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### 3. Public Servants

*Lori Turnbull & Donald Booth*  
Pages 59–70

**Inside the Campaign:  
Managing Elections in Canada**  
*Edited by Alex Marland  
& Thierry Giasson*

Copyright: UBC Press, 2020  
ISBN 9780774864688 (PDF)  
[www.ubcpress.ca/inside-the-campaign](http://www.ubcpress.ca/inside-the-campaign)

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#### Book Contents

Introduction: Constantly Shopping for Votes  
*Alex Marland with Susan Delacourt*

##### PART 1: CARETAKERS AND PARTICIPANT OBSERVERS

1. Election Administrators  
*Andrea Lawlor & Marc Mayrand*

2. Political Staff  
*Paul Wilson & Michael McNair*

3. Public Servants  
*Lori Turnbull & Donald Booth*

4. Leaders' Debate Coordinators  
*Brooks DeCillia & Michel Cormier*

5. News Editors  
*Colette Brin & Ryan MacDonald*

6. Pollsters  
*André Turcotte & Éric Grenier*

##### PART 2: CAMPAIGN OFFICES AND THE CAMPAIGN TRAIL

7. Party Fundraisers  
*Erin Crandall & Michael Roy*

8. Party Platform Builders  
*Jared Wesley & Renze Nauta*

9. National Campaign Directors  
*David McGrane & Anne McGrath*

10. National Campaign Director of Communications  
*Stéphanie Yates & John Chenery*

11. Senior Adviser to the Leader on Tour  
*Mireille Lalancette with Marie Della Mattia*

12. Political Advertisers  
*Vincent Raynauld & Dany Renauld*

13. Third-Party Activism  
*Thomas Collombat & Magali Picard*

14. The Independent Candidate  
*Tamara Small & Jane Philpott*

Conclusion: Revealing the Campaign Machine  
*Anna Lennox Esselment & Thierry Giasson*



# 3

## Public Servants

*Lori Turnbull and Donald Booth*

The independent, non-partisan public service plays an essential role, albeit a behind-the-scenes one, during a federal election campaign and the transition that immediately follows. Whether an election results in a change of government or the return of the incumbent, federal public servants help to facilitate a smooth transition to ensure that there are no disruptions in service to Canadians, that government operations continue to run as seamlessly as possible, and that ministers of the Crown receive appropriate support in executing their legal responsibilities.

La fonction publique, indépendante et non partisane, joue un rôle essentiel dans les transitions gouvernementales au Canada, même en coulisse. Qu'une élection entraîne un changement de gouvernement ou le retour du gouvernement sortant, l'intervalle entre l'élection et l'assermentation du nouveau cabinet est une période très délicate au cours de laquelle une incertitude plane sur les carrières politiques, les relations de pouvoir et l'orientation des priorités du gouvernement. Le Bureau du Conseil privé, le ministère du premier ministre, ainsi que le Cabinet du premier ministre et l'équipe de transition dirigent les efforts afin de faciliter un processus de transition harmonieux sans interruption pour les Canadiens.

AN IMPARTIAL, PROFESSIONAL public service has been one of the pillars of Canada’s system of government since the Public Service Commission was created in 1918 to enforce merit-based, non-partisan hiring. Today the federal public service is the most diverse workforce in the country. No other employer can boast of an employee complement of roughly 275,000 and well over seventy occupational categories. The workforce encompasses everything from law enforcement officials to entomologists to lighthouse keepers, with some degree of representation in virtually every community in the country.<sup>1</sup> Naturally, there are profound differences in the nature of the work, the professional backgrounds, and the day-to-day operational realities of those who populate its ranks. Yet there are certain shared principles that provide a common touchstone for federal public service employees, whether they are a deputy minister in Ottawa, a fisheries scientist in Prince Edward Island, or a correctional service worker in British Columbia.

These overarching principles, articulated in the *Values and Ethics Code for the Public Sector*, help to define expected behaviours as well as anchor the unique role of the civil service within our Westminster parliamentary system. It is no coincidence that “respect for democracy” is the first value outlined in the code’s statement of values, with underlying commitments enumerated as follows:

- a) respecting the rule of law and carrying out their duties in accordance with legislation, policies and directives in a non-partisan and impartial manner;
- b) loyally carrying out the lawful decisions of their leaders and supporting ministers in their accountability to Parliament and Canadians; and
- c) providing decision makers with all the information, analysis and advice they need, always striving to be open, candid and impartial.<sup>2</sup>

An election period, and the transitional phase that immediately follows election night, are highly sensitive political times that involve

some degree of change at the centre of power. There are three types of transition: those that involve a change in the governing party, those that see a return of an incumbent government, and those in which there is a change in leadership of the governing party.<sup>3</sup> Any of these scenarios can create uncertainty. The permanent public service eases much of the tension by providing support and advice both to incoming and to outgoing leaders. Public servants help to ensure that the business of government is not disrupted as political events play out.

## Duties in an Election Campaign

From a public service perspective, the election period can be more or less divided into three distinct phases: 1) pre-election planning, 2) the election/caretaker period, and 3) forming cabinet and launching the mandate.

For many in the public service, the election period is less about the campaign itself than about preparing for the days after the election. Generally speaking, pre-election planning is launched six months or more before the calling of an election. Advice is quietly prepared for an incoming government or a returning government that might wish to move in different directions or adopt a fresh start. This exercise can take many forms. Deputy ministers, for example, might begin by examining what works and what does not work in their portfolios and identify potential changes to the “machinery” for prime ministerial consideration. They also work to develop new policy proposals to complement the ideas and proposals that will make up the various parties’ political platforms. Often these proposals touch on issues that might not get attention on the campaign trail given that they might not resonate with everyday Canadian voters, such as the need for investment in critical IT systems or the need to address potentially unpopular issues.

Once the election writ is issued, and Parliament is dissolved, government activity operates under the parameters of what is commonly referred to as the “caretaker convention.” Constitutional

conventions are political rules that guide actions.<sup>4</sup> They involve regular conduct in public administration that endures over time irrespective of which political party heads the government. The caretaker convention dictates that the government should act with restraint during an election campaign and, to the extent possible, confine itself to routine and necessary public business.<sup>5</sup> Ideally, this means avoiding taking action that could hinder a future government's ability to make decisions, such as signing large contracts or international treaties. In the twenty-first century, the practice has become more than restraint exercised simply as a matter of prudent good government, and successive governments have issued guidance specifically referring to the convention. Official public guidance was first issued in 2015, outlining the rules of engagement for ministers, political staff, and public servants. The guidance was subsequently updated and issued in advance of the 2019 federal election.<sup>6</sup> The caretaker convention, of course, is not law. Conventions are generally binding in a political but not a legal sense.<sup>7</sup> To paraphrase a senior Privy Council Office (PCO) official, the caretaker convention is a soft guardrail of our democracy.

The foundational principle behind the caretaker convention is simple but speaks to the core of our system of responsible government. For a government to have legitimacy, it must be able to demonstrate that it commands the confidence of the House of Commons. When a writ of election is issued, however, the House of Commons is dissolved, and there is no elected chamber to which the government can be held accountable. For this reason, and because one cannot presume which party will win the election, in order to respect democratic principles, a government should circumscribe its action. Equally important, the convention helps to uphold the impartiality and non