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Canada

Department of Justice
Canada

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COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

FILED / PRODUIT

Date: November 16, 2022

CT- 2022-002

Annie Ruhlmann for / pour
REGISTRAR / REGISTRAIRE

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November 16, 2022

BY EMAIL

The Registrar
Competition Tribunal
Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, ON
K1P 5B4

Dear Sir/Madame:

Re: CT-2022-002 – *Commissioner of Competition v. Rogers Communications Inc. and Shaw Communications Inc.*

We ask that a copy of this letter and its attachment be provided to the panel members for the above noted proceeding.

During the opening day of oral hearings on November 7, 2022 Chief Justice Crampton indicated that it would be helpful for the Commissioner to clearly set out his position regarding balancing weights given that it is his burden to establish anti-competitive effects contemplated by section 96 of the Act.¹

The purpose of this letter is to set out the Commissioner's position at the outset of this proceeding, which will be the subject of further submissions in closing argument after the evidentiary portion of this hearing concludes.

The Commissioner's position is as follows:

1. The effects of a merger include a loss of allocative efficiency (deadweight loss) and redistributive effects (wealth transfer).²

¹ Transcript Day 1, November 7, 2022, p. 9, ll. 9-13.

² See Competition Bureau, Merger Enforcement Guidelines, October 6, 2011 (MEGs), paras. 12.21 to 12.31.

2. The Commissioner has filed expert evidence to assist the Tribunal in its assessment of the redistributive effects of the proposed merger of Rogers and Shaw. The expert report of Nathan Miller (the “Miller Report”) includes an estimate of changes in producer and consumer surplus, deadweight loss, and the transfer from consumers to producers from higher prices paid on the post-merger quantity.³ The expert report of Katherine Cuff (“Cuff Report”) includes an identification of average tax rate by income decile and for the Top 1%.⁴ The expert report of Lars Osberg (the “Osberg Report”) includes an estimate of the shareholdings of Rogers post-merger, the distribution of financial assets by income decile, and the distribution of expenditures on cell phone services by income decile.⁵
3. In its *Superior Propane* redetermination decision⁶ the Tribunal found that the redistributive effects of a merger can be measured in two ways. One way to consider redistributive effects is to identify what portion of a transfer of wealth is socially adverse and to add that socially adverse portion to the deadweight loss (“Socially Adverse Transfer”).⁷ Another way to consider redistributive effects is to weight changes in consumer surplus relative to producer surplus (“Balancing Weights”).⁸ In the Balancing Weights approach, the anticompetitive effects equal the weighted sum of changes in consumer and producer surplus.
4. The Canadian tax system can be informative of the relative weights to place on different income groups.⁹ A weight can also be identified that would result in the same anticompetitive effects as under the Socially Adverse Transfer approach. In addition, a balancing weight can also be calculated to find the relative weight to place on consumers that would equalize the change in weighted consumer and producer surplus such that if the weight were greater than the balancing weight then the merger would result in more harm than benefit.
5. The Commissioner provided the Respondents with a spreadsheet on October 12, 2022 setting out his position on both approaches to including redistributive effects in the anticompetitive effects. This spreadsheet is enclosed with the letter.
6. The following provides a narrative of the content of the spreadsheet.

³ Expert Report of Nathan H. Miller, September 21, 2011, exhibits 21, 23, and 27. Note that the change in deadweight loss is the sum of the change in producer and consumer surplus, therefore the change in producer surplus is equal to the change in deadweight loss less the change in consumer surplus.

⁴ Expert Report of Katherine Cuff, September 21, 2022, exhibit 4.

⁵ Expert Report of Lars Osberg, September 21, 2022, paragraph 11, tables 1.3 and 2.1.5 .

⁶ *Commissioner of Competition v. Superior Propane Inc.*, 2002 Comp. Trib. 16 aff'd 2003 FCA 53.

⁷ *Ibid.*, at paras. 365-368.

⁸ *Ibid.*, at para. 338.

⁹ *Ibid.*, at para. 110 (“If, for example, the lowest tax rate is 20 percent and the highest is 50 percent, there is clear indication that low-income individuals are favoured over high-income individuals; assigning a weight of 1.0 to the latter group, the corresponding weight on the former would be 2.5.”)

