

Guidelines on the Conduct of Ministers, Ministers of State, Exempt Staff and Public Servants During an Election

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Introduction: The Caretaker Convention

In Canada's Westminster form of government, convention requires that the Government command the confidence of the House of Commons at all times. While constitutionally a government retains full legal authority to govern during an election, as well as the responsibility to ensure that necessary government activity continues, it is expected to exercise restraint in its actions. This is often referred to as the "caretaker convention". The rationale is that, following dissolution, there is no elected chamber to which the Government can be held accountable, and the Government cannot assume that it will command confidence in the next Parliament.

The conventional restriction limiting the extent to which the Government should exercise its authority applies whether it has lost a vote of confidence in the House, whether the Prime Minister has asked for dissolution on his or her own initiative, or whether Parliament has been dissolved in advance of an election date set by legislation. It also applies to the outgoing government during any post-election transition to a successor government. This caretaker period begins when the Government has lost a vote of non-confidence or Parliament has been dissolved. It ends when a new government is sworn in, or when an election result returning an incumbent government is clear.

This does not mean that government is barred from making decisions or announcements, or otherwise taking action, during the caretaker period. It can and should do so where the matter is routine and necessary for the conduct of government business, or where it is urgent and in the public interest – for example, responding to a natural disaster. In certain cases where a major decision is unavoidable during a campaign (e.g., due to an international obligation or an emergency), consultation with the opposition parties may be appropriate, particularly where a

major decision could be controversial or difficult for a new government to reverse.

In short, during an election, a government should restrict itself – in matters of policy, expenditure and appointments – to activity that is:

1. (a) routine, or
2. (b) non-controversial, or
3. (c) urgent and in the public interest, or
4. (d) reversible by a new government without undue cost or disruption, or
5. (e) agreed to by opposition parties (in those cases where consultation is appropriate).

In determining what activity is necessary for continued good government, the Government must inevitably exercise judgement, weighing the need for action and potential public reaction, given the absence of a confidence chamber and the possibility that a different government could be elected.

Continuing Government Business

The duties of Ministers of the Crown must continue to be fulfilled during the caretaker period. Officials and departmental resources continue to be at the disposal of ministers and ministers of state for the purpose of departmental duties. These duties may or may not be set out in legislation.

As is always the case between elections, ministers, ministers of state and exempt staff are obliged to ensure that the resources of the department and portfolio – financial, materiel and human resources – are not used for partisan purposes. In the context of an election, they must be especially vigilant with respect to the distinction between *official government business* supported by departmental and portfolio resources, and *partisan political activities*, taking care to avoid even the appearance that departmental and portfolio resources are being used for campaign purposes.

Deputy ministers have a key role in ensuring the continuance of necessary government business – for example, by staying in contact with their minister through the campaign. They must also ensure that departmental and agency facilities and resources continue to be used only for official government business and that the public servants in their department carry out their responsibilities in a non-partisan manner.

In order to fulfil their ongoing responsibilities, ministers must remain in contact with the deputy minister to provide direction to the department or portfolio as appropriate. At the same time, in order to respect the caretaker convention as well as the distinction between official government business and partisan activity, in the absence of any of the exceptions enumerated above, ministers must:

- defer to the extent possible such matters as appointments, policy decisions, new spending or other initiatives, announcements, negotiations or consultations, non-routine contracts and grants and contributions;
- work with deputy ministers to ensure that departmental activities are carried out in a non-partisan, low-profile manner; and

- avoid participating in high-profile government-related domestic and international events, including federal/provincial/territorial events, international visits, and the signing of treaties and agreements.

For greater clarity, there may be compelling reasons for continued participation by Ministers and/or officials in specific activities such as treaty negotiations. For example, when negotiations are at a critical juncture with timelines beyond Canada's control, the failure to participate in ongoing negotiations during the caretaker period could negatively impact Canada's interests. Under such conditions, a compelling case may be made for ongoing efforts to protect Canada's interests. Irreversible steps such as ratification should be avoided during this caretaker period.

Cabinet Operations

Normal Cabinet procedures must be followed in fulfilling the minister's or minister of state's official duties. The minister must not act independently on an initiative that requires Cabinet or Treasury Board approval. Cabinet operations are normally curtailed during an election, with Cabinet meeting only as necessary to deal with essential items.

Ministers and ministers of state should always be accessible to participate in cabinet and departmental decision-making to deal with any matters that might arise. In particular, ministers who are located closer to Ottawa should expect to be contacted to sign Orders in Council, as necessary.

