

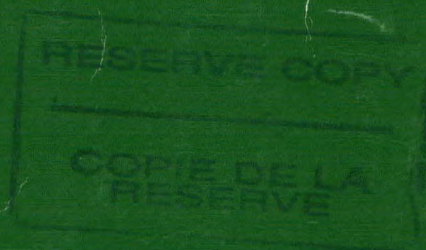
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# The Budget Process

A paper on budget secrecy and  
proposals for broader consultation

The Honourable Allan J. MacEachen  
Deputy Prime Minister and Minister of Finance

April, 1982

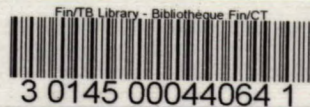


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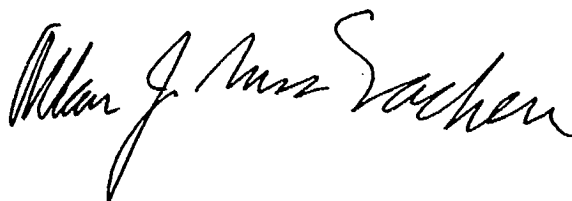


Department of Finance  
Canada

Ministère des Finances  
Canada

## Preface

In reply to a question in the House of Commons on December 10, 1981, I said: "It may be that the House of Commons ought to consider, at some time, revising the attitude towards budget secrecy to make it possible to have a more meaningful consultation prior to the budget presentation." This paper is intended to stimulate the public discussion necessary for modifications in the tradition of budget secrecy to command public support. The paper also sets out methods of increasing meaningful public input to the process of budget formulation and the subsequent consideration of budget measures. The implementation of these proposals would be an important step toward a more open budget process.

A handwritten signature in black ink, reading "Allan J. MacEachen". The signature is fluid and cursive, with the first name "Allan" and last name "MacEachen" clearly legible.

Hon. Allan J. MacEachen  
Deputy Prime Minister and  
Minister of Finance

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## Introduction

An effective, well-understood budgetary process – the process by which tax proposals are conceived, developed and subsequently implemented by Parliament – is central to the proper functioning of government.

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Criticisms of the existing process, shrouded as it is in traditional secrecy, have been heard over the years from the public and also from ministers of finance. As tax changes have become more complex and more pervasive in their consequences for individual and corporate Canadians, suggestions for improvements to budget decision-making have become more frequent. They have centered on the need to open up both the budget-making process and the legislative procedures to more meaningful public involvement.

## Background

Ministers of Finance have for many years publicly expressed concern about the budgetary process and the constraints that budget secrecy imposes on the preparation of budgets.

The Honourable Walter Gordon has observed: "The old established tradition – according to which budgets are prepared in the Department of Finance, without consultation or discussion with other officials or outside experts, and without informing the Cabinet of what is going to be proposed until a few hours before presentation to the House – is out of date and should be changed."

In 1969 the Honourable Edgar Benson as Minister of Finance stated: "What I would like is for the Minister to be able to present a tentative basis of his proposal to Parliament for discussion. The way it is now, the Minister of Finance has to present highly important advice from a very small group of expert advisers in a form which the government can understand, and on this the government stands or falls, and I think this is wrong."

The Honourable Donald Macdonald, in his budget speech of May 1976, said: "the time has come to consider whether some of the long-standing traditions that surround the budgetary process should be modified to serve better the needs of today." He added: "two aspects of the budgetary process require particular study. The first is the strict rule of secrecy that applies to the budget prior to its introduction. The second is the procedure for consideration of the budget proposals following their introduction in Parliament."

The Honourable John Crosbie stated in 1979: "I hope it will be possible in the coming session of Parliament to examine the entire process of budget-making... We could begin by referring the entire area to a Committee of the House of Commons."

This paper identifies specific areas of concern and suggests ways in which they might be addressed.