Socially Adverse Transfer

7. From the Cuff Report, three broad income groups can be identified in the Canadian tax system: (i) a low income group from the first to fourth income decile, (ii) a middle income group from the fifth to eighth income decile, and (iii) a high income group from the ninth to tenth income decile. While a very high income group consisting of the top 1% can also be identified most of the available data is by income decile. The Osberg Report makes clear that the Rogers and Shaw Families are clearly at the top of the income distribution, well above the Top 1% threshold.¹⁰ Low income groups generally have negative effective tax rates once refundable tax credits are taken into account. Middle income groups have positive effective tax rates but still benefit from various tax credits. High income groups tend not to be eligible for tax credits.
8. From the Osberg Report, three broad categories of shareholders are identified: (i) Rogers and Shaw family members, (ii) international investors, and (iii) other domestic shareholders.
9. Transfers between each group of consumers and producers that are considered to be socially adverse are calculated in proportion to their share of expenditures on cell phone services and ownership share in the post-merger Rogers.
10. The portion of the transfer considered socially adverse is applied to different measures of the transfer. These measures relate to estimates from the Miller Report using different models (8-brand and 11-brand), different elasticities (0.5 and 0.1), and considering just the merger or both the merger and divestiture.

Balancing Weights

11. For consumers and domestic shareholders, the Commissioner has considered weights by income decile and for the Top 1% of income earners in proportion to the tax system. Weights can be calculated based on the average tax rate, the percent of income available (which equals one minus the average tax rate), and the federal and provincial tax brackets. The federal and provincial tax brackets are calculated on a separate tab “*Tax Brackets*”. The Commissioner assigns a weight of zero to international shareholders.
12. These weights are then applied to producers in proportion to their ownership share of post-merger Rogers and consumers in proportion to their share of expenditure on cell phone services.
13. The anticompetitive effects are calculated by multiplying the consumer surplus by the weight and then adding the producer surplus.

¹⁰ Osberg Report, para. 14.

14. Each of the three weights is applied to the different measures of change in consumer surplus from the Miller Report and added to the corresponding measure of change in producer surplus. The Miller Report uses different models (8-brand and 11-brand), different elasticities (0.5 and 0.1), and considers just the merger and both the merger and divestiture.
15. Finally, a weight is selected that results in the same anticompetitive effects under the weighted surplus approach as under the socially adverse transfer approach. These weights are reported for comparison purposes and to demonstrate the link between the two different approaches.

We trust the foregoing will be of assistance with respect to the comments of the Chief Justice.

Sincerely yours,



Derek Leschinsky
Senior Counsel
Competition Bureau Legal Services

- c. Jonathan Lisus, Crawford Smith (*Lax O'Sullivan Lisus Gottlieb*)
Kent Thomson, Derek Ricci (*Davies Ward Phillips & Vineberg LLP*)
John Rook, Emrys Davis (*Bennett Jones LLP*)

Anticompetitive Effects

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Consumer Share of Transfer

	% of households with 0 cell phones
Income	
P0-10	20.7
P11-20	25.9
P21-30	14.3
P31-40	7.7
P41-50	5.6
P51-60	4.4
P61-70	1.4
P71-80	1.2
P81-90	2.4
P91-100	3.6

Note: The expenditure of the lowest decile was not reported because of reliability issues, it has been replaced w
Source: Osberg Report, Table 2.1.5

Producer Share of Transfer

Group	Group Share of Post- Merger Rogers
Other Domestic Shareholders	41.30%
Other Domestic Shareholders	41.30%
Other Domestic Shareholders	41.30%
Other Domestic Shareholders	41.30%
Other Domestic Shareholders	41.30%
Other Domestic Shareholders	41.30%
Other Domestic Shareholders	41.30%
Other Domestic Shareholders	41.30%
Other Domestic Shareholders	41.30%
Other Domestic Shareholders	41.30%
Rogers/Shaw Family	33.20%
International	25.50%

Source: Osberg Report, paragraph 11 and Table 1.3

Socially Adverse Transfer

Transfer from / to

All Consumers / International Shareholders	25.50%
All Consumers / Rogers & Shaw Family	33.20%
Low Income Consumers to Middle and High Income Domestic Shareholders	8.92%