Departmental Support, Communications and Advertising

As always, public servants must not be asked to perform political tasks or work normally done by ministerial exempt staff, and departmental facilities and resources cannot be used for partisan purposes. This includes:

- ministers' departmental offices, wherever located;
- regional ministerial offices; and
- services such as translation, printing, preparation of communications material and telecommunications (e.g. video services and mobile telephones).

Ministers' and ministers of states' departmental communications and public affairs units must not be involved in partisan matters. They may provide ministers and ministers of state with existing factual information, but they must not be asked to perform any additional or expanded services. Similarly, some regular departmental operations that continue during an election period, such as media monitoring, may need to be reviewed and adjusted to ensure that they are not inadvertently applied to ministers' campaign activities. Department-supported websites and social media channels (and any information derived from them) should continue to be used only for official government communications, and government resources should not be used to support personal or partisan social media accounts.

Government or departmental announcements are curtailed during an election period:

- exceptions would be made, for example, in the case of a significant international or domestic event where the failure to have the Prime Minister or minister comment would do damage to

Canadian interests or prestige, or announcements relating to the health and safety of Canadians;

- announcements that must proceed are made in the name of the department;
- as always, communications and public announcements that are prepared using government resources must not contain partisan information or identifiers; and
- any department seeking to make an announcement, as approved by the deputy head, would need approval by PCO.

Ministers and ministers of state should be careful in the use and distribution of governmental publications during an election campaign. Such publications can be distributed, but only as would occur under normal circumstances in support of official government business.

Public funds may not be used for public opinion research or advertising during the election campaign:

- exceptions may be granted for public notices for legal purposes, or for reasons of public health and safety, employment or staffing notices, and carried out in the name of the department, as approved by the deputy head, and then by PCO.

Contracts, G&Cs and Appointments

The processing of routine and non-controversial contracts and grants and contributions needs to continue. However, there should be heightened vigilance to ensure that contracts and grants and contributions are not used for partisan purposes. For this purpose, during caretaker periods decision-making with respect to routine contracts and grants and contributions may be delegated to departmental officials, who are responsible for applying the principle of restraint. No contracts are to be awarded by ministerial offices to write speeches during the election campaign.

Appointments should normally be deferred. The Prime Minister's Office and PCO must be consulted before making any commitments concerning appointments that cannot be deferred.

Travel and Hospitality Expenses

As stipulated in [Accountable Government: A Guide for Ministers and Ministers of State \(2011\)](#), all government-paid travel and hospitality expenses for ministers, ministers of state and their exempt staff must be for official government business. They will continue to be posted on departmental websites.

As set out in section 12 of the [Conflict of Interest Act](#):

No minister of the Crown, minister of state or parliamentary secretary, no member of his or her family and no ministerial adviser or ministerial staff shall accept travel on non-commercial chartered or private aircraft for any purpose unless required in his or her capacity as a public office holder or in exceptional circumstances or with the prior approval of the [Conflict of Interest and Ethics] Commissioner.

Ministers, ministers of state and parliamentary secretaries are also directed in [Accountable Government](#) not to accept any other form of sponsored travel. Campaign travel paid for by political parties is not included in these restrictions.

As with other departmental facilities and resources, government aircraft, cars and expense accounts are for official government business only.

- government aircraft may only be used when the purpose of the journey, including each leg, is for official business and in accordance with the Treasury Board [Policies for Ministers' Offices](#).
- ministerial vehicles and expense accounts, when government-paid, are for official business use only and the guidelines on their use in [Policies for Ministers' Offices](#) continue to apply.

Status of Parliamentary Secretaries and other Members of Parliament (MPs) after Dissolution

Parliamentary secretary appointments cease immediately upon dissolution of the House. Consequently:

- while parliamentary secretaries are no longer subject to the compliance provisions of the [Conflict of Interest Act](#), they are subject to the Act's post-employment provisions. The Conflict of Interest and Ethics Commissioner advises them of these provisions in writing;
- they are no longer entitled to departmental support for previously assigned duties;
- any functions previously assigned to them must be assumed by responsible ministers; and
- they may no longer be given access to government documents, including Cabinet documents.

The status of members of parliament also changes with the dissolution of the House.

- When Parliament is dissolved, Members of Parliament formally lose their status as such. However, section 69 of the [Parliament of Canada Act](#) provides for payment of salaries to MPs after dissolution by "deeming" them to continue to be a member of the House until the date of the election.
- In practice, MPs continue their representational role for their constituents during the campaign.

Exempt Staff

Election leave requirements for exempt staff are set out in the [Policies for Ministers' Offices](#), Section 3.5.4., Election Leave.

A ministerial exempt staff member is required to request leave without pay or resign from his or her exempt staff position in order to stand for nomination as a party candidate to run in the election.