## **The Pre-Budget Process**

There have long been extensive pre-budget consultations. Individuals and organizations submit specific recommendations for tax changes throughout the year, and many prepare comprehensive representations or submissions in the pre-budget period. A large number of discussions are held with the Minister of Finance and officials of his department. Though extensive, these consultations are often disappointing for both sides. Those who make representations cannot know in advance how their submissions will relate to the budget options which the government has under consideration. They therefore cannot ensure that their representations will have maximum impact. For the Minister and his officials, budget secrecy limits the frankness of the government response and the thoroughness of the subsequent discussion.

Several steps could be taken to encourage more meaningful pre-budget consultations. These relate to the tradition of budget secrecy, the establishment of consultative bodies, the release of pre-budget materials, and the timing of the budget.

## **Budget Secrecy**

Changing the tradition of budget secrecy is the key to a more open pre-budget process.

The concept of budget secrecy, like many of our constitutional practices, has been inherited from the British parliamentary system. It originated at a time when the sole purpose of a budget was to raise government revenues by way of tariffs or excise taxes. Precautions had to be taken to prevent persons from profiting by arranging their affairs with prior knowledge of budget changes. The original concept of budget secrecy was thus relatively narrow: to protect against financial advantage or gain. However, the concept was broadened following budget leaks in the United Kingdom that resulted in the resignation of a cabinet minister in 1936 and the Chancellor of the Exchequer in 1947. In the latter case, the Chancellor resigned because of a premature disclosure to a reporter while entering the House to present his budget, even though a parliamentary committee appointed to investigate the matter concluded that no serious consequences or private gain resulted from the disclosure. Thus the concept of budget secrecy evolved to the point of shrouding in secrecy any and all matters that were to be included in a budget.

The issue of budget secrecy arose in a different form in Canada in 1963. The Honourable Walter Gordon engaged outside experts to assist in the preparation of his budget of June, 1963, and was criticized for doing so.

At that time, the extent of the concept of budget secrecy was explained in the House of Commons by the Honourable George Nowlan on June 19, 1963, when



he stated: "I do not think the public generally realizes the way in which secrecy has always been a traditional part of the making of a budget. The drafting is done in various sections, not one of which can be connected with another so that one can understand what is being done. ...That is the accepted practice arising out of a long history and a long tradition indicating the absolute necessity of avoiding a leak, consciously or unconsciously, and of assuring the public that the Minister of Finance, like Caesar's wife, is above suspicion."

The consequence of a tradition of such absolute secrecy is that ministers of finance and their officials are seriously constrained in the information they may disclose, particularly as the date of a budget approaches. When a political controversy might be precipitated by a budget leak, however trivial it might be and regardless of how it occurs, meaningful pre-budget consultations are naturally inhibited.

The tradition also inhibits consultations within the government. The recent introduction of the government's expenditure management system has greatly expanded the need for extensive interdepartmental and interministerial discussions in the pre-budget period. An initial stage of budget preparation is the establishment of the government's fiscal framework, the setting of priorities, and the determination of expenditures to be reflected in the various policy envelopes. In addition, the new rules within the envelope system for dealing with those tax expenditures with significant policy implications have greatly enlarged the need for consultations among officials of different departments. The effectiveness of these internal improvements is seriously impaired because the tradition of budget secrecy frustrates open discussion in the pre-budget period.

The extreme interpretation of budget secrecy does not take account of the broad economic and social role which modern budgets must play. The budget is no longer confined to fiscal, monetary and tax policy considerations. It has become one of the most significant events in the political calendar for the unveiling by governments of the specific actions they are taking over the entire range of public policy. The tax system itself is no longer concerned only with raising revenues and has increasingly become an important instrument in pursuing a variety of the social and economic objectives of the government. Indeed, these multiple objectives contribute to the complexity of the tax system.

In this context, the concept of budget secrecy must be defined in a manner consistent with modern budget realities. The minister of finance and his officials must be discreet. Outsiders must not be in a position to benefit by being privy to knowledge of budget measures before the information is made public. But budget matters are inevitably complex, and ministers of finance should be free to seek outside advice on measures under consideration. Neither they nor the department should be denied the opportunity to engage outside consultants and to seek professional advice in formulating budget proposals.