Middle Income Consumers to High Income Domestic Shareholders	8.64%
Proportion of Transfer Considered Socially Adverse	76.26%

Anticompetitive Effects (millions)

<i>Merger</i>	8-Brand Model	
Deadweight Loss	-\$	324
Transfer	-\$	619
Socially Adverse Transfer	-\$	472
Anticompetitive Effects	-\$	796
Source: Miller Report, Exhibit 21		

<i>Merger & Divestiture</i>	8-Brand Model	
Deadweight Loss	-\$	42
Transfer	-\$	63
Socially Adverse Transfer	-\$	48
Anticompetitive Effects	-\$	90
Source: Miller Report, Exhibit 23		

<i>Merger, Elasticity of 0.1</i>	8-Brand Model	
Deadweight Loss	-\$	184
Transfer	-\$	1,012
Socially Adverse Transfer	-\$	772
Anticompetitive Effects	-\$	956
Source: Miller Report, Exhibit 27		

Average % of household income spent on cell phone services, for households with ≥1 cell phone *	Average % of household income spent on cell phone services, for households including zero cell phones *	Average income	Average Cell Phone Expenditure	Income Decile Share of Cell Phone Expenditure
		\$ 13,657	\$ 697.23	5%
3.3	2%	\$ 28,513	\$ 697.23	5%
2.5	2%	\$ 41,365	\$ 886.25	6%
2.1	2%	\$ 55,115	\$ 1,068.29	8%
1.9	2%	\$ 69,755	\$ 1,251.13	9%
1.7	2%	\$ 85,910	\$ 1,396.21	10%
1.5	1%	\$ 104,324	\$ 1,542.95	11%
1.4	1%	\$ 128,114	\$ 1,772.07	13%
1.2	1%	\$ 160,850	\$ 1,883.88	14%
0.9	1%	\$ 282,390	\$ 2,450.02	18%

with the expenditure of the second lowest decile

Income Decile	Income Decile Share of Financial Assets	Group & Income Decile Share of Transfer
P0-10	1.50%	0.62%
P11-20	1.90%	0.78%
P21-30	3.30%	1.36%
P31-40	5.20%	2.15%
P41-50	7.40%	3.06%
P51-60	8.60%	3.55%
P61-70	11.20%	4.63%
P71-80	12.90%	5.33%
P81-90	16.60%	6.86%
P91-100	31.30%	12.93%
NA	NA	33.20%
NA	NA	25.50%

11-Brand Model

-\$	322
-\$	582
-\$	444
-\$	766

11-Brand Model

-\$	70
-\$	116
-\$	88
-\$	158

11-Brand Model

-\$	182
-\$	971
-\$	741
-\$	923

Weights Implied by the Canadian Tax System

Income	Average income	Mean Effective Average Tax Rate (with payroll taxes)
P0-10	\$ 13,657	0.8
P11-20	\$ 28,513	1.95
P21-30	\$ 41,365	2.8
P31-40	\$ 55,115	5.9
P41-50	\$ 69,755	10.2
P51-60	\$ 85,910	13.6
P61-70	\$ 104,324	16.55
P71-80	\$ 128,114	19.35
P81-90	\$ 160,850	21.45
P91-100	\$ 282,390	25.35
Top 1%		31.7
International		NA

Notes: Top 1% used for Rogers/Shaw Family; tax rates are for individuals while average income is for hou
Source: Cuff Report, Exhibits 1, 4, & 7; Osberg Report, Table 2.1.5; Tab 'Tax Brackets'

Share of Producer Surplus

Group	Group Share of Post-Merger Rogers	Income Decile
Other Domestic Shareholders	41.30%	P0-10
Other Domestic Shareholders	41.30%	P11-20
Other Domestic Shareholders	41.30%	P21-30
Other Domestic Shareholders	41.30%	P31-40
Other Domestic Shareholders	41.30%	P41-50
Other Domestic Shareholders	41.30%	P51-60
Other Domestic Shareholders	41.30%	P61-70
Other Domestic Shareholders	41.30%	P71-80
Other Domestic Shareholders	41.30%	P81-90
Other Domestic Shareholders	41.30%	P91-100
Rogers/Shaw Family	33.20%	NA
International	25.50%	NA