If the nomination takes place before the election writs are issued, the individual may return to his or her exempt staff position once the nomination race has ended, whether or not that person

is successfully nominated. If the individual is nominated and wishes to campaign or do any other work related to his or her nomination prior to the issuance of the writs, he or she must do so on their own time and such work must not take them away from their paid duties.

Once the writs are issued, any exempt staff member who seeks nomination or who is already nominated and wishes to campaign must either be granted leave without pay or resign, at the discretion of his or her minister or minister of state. Exempt staff members should avoid declaring or having themselves declared as candidates until after they have resigned or commenced leave without pay.

Exempt staff members who wish to be actively involved in the campaign (e.g., door-to-door canvassing, answering telephones) on a full-time basis are required to either take leave without pay approved by their minister or minister of state, or resign their position.

Those who remain in their position and wish to become involved on a part-time basis may participate in campaign activities on their own time, outside normal working hours, while not carrying out official duties. Exempt staff may not take vacation leave or any other leave with pay for campaign purposes.

The positions of assistants to parliamentary secretaries cease to exist immediately upon dissolution, and any exempt staff occupying these positions must, at the minister's discretion, either be terminated or re-assigned in the minister's office to another position funded from the minister's exempt staff budget. The allocation set aside in ministerial office budgets for assistants to parliamentary secretaries cannot be used for other purposes and any unspent portion lapses at the end of the fiscal year.

Any new staff brought in to replace those who have resigned or are on leave must meet conflict of interest and security requirements before they are hired.

The limits of ministerial office budgets are fixed, and must not be overspent.

In the context of ministers' and ministers of states' own re-election campaigns, they must ensure that members of their exempt staff comply with Treasury Board policies, directives and guidelines so that public funds are not spent in support of political or electoral activities. Public resources are not to be used for election purposes.

One exempt staff member may, at public expense, accompany their minister or minister of state at all times in order to ensure that appropriate contact and liaison with the department is maintained. Such contact is important to ensure the continuance of necessary government business. However, it must be clearly understood that the exempt staff member's role is for official government business and not for partisan political activities.

Public Servants and Political Activities

The political activities provisions set out in Part 7 of the [Public Service Employment Act](#) (PSEA) recognize the right of an employee to engage in any political activity, so long as it does not impair, or is not perceived as impairing, the employee's ability to perform their duties in a politically impartial manner.

Under the PSEA, political activity includes:

- Any activity in support of, within or in opposition to a political party;
- Any activity in support of or in opposition to a candidate before and during an election period; and
- Seeking nomination as, or being, a candidate in a federal, provincial, territorial and municipal election before or during the election period.

Before seeking nomination as, or being, a candidate in a federal, provincial, territorial or municipal election, employees must first request and obtain permission from the [Public Service Commission](#) (PSC). At the federal, provincial and territorial levels, employees must also request and obtain a leave of absence without pay (LWOP) from the PSC to be a candidate during the election period and will cease to be an employee on the day they are declared elected. The PSC may also make permission conditional on the employee being on LWOP to conduct activities in support of their candidacy.

Permission from the PSC is not required to undertake political activities in support of or in opposition to a political party or candidate. However, employees are responsible for examining their specific circumstances to assess and make informed decisions about whether engaging in this type of political activity would impair or could be perceived as impairing their ability to perform their duties in a politically impartial manner. Employees should consider the nature of their current public service duties, the level and visibility of their position, the nature of the political activity and their personal visibility.

Activities that do not fall under the definition of a political activity in the PSEA, should be considered in light of the [Values and Ethics Code for the Public Sector](#) and the code of conduct of the employee's organization.

Anyone may make an allegation of improper political activity against an employee. The PSC may investigate any allegation that an employee may have engaged in an improper political activity. If the investigation establishes that there was an improper political activity, the PSC may take any corrective action deemed appropriate.

For more information, employees may wish to speak with their manager, their organization's [Designated Political Activities Representative](#) or visit the [PSC's Website](#) where they can refer to the [Suite of Political Activities Tools](#). They may also contact the PSC's Political Activities and Non-Partisanship Directorate directly at 1-866-707-7152 or via e-mail at CFP.ActivitesPolitiques-PoliticalActivities.PSC@cfp-psc.gc.ca.

Summary

Under the caretaker convention, the government acts with restraint during an election, confining itself to necessary public business (either routine or urgent).

As always, public resources must not be used for partisan advantage. Hence, the distinction between official government business and partisan political activities must be strictly observed: only the former may be supported by departmental resources and the work of public servants.

Exempt staff and public servants wishing to engage in political activities on their own time must adhere strictly to the rules and policies governing such conduct.

Deputy heads have key responsibility for ensuring that departmental and agency resources are used only for official government business, and that public servants respect the principles of political neutrality in their work.

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