A redefinition of budget secrecy thus is necessary to ensure that broader consultation and a more meaningful response to pre-budget submissions from the public is possible. Clearly, the tradition of budget secrecy frustrates both the government and the public. The government is not saddled with a similar tradition in formulating other initiatives – the introduction outside of the budget context of new social and economic programs or changes in existing programs – in which the opportunity for private gain from prior knowledge often exists.



Few would dispute the view that the tradition of budget secrecy should be relaxed as a precondition to a more open budget process. The question is how budget secrecy, which is founded on tradition rather than law, can be redefined. It would be possible for a government to indicate that it intended to open up the budget process by initiatives based on a less severe definition of budget secrecy. However, such an opening up of the process would have to command support. This support will be based to an important extent on the improvements to the budget process that it would allow.

## **Consultative Bodies**

The tradition of budget secrecy has effectively prevented ministers of finance from establishing consultative bodies to which they might refer initiatives in the areas of tax or fiscal policy that they have under consideration for incorporation in a forthcoming budget. A narrowing of the tradition would permit the Minister of Finance to consider establishing one or more task forces or consultative groups to which particular problems or proposed budget measures might be referred for outside consideration.

The precise nature and scope of such consultative bodies would vary from minister to minister and depend on the particular problems to be addressed. The important point is that the relaxation of budget secrecy should permit a minister of finance the flexibility to establish whatever consultative arrangements he thinks are necessary to bring advice from the private sector to bear on budget decisions.

An additional possibility in the field of taxation policy would be the establishment of a permanent advisory committee consisting of outside tax specialists to provide advice on a regular basis to the minister of finance and his officials. This would be similar to the Tax Advisory Committee established by Revenue Canada-Taxation to provide a forum for the exchange of information. The effectiveness of any such advisory committee naturally would depend in substantial measure on the ability of the minister and government officials to discuss issues frankly.

The establishment of a tax advisory committee and of consultative bodies along the lines discussed above has widespread support. Earlier this year a special committee formed under the auspices of the Canadian Tax Foundation, an independent organization formed to engage in research into all aspects of taxation, was invited by the Minister of Finance to prepare a comprehensive report on ways by which the budget and tax legislative processes might be improved. The report, submitted in March, recommended the increased use by the government of outside consultants and consultative committees.

Over the years a number of consultants have been engaged on special assignments and tax specialists have been brought into the department under the government's Executive Interchange Program. Indeed, the use of individual outside consultants and professional advisers has increased in recent years. This is a development that should actively be encouraged. It should not be criticized as a departure from the normal budget process, as has in the past been suggested, or be prevented by considerations of budget secrecy.

The Canadian Tax Foundation Committee also recommended the establishment of several types of consultative bodies:

- ad hoc committees to advise on specific technical tax questions particularly in highly specialized areas of the law, and
- a Finance Advisory Committee consisting of tax professionals, economists and government officials to act as a sounding board for the minister and as an early warning system for developments in the private sector.

These are positive innovations that could be extremely helpful to the Minister of Finance and to his officials.

The use of consultative bodies may be particularly appropriate for dealing with those tax measures that do not take effect until some time after the date of their announcement. The special committee of the Canadian Tax Foundation pointed out that proposed tax changes could be discussed more openly in pre-budget consultations if they were not to take effect immediately. Since the general public would be informed and able to arrange their affairs before the changes became effective, there would be less risk that groups or individuals consulted by the Minister prior to the budget would be able to use advance information for private gain.

The effective dates for tax changes already vary considerably. However, delays in effective dates may have serious revenue or policy implications. In any budget, a number of changes also are advantageous to taxpayers who may be reluctant to have the benefits postponed. Indeed, a delay in some instances could result in a postponement of important business or investment decisions. This is obviously a complex issue which merits further discussion and analysis.

