Budget, Debt Repayment and Taxpayer Accountability Act*

- the government cannot present legislation to increase the rate of any tax imposed by the following acts, unless it first puts the question of the advisability of proceeding with such an increase to the voters in a referendum, and a majority of the persons who vote in the referendum authorize the government to proceed with the changes
    - The Health and Post Secondary Education Tax Levy Act
    - The Income Tax Act
    - The Retail Sales Tax Act
    - Part I of The Revenue Act
- permits tax rate increases if the increase results from a change in federal tax laws and is necessary to maintain provincial revenue or give effect to a restructuring of tax authority between the federal and provincial governments; and/or if the increase in a particular tax rate is offset by a matching decrease in another tax (tax neutral change)
- does not prevent the government from introducing new taxes

Ontario

Balanced Budget Legislation—Balanced Budget Act

- enacted in December, 1999
- requires that expenditures for the province not exceed revenues in any given year beginning in 2001
- requires that the Minister of Finance present a balanced budget
- includes several exceptions:
  - natural disaster;
  - state of war;
  - reduction in revenues of more than 5% of the previous year's revenues due to something other than changes in taxation.
- changes in accounting policies leading to deficits are not included in the calculation of annual deficits
- act imposes penalties on members of the Executive Council if a deficit exists in excess of 1% of revenues and a balanced or surplus budget existed the previous year; salary penalty is a 25% reduction and may be increased to a 50% reduction if the deficit persists

Tax and Expenditure Limitations—*Taxpayer Protection Act*

- enacted in December 1999
- prohibits an increase in an existing tax and the creation of a new tax unless approved by popular referendum
- considers a delay in, or cancellation of, an already announced tax reduction as a tax increase
- includes taxes implemented under the following:
  - Corporations Tax Act
  - Education Act
  - Employer Health Tax Act
  - Fuel Tax Act
  - Gasoline Tax Act
  - Income Tax Act
  - Provincial Land Tax Act
  - Retail Sales Tax Act
- includes several exceptions to the rule:
  - the increase or new tax is not designed to generate a net increase in the amount of provincial revenues
  - the increase or the new tax is a response to changes in federal tax laws and is necessary to maintain provincial revenues
  - the increase or the new tax is required to effect a restructuring of tax authority between the federal government and one or more provincial governments or between the Province and one or more municipalities or school boards
  - the increase or the new tax is required as a result of the reorganization or restructuring of one or more Crown agencies
- does not apply to newly elected parties if there was a clear statement of intent to raise taxes made and submitted to the Chief Electoral Officer during the campaign

Quebec

Balanced Budget Legislation—*Balanced Budget Act*

- enacted in December, 2001; amended the 1996 Act
- simply prohibits the incurrence of a budget deficit
- any overruns up to $1 billion may be incurred within a single year but must be matched by an equivalent surplus in the following fiscal year
- if the Government achieves a surplus in a fiscal year, it may incur overruns in subsequent fiscal years up to the amount of that surplus
- the Government may operate in deficit for more than one year and exceed the $1 billion threshold if the deficit is a result of:

- a disaster
- a significant deterioration of economic conditions
- a change in federal programs or transfer payments to the province that would substantially reduce transfers to the Government

- the Minister of Finance is required to submit a multi-year plan (maximum of 5 years) that delineates the manner in which surplus funds will be generated to offset previous deficits; must cover 75% of the overruns in the first 4 years of the plan

Tax and Expenditure Limitations—none in place

New Brunswick

Balanced Budget Legislation—*Balanced Budget Act*

- enacted May 7, 1993
- the government's revenues will be sufficient to cover its aggregate expenditures between April 1993 and March 1996
- the government's revenues will be sufficient to finance normal expenditures in each fiscal period (defined as a consecutive four-year period)
- overriding goal of the Act is to have a balanced budget over a four-year period

Tax and Spending Legislation—none in place

Nova Scotia

Balanced Budget Legislation—*Financial Measures Act*

- enacted in 2000 (replaced the Government Expenditures Act of 1993)
- beginning in the 2002/03 fiscal year, the Minister of Finance is precluded from tabling a budget with a deficit
- If a deficit is expected, the Minister of Finance must provide details as to the exact reasons a deficit is expected
- the deficit must be recovered no later than the following fiscal year
- deficits incurred for the following reasons are not included in the calculation of a deficit:
  - natural disaster;
  - losses associated with a sale, dissolution, closure or other restructuring of a government service organization or government business enterprise that are not anticipated to have a similar financial impact on future fiscal years
  - debt-servicing costs that exceed the amount budgeted for debt servicing

Tax and Expenditure Limitations—none in place

Prince Edward Island

Balanced Budget Legislation—none in place

Tax and Expenditure Limitations—none in place

Newfoundland

Balanced Budget Legislation—none in place

Tax and Expenditure Limitations—none in place

Appendix B: State laws prescribing TELs in the United States

	Adopted	Constitutional or Statutory Limit	Applies to	Nature of Limit
Alaska	1982	Constitutional	Appropriations	Growth of population and inflation
Arizona	1978	Constitutional	Appropriations	7.23% of personal income
California	1979	Constitutional	Appropriations	Personal income growth and population
Colorado	1991	Statutory	Appropriations	General fund appropriations and growth limited to 6% of prior year's appropriations
	1992	Constitutional	Expenditures & Revenue	Spending limited to growth of population and inflation. Tax increases require voter approval
Connecticut	1992	Constitutional	Appropriations	Greater of personal income growth or inflation
Delaware	1978	Constitutional	Appropriations	98% of estimated revenue
Florida	1994	Constitutional	Revenue	5-year average personal income growth
Hawaii	1978	Constitutional	Appropriations	3-year average personal income growth
Idaho	1980	Statutory	Appropriations	5.33% of personal income
Iowa	1992	Statutory	Appropriations	99% of adjusted general fund receipts
Louisiana	1979	Statutory	Revenue	Ratio to personal income in 1979
	1993	Constitutional	Appropriations	Per-capita personal income growth
Massachusetts	1986	Statutory	Revenue	Growth of wages and salaries
Michigan	1978	Constitutional	Revenue	9.49% of prior year's personal income

	Adopted	Constitutional or Statutory Limit	Applies to	Nature of Limit
Mississippi	1992	Statutory	Appropriations	98% of projected revenue
Missouri	1980	Constitutional	Revenue	5.64% of prior year's personal income
	1996	Constitutional	Revenue	Voter approval required for tax increase over $50 million or 1% of state revenues
Montana	1981	Statutory	Appropriations	Personal income growth
Nevada	1979	Statutory	Expenditures	Growth of population and inflation
New Jersey	1990	Statutory	Appropriations	Personal income growth
North Carolina	1991	Statutory	Appropriations	7% of state personal income
Oklahoma	1985	Constitutional	Appropriations	12% adjusted for inflation; 95% of certified revenue
Oregon	1979	Statutory	Appropriations	Personal income growth
Rhode Island	1992	Constitutional	Appropriations	98% of projected revenue
South Carolina	1980 & 1984	Constitutional	Appropriations	Personal income growth
Tennessee	1978	Constitutional	Appropriations	Personal income growth
Texas	1978	Constitutional	Appropriations	Personal income growth
Utah	1988	Statutory	Appropriations	Growth in population and inflation
Washington	1993	Statutory	Expenditures & Revenue	Growth in population and inflation; tax increases beyond limit need voter approval

Source: Public Interest Institute, available on the Internet at www.limitedgovernment.org. Additional information, including the actual acts, are available on a state-by-state basis.

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