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Guidelines on the conduct of Ministers, Ministers of State, exempt staff and public servants during an election

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1. Introduction: the Caretaker Convention

In Canada's form of democratic government, the legitimacy of the Government flows from its ability to command the confidence of the House of Commons. Following the dissolution of Parliament for an election, however, there is no elected chamber to confer confidence on the Government. Given this fact, and that the Government cannot assume that it will command the confidence of the House after the election, it is incumbent upon a government to act with restraint during an election period. This is the "caretaker convention". By observing the caretaker convention, governments at the end of their current mandate demonstrate respect for the democratic will of the people.

The caretaker period begins when either the Government loses a vote of non-confidence or Parliament has been dissolved (either as a result of the Prime Minister asking for dissolution, or because of an election date set by legislation). It ends when a new government is sworn-in, or when an election result returning an incumbent government is clear.

Exercising "restraint" does not mean that government is prohibited from making decisions or announcements, or otherwise taking action, during the caretaker period. To the contrary, the routine operation of government must continue and necessary business must be transacted. In the event of emergencies, such as natural disasters, the government must have a free hand to take appropriate action to ensure that the public interest, notably the safety and security of Canadians, is preserved.

To the extent possible, however, government activity following the dissolution of Parliament – in matters of policy, expenditure and appointments – should be restricted to matters that are:

- a. routine, or
- b. non-controversial, or
- c. urgent and in the public interest, or
- d. reversible by a new government without undue cost or disruption, or
- 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 the restraint called for by convention.

2. Government business during the Writ period

As noted, government operations continue during the writ period and the duties of ministers of the Crown must continue to be fulfilled. Officials and departmental resources continue to be at the disposal of ministers and ministers of state for the purpose of departmental duties during the caretaker. These duties may or may not be set out in legislation.

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 ensuring that public services continue to be delivered in timely manner. 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 routine departmental activities are carried out in a 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.

COVID-19

The 2021 federal election will be taking place during a time of uncertainty due to the continuing presence of COVID-19. The unpredictability of the disease, and its potential variants, raises the possibility that a number of public health-related decisions may need to be taken urgently and in the public interest during the campaign. The Government commits to continuing to keep the Opposition Parties informed of any significant decisions that are required to be made as a result of the management of the pandemic.

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.

Regulations

During the election period, departments should not launch new regulatory initiatives, or proactively engage stakeholders on regulatory development. For regulatory proposals that are pre-published this session, departments may receive comments from the public and stakeholders for the entire duration of the comment period. If the comment period extends into the election period, departments may continue to passively receive comments, but should not proactively engage stakeholders.

For regulatory proposals that receive final approval this session, departments may take the necessary steps to implement the proposal, including communicating with stakeholders. To the extent that this work extends into the election period, engagement with stakeholders should, to the extent possible, be reactive as opposed to proactive.

To the extent possible, departments should avoid having regulatory initiatives come into force during the election period, especially for initiatives that are high-profile or controversial (as ministers and officials may find it difficult to respond to implementation issues that arise during this period).

3. Departmental support, travel and hospitality expenses

During the election campaign, 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).

As stipulated in Open and Accountable Government (2015), all government-paid travel and hospitality expenses for ministers, ministers of state and their exempt staff must be for official government business. Such expenses 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 and ministers of state are also directed in Open and 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.

4. Communications and advertising

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.

The Treasury Board has issued a Directive on the Management of Communications which requires that Government of Canada advertising activities be suspended on June 30 in a year in which there is a fixed general federal election date. Exceptions may be granted for public notices for legal purposes, or for reasons of public health and safety, employment or staffing notices, or urgent business as determined by department deputy heads.

In addition, as a general rule, government or departmental announcements are curtailed during an election period. Under certain circumstances, however, exceptions could be made at the discretion of a department deputy head. This would include:

- 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;
- announcements relating to the health and safety of Canadians;

- public notices for legal purposes.

If it is determined that an announcement must proceed it should be made in the name of the department and, as always, communications and public announcements that are prepared using government resources must not contain partisan information or identifiers.

Any department seeking to make an announcement, as approved by the deputy head, should consult with the Privy Council Office.

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.

Departmental social media accounts should only be used to provide factual information and an abundance of caution should be exercised so as to avoid any potential perception that a department is advocating for a particular policy position. As a general rule, social media should be used only as required to support routine program administration.

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.

No contracts are to be awarded by ministerial offices to write speeches during the election campaign.

Public opinion research activities are suspended the day of the issuing of the writ and only resume when the newly elected government is sworn into office, unless extenuating circumstances dictate that such research is necessary for immediate departmental operations. In these cases, approval is required by the appropriate departmental deputy head.

5. Contracts, grants and contributions 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. In this context, during caretaker periods, consideration should be given to delegating decision-making with respect to routine contracts and grants and contributions to departmental officials.

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.

6. Parliamentary Secretaries and Members of Parliament

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.

7. 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.

8. 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. Particular attention should be paid to potentially highly visible public activities, notably the use of personal social media accounts.

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.

9. Other relevant issues

Critical Election Incident Public Protocol

The protection and preservation of Canada's democratic institutions and practices is one of the core responsibilities of the federal government. As part of this work, the Government of Canada has established a Critical Election Incident Public Protocol in order to ensure coherence and consistency in Canada's approach to publicly informing Canadians during the writ period about incidents that threaten Canada's ability to have a free and fair election. The Protocol lays out a process, administered by a panel of non-partisan senior public servants from the Privy Council Office and national security portfolios, through which Canadians would be notified of an incident or an accumulation of separate incidents, which threatens the integrity of the federal election process. The Protocol has been drafted to be consistent with caretaker convention principles and would be engaged only in the most urgent cases where there is a clear impact on the national interest. For more information about the Protocol, visit [Critical Election Incident Public Protocol](#).

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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