The report also recommended the establishment of a Tax Reform Commission, a permanent body which would be independent of the government and Parliament. The proposed commission would be patterned on the Law Reform Commission which was established by statute with the mandate of making proposals for the betterment and reform of Canadian federal laws. The Law Reform Commission is composed of full-time commissioners supported by a permanent research staff with its own resources. Among the responsibilities of a Tax Reform Commission, as proposed by the report, would be "to review the tax structure regularly and make recommendations for its improvement". It would also be authorized to undertake studies and hold hearings with the objective of making recommendations to the Minister of Finance.

While the creation of such a body, structured primarily as a research organization outside the main budget decision-making process, might contribute to the study of tax issues, ad hoc consultative committees appear to offer a more effective mechanism for opening up the budget process. Ad hoc groups with precise mandates from the minister and with specialized membership would be better equipped to integrate the examination of tax and fiscal policy issues into the budget decision-making process. Ad hoc groups would also have the advantage of providing easier access to specialists, many of whom would be more willing to undertake assignments of a short-term nature. Such consultative groups would also be able to receive representations, to hold public hearings, and to make recommendations to the minister in a more flexible and timely manner.

## **Pre-Budget Materials**

The redefinition of budget secrecy would contribute to an improved framework within which public consultations in the pre-budget period could take place.

Other positive steps would be for a minister of finance to issue green papers, white papers, or other less formal documents providing information on certain policy or technical issues that he wanted to address in a future budget. This would inform those with a particular interest or expertise that an area of tax policy was under consideration and enable them to make representations before final decisions are taken.

There is, of course, no tradition or parliamentary procedure that inhibits a minister of finance before a budget from issuing discussion papers on possible tax initiatives or otherwise disclosing publicly that he is considering certain measures. The report of the special committee of the Canadian Tax Foundation placed considerable emphasis on the increased use of green or white papers and other consultative documents on tax issues. It pointed out that this technique effectively removes the subject matter of the paper from the veil of budget secrecy.

The release of background papers on certain policy initiatives or technical changes that are under consideration also would undoubtedly serve to improve the two-way communication process. This is particularly so in those complex areas of the law where the government cannot be expected to have all the information necessary for a full assessment of the impact of proposed changes.

The usefulness of the dialogue emerging from such papers could be enhanced further if the papers were to be subject to a conference or to public hearings the record of which would be published. An ad hoc committee or other consultative body described in the preceding section could serve usefully as a forum for hearings on particular issues. Some issues would undoubtedly be suitable for discussion at professional conferences, such as those organized by the Canadian Institute of Chartered Accountants, the Canadian Bar Association or the Canadian Tax Foundation.

It must be emphasized, however, that it is simply not practicable to contemplate the issue of consultative documents covering all or even most of the measures that the minister has under consideration in preparing for a budget. Time limitations impose restrictions on the use of processes that may require years rather than months. Many budget measures also cannot properly be dealt with in isolation, but must be considered in the broader context both of the government's fiscal stance and of other budgetary changes. Finally, it must be noted that there have been several formal papers since the white paper on tax reform dealing with such matters as the tax treatment of charities, the manufacturers' sales tax, and the tax treatment of capital gains. In certain cases, the dialogue was extremely fruitful, but the experience following the release of some of these papers does not lead inevitably to the conclusion that policy papers would improve the quality of debate in all circumstances. Those with a vested interest often tend to dominate the discussion and the broader public interest is often not properly represented.



With these caveats taken into account, it remains clear that increased resort to policy papers or technical releases would provide a greater opportunity for outside input into budget decisions.

Such public consultations, of course, would continue to be reinforced by private consultations. Many taxpayers do not want their representations published, particularly those submissions containing confidential information. The consultation process, however revised, must recognize that much useful dialogue between the Department of Finance and individual taxpayers or their professional advisers is on a confidential basis and it would be inappropriate to require public disclosure of all submissions and representations.