Source: Osberg Report, paragraph 11 and Table 1.3

Average Producer Weight (Average Tax Rate)
Producer Weight Normalized to Unity

Average Producer Weight (Available Income)
Producer Weight Normalized to Unity

Average Producer Weight (Fed & Prov Tax Bracket)
Producer Weight Normalized to Unity

Share of Consumer Surplus

Income	% of households with 0 cell phones	Average % of household income spent on cell phone services, for households with ≥1 cell phone
P0-10	20.7 *	
P11-20	25.9	3.3
P21-30	14.3	2.5
P31-40	7.7	2.1
P41-50	5.6	1.9
P51-60	4.4	1.7
P61-70	1.4	1.5
P71-80	1.2	1.4
P81-90	2.4	1.2
P91-100	3.6	0.9
Top 1%		
International		

Note: The expenditure of the lowest decile was not reported because of reliability issues, it has been repl
Source: Osberg Report, Table 2.1.5

Average Consumer Weight (Average Tax Rate)

Consumer Weight, relative to a Producer Weight of Unity

Average Consumer Weight (Available Income)

Consumer Weight, relative to a Producer Weight of Unity

Average Consumer Weight (Fed & Prov Tax Bracket)

Consumer Weight, relative to a Producer Weight of Unity

Anticompetitive Effects (millions)

<i>Merger</i>	8-Brand Model		11-Brand Model	
Deadweight Loss	-\$	324	-\$	322
Consumer Surplus	-\$	669	-\$	631
Producer Surplus	\$	345	\$	309
Weighted Consumer Surplus (Average Tax Rate)	-\$	2,267	-\$	2,138
Weighted Consumer Surplus (Available Income)	-\$	1,008	-\$	951
Weighted Consumer Surplus (Fed & Prov Tax Bracket)	-\$	1,129	-\$	1,065
Anticompetitive Effects (Average Tax Rate)	-\$	1,922	-\$	1,829
Anticompetitive Effects (Available Income)	-\$	663	-\$	642
Anticompetitive Effects (Fed & Prov Tax Bracket)	-\$	784	-\$	756

Source: Miller Report, Exhibit 21

Merger & Divestiture

	8-Brand Model		11-Brand Model	
Deadweight Loss	-\$	42	-\$	70

Consumer Surplus	-\$	78	-\$	128
Producer Surplus	\$	36	\$	58
Weighted Consumer Surplus (Average Tax Rate)	-\$	264	-\$	434
Weighted Consumer Surplus (Available Income)	-\$	118	-\$	193
Weighted Consumer Surplus (Fed & Prov Tax Bracket)	-\$	132	-\$	216
Anticompetitive Effects (Average Tax Rate)	-\$	228	-\$	376
Anticompetitive Effects (Available Income)	-\$	82	-\$	135
Anticompetitive Effects (Fed & Prov Tax Bracket)	-\$	96	-\$	158

Source: Miller Report, Exhibit 23

<i>Merger, Elasticity of 0.1</i>		8-Brand Model		11-Brand Model
Deadweight Loss	-\$	184	-\$	182
Consumer Surplus	-\$	1,097	-\$	1,062
Producer Surplus	\$	913	\$	880
Weighted Consumer Surplus (Average Tax Rate)	-\$	3,717	-\$	3,599
Weighted Consumer Surplus (Available Income)	-\$	1,653	-\$	1,600
Weighted Consumer Surplus (Fed & Prov Tax Bracket)	-\$	1,852	-\$	1,793
Anticompetitive Effects (Average Tax Rate)	-\$	2,804	-\$	2,719
Anticompetitive Effects (Available Income)	-\$	740	-\$	720
Anticompetitive Effects (Fed & Prov Tax Bracket)	-\$	939	-\$	913

Source: Miller Report, Exhibit 27

Weight Implied by the Socially Adverse Transfer

<i>Merger</i>		8-Brand Model		11-Brand Model
Anticompetitive Effects	-\$	796	-\$	766
Weight (Found by Goal Seek)		1.71		1.70
Consumer Surplus	-\$	669	-\$	631
Producer Surplus	\$	345	\$	309
Weighted Consumer Surplus	-\$	1,141	-\$	1,075
Anticompetitive Effects	-\$	796	-\$	766