### **Budget Timing**

The uncertainty as to the timing of the annual presentation of the budget is of particular concern to those making representations. When a budget date is finally settled upon, there is often insufficient time for organizations to prepare their pre-budget submissions carefully or to present them far enough in advance to allow for full consideration by the Minister of Finance and his officials. The establishment of a regular budget time each year would help to overcome this obstacle. Recent budgets have been presented in the autumn and it has been suggested that this become the normal practice. In this case, the important budget measures affecting individuals would ordinarily take effect only for the next taxation year, by which time the measures would already have received extensive post-budget consideration.

In addition, an autumn federal budget would have important benefits for the provinces. It would provide the necessary fiscal background and framework for the preparation of provincial budgets, which are generally presented in the late winter or early spring.

Of course, the setting of an annual date or time for the regular federal budget would not prevent the government from presenting budgets at other times or from introducing specific fiscal measures whenever circumstances warranted.

### **The Post-Budget Process**

In addition to interest in an opening up of the pre-budget process, there has been considerable public discussion in recent years of the post-budget process. No matter how much improvement might occur in the pre-budget consultative process, there will inevitably be budget proposals that will require alteration as the result of broader post-budget consideration by the public and by Parliament. The post-budget process therefore should both encourage public discussion and facilitate desirable changes.

There is no procedural method of ensuring that the political system will consistently favour worthwhile post-budget change. According to a longstanding practice, the Government must retain the confidence of the House of Commons for its budgetary proposals. This tradition, and the extensive

consequences of budgetary measures for the public, regularly make budgets the subject of intense political debate. Controversy may act either to inhibit post-budget changes or to promote them. What is important is that parliamentary processes allow for the thorough and timely consideration of budget measures.

## **Parliamentary Process**

Parliamentary process includes the procedures by which budget measures are introduced and become law. The discussion of this central aspect of post-budget process must be preceded by a short description of the main steps in parliamentary procedure.

The notification of tax changes comes with the tabling in the House of Commons of what are called Notices of Ways and Means Motions. These Notices may be tabled on budget night or during any sitting of the House. They give specific information about the proposed tax changes including the dates on which changes will be effective. Tax bills are subsequently introduced which, when enacted, give effect to the changes specified in the Notices of Ways and Means Motions and authorize the imposition of taxes on the effective dates.

The rules of the House of Commons require that tax bills adhere to the parameters described in the Notices of Ways and Means. For this reason, a new Notice of Ways and Means is often tabled prior to the introduction of a tax bill to take account of alterations in the initial tax proposals. The new Notice, containing the substance of the initial Notice as amended, then becomes the basis for the tax bill when concurred in by the House.

In recent years, ministers of finance have often added a step between the original tabling of Notices of Ways and Means Motions and the amended Notices on which tax bills have been based. The text of draft legislation has been tabled in the form of comprehensive Notices of Ways and Means. This has been done to allow affected taxpayers and their professional advisors an opportunity to comment on the details of the legislation before the tax bill or bills are introduced. When the House has been adjourned the texts have been published simply as draft legislation. The publication of draft legislation in either form has permitted many technical problems to be accommodated in the final legislation.

Once a budget bill is ready for introduction in the House of Commons, it follows the normal legislative process – first reading, second reading, consideration by a committee, report stage, and third reading – with the very important exception that the committee stage for tax bills takes place in the Committee of the Whole rather than in a standing committee. The Committee of the Whole includes all Members of the House of Commons, and its rules do not provide for the calling of witnesses.

The Senate also must approve tax legislation before it becomes law.

Much of the discussion of parliamentary process for budget measures has related to the long delays in the enactment of tax legislation and the need to

ensure that Members of Parliament and the Government have the benefit of the views of taxpayers and tax professionals during the consideration of legislation.

The tabling of draft legislation in the form of comprehensive Notices of Ways and Means Motions has provided for a significant input by the public and the legal and accounting professions into the development of tax legislation. However, the publication of draft legislation in this form remains a matter for ministerial decision on a case-by-case basis. It might usefully be encouraged as a standard part of the normal process for tax measures arising out of a budget.