<i>Merger & Divestiture</i>		8-Brand Model		11-Brand Model
Anticompetitive Effects	-\$	90	-\$	158
Weight (Found by Goal Seek)		1.62		1.69
Consumer Surplus	-\$	78	-\$	128
Producer Surplus	\$	36	\$	58
Weighted Consumer Surplus	-\$	126	-\$	216
Anticompetitive Effects	-\$	90	-\$	158

<i>Merger, Elasticity of 0.1</i>		8-Brand Model		11-Brand Model
Anticompetitive Effects	-\$	956	-\$	923
Weight (Found by Goal Seek)		1.70		1.70
Consumer Surplus	-\$	1,097	-\$	1,062
Producer Surplus	\$	913	\$	880
Weighted Consumer Surplus	-\$	1,869	-\$	1,803
Anticompetitive Effects	-\$	956	-\$	923

Weight implied by average tax rate	Percent of Income Available	Weight implied by available income	Applicable Federal and BC, AB, ON Tax Bracket	Weight implied by federal tax bracket
39.63	99.2	1.45	20.95%	2.29
16.26	98.05	1.44	20.95%	2.29
11.32	97.2	1.42	20.95%	2.29
5.37	94.1	1.38	29.50%	1.63
3.11	89.8	1.31	29.50%	1.63
2.33	86.4	1.27	30.09%	1.60
1.92	83.45	1.22	37.19%	1.29
1.64	80.65	1.18	37.70%	1.27
1.48	78.55	1.15	42.30%	1.14
1.25	74.65	1.09	47.88%	1.00
1.00	68.3	1.00	48.06%	1.00
0		0		0

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Income Decile Share of Financial Assets	Group & Income Decile Share of Producer Surplus
1.50%	0.62%
1.90%	0.78%
3.30%	1.36%
5.20%	2.15%
7.40%	3.06%
8.60%	3.55%
11.20%	4.63%
12.90%	5.33%
16.60%	6.86%
31.30%	12.93%
NA	33.20%
NA	25.50%

1.59

1.00

0.83

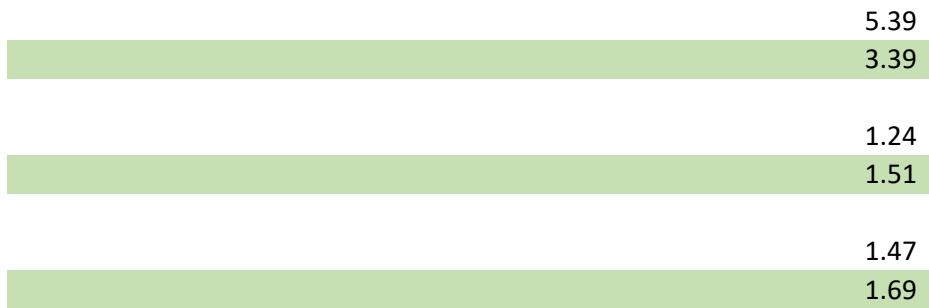
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Average % of household income spent on cell phone services, for households including zero cell phones *	Average income	Average Cell Phone Expenditure	Income Decile Share of Cell Phone Expenditure
	\$ 13,657	\$ 697.23	5%
2%	\$ 28,513	\$ 697.23	5%
2%	\$ 41,365	\$ 886.25	6%
2%	\$ 55,115	\$ 1,068.29	8%
2%	\$ 69,755	\$ 1,251.13	9%
2%	\$ 85,910	\$ 1,396.21	10%
1%	\$ 104,324	\$ 1,542.95	11%
1%	\$ 128,114	\$ 1,772.07	13%
1%	\$ 160,850	\$ 1,883.88	14%
1%	\$ 282,390	\$ 2,450.02	18%

placed with the expenditure of the second lowest decile



Federal and Provincial income tax schedules

Income	Average income	Applicable Federal Tax			Population Weighted Provincial Average	
		Bracket	AB	BC	ON	
P0-10	\$ 13,657	15%	10.00%	5.06%	5.05%	5.95%
P11-20	\$ 28,513	15%	10.00%	5.06%	5.05%	5.95%
P21-30	\$ 41,365	15%	10.00%	5.06%	5.05%	5.95%
P31-40	\$ 55,115	20.50%	10.00%	7.70%	9.15%	9.00%
P41-50	\$ 69,755	20.50%	10.00%	7.70%	9.15%	9.00%
P51-60	\$ 85,910	20.50%	10.00%	10.50%	9.15%	9.59%
P61-70	\$ 104,324	26%	10.00%	12.29%	11.16%	11.19%
P71-80	\$ 128,114	26%	10.00%	14.70%	11.16%	11.70%
P81-90	\$ 160,850	29%	13.00%	16.80%	12.16%	13.30%
P91-100	\$ 282,390	33%	14.00%	20.50%	13.16%	14.88%
Top 1%		33%	15.00%	20.50%	13.16%	15.06%

International

Source: Cuff Report, Exhibits 1 & 7; Osberg Report, Table 2.1.5

Provincial
Population
(Q3 2022)

	AB	BC	ON
Persons	4,543,111	5,319,324	15,109,416
Percent	18%	21%	61%

Source: Statistics Canada. Table 17-10-0009-01 Population estimates, quarterly

<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1710000901>

Applicable
Federal and BC,
AB, ON Tax
Bracket

20.95%
20.95%
20.95%
29.50%
29.50%
30.09%
37.19%
37.70%
42.30%
47.88%
48.06%

Exhibit 1

Federal taxable income brackets and income tax rates for 2021 tax year

2021 Federal Taxable Income Brackets*	2021 Federal Marginal Tax Rates
\$49,020 or less	15.0%
More than \$49,020 to \$98,040	20.9%
More than \$98,040 to \$151,978	26.1%
More than \$151,978 to \$216,511	29.3%
More than \$216,511	33.0%

*These taxable income amounts are adjusted for inflation.

Source: Financial Consumer Agency of Canada (2020), Your financial toolkit, Module 8.2.4: Tax <https://www.canada.ca/en/financial-consumer-agency/services/financial-toolkit/taxes/taxes-2>

2021 Alberta Taxable Income Brackets*	2021 Alberta Marginal Tax Rates
\$131,200 or less	10.0%
More than \$131,200 to \$157,464	12.0%
More than \$157,464 to \$209,952	13.0%
More than \$209,952 to \$314,928	14.0%
More than \$314,928	15.0%

*Starting In 2020, Alberta stopped indexing taxable income for inflation.

2021 British Columbia Taxable Income Brackets*	2021 British Columbia Marginal Tax Rates
\$42,184 or less	5.0%
More than \$42,184 to \$84,369	7.7%
More than \$84,369 to \$96,866	10.5%
More than \$96,866 to \$117,623	12.2%
More than \$117,623 to \$159,483	14.7%
More than \$159,483 to \$222,420	16.8%
More than \$222,420	20.5%

*These taxable income amounts are adjusted for inflation.

2021 Ontario Taxable Income Brackets*	2021 Ontario Marginal Tax Rates
\$45,142 or less	5.0%
More than \$45,142 to \$90,287	9.1%
More than \$90,287 to \$150,000	11.1%
More than \$150,000 to \$220,000	12.1%
More than \$220,000	13.1%

*These taxable income amounts are adjusted for inflation. ^Ontario also has a surtax on income greater than \$4,874, and an additional surtax of 36% of basic provincial tax greater than \$4,874.

Information in the tables is from CRA T1 income tax packages for 2021, <https://www.canada.ca/en/financial-consumer-agency/services/forms-publications/tax-packages-years/general-income-tax-benefit-package.html> indexing is from David Lin (2020) 'Finances of the Nation: Survey of Provincial and Territorial Budgets' Tax Journal 68(1), 185-250.

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Income Tax Rates
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Income Tax Rates
9%
9%
9%
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Marginal Income Tax Rates
6%
19%
5%
19%
7%
8%
5%

Income Tax Rates^
5%
5%
16%
16%
16%

of 20% of basic provincial tax
on \$6,182.

[en/revenue-](#)
[nl](#) and information about
budgets, 2019-2020; Canadian