The tax legislative process would also be enhanced if tax legislation were accompanied by technical explanations that would facilitate an understanding of each provision. Given the complexity of many of the provisions, this would aid the review of legislation both by the public and by Parliament.

A specific criticism of the present House of Commons rules governing the enactment of tax legislation is that they do not permit the calling of witnesses or the taking of evidence with respect to matters before the Committee of the Whole. This requires Members, on the clause-by-clause consideration of extremely complex legislation, to proceed without the direct participation of outside experts. It has been argued that there is thus no opportunity for the tax profession or public to contribute directly through the Committee process to the identification of deficiencies in the legislation in order to assist Members in making improvements.

To correct this it has been suggested that in addition to, or rather than, referring tax bills to the Committee of the Whole, certain bills or parts of bills be referred to a standing committee such as the Standing Committee on Finance, Trade and Economic Affairs. Another suggestion has been that technical amendments be separated from major budgetary changes – those having important tax policy and revenue implications – and be presented in separate bills. The latter suggestion rests on the incorrect assumption that there is a clear line of demarcation between purely technical and budgetary amendments. However the possibility of referring budget measures to a standing committee has recently received considerable attention.

The special committee of the Canadian Tax Foundation in their March 1982 report to the Minister of Finance proposed that, in addition to the normal parliamentary process, tax bills be referred to a new taxation sub-committee of the Standing Committee on Finance, Trade and Economic Affairs or that draft legislation be referred to the same sub-committee. After study by the taxation sub-committee tax bills would still be considered in Committee of the Whole.

A major drawback of such an innovation in the normal legislative process for tax bills is that the addition of another stage in all likelihood would lead to further delays between the time that proposed tax changes are announced and their enactment. If the other proposals in this paper are adopted and existing procedures are utilized fully, it is likely that the addition of another committee review would become less urgent.



It is possible under the existing House of Commons rules for a minister of finance to seek the referral of specific budget matters to a special or standing committee. This may be done through an ordinary motion setting out the terms of the reference. It would also be possible for a minister of finance to move a motion to refer draft legislation in the form of a comprehensive Notice of Ways and Means to a standing or special committee. Another possibility, but one which involves a departure from the normal legislative process and therefore requires the unanimous consent of the House, is referral of tax bills to a standing or special committee rather than to Committee of the Whole. In 1981, for example, Bill C-57, *An Act to amend the Excise Tax Act and the Excise Act and to provide for a revenue tax in respect of petroleum and gas*, was referred to the Standing Committee on Finance, Trade and Economic Affairs.

It also should be recognized that it has been the recent practice of the Senate Committee on Banking, Trade and Commerce to review the provisions of tax bills shortly after they have been introduced in the House of Commons. The Senate Committee engages outside consultants to assist in its deliberations, and it hears witnesses, including representatives of the departments of Finance and National Revenue. The review by this Committee is comprehensive and not only deals with important matters of substance but also gives detailed consideration to technical aspects of the legislation. This contributes substantially to the extensive analysis received by tax bills before their enactment.

The key to more effective parliamentary consideration of budget measures thus lies not so much in major reform to parliamentary procedures as in a more thorough and focussed discussion at each stage – from the budget debate through to the passage of budget legislation. This discussion can be improved through practices such as the tabling of comprehensive Notices of Ways and Means and the provision of technical explanations. It can also be helped by the use of standing or special committees where circumstances warrant.

## **Conclusion**

The budget process needs to be improved. A precondition for more meaningful pre-budget consultations is a redefinition of the tradition of budget secrecy to bring it into line with modern realities. Changes in the requirement for secrecy would make possible innovations such as the increased use of consultative groups with membership from outside the government. Improvements to budgetary and legislative processes can also be achieved through existing mechanisms – increased use of discussion papers, the provision of draft legislation, the introduction of technical explanations for amending legislation, and thorough consideration of budget measures within Parliament.

Public discussion is essential to the improvement of the process. It is hoped that this paper will receive the consideration of parliamentarians and members of the public so that a consensus may develop on the need for and direction of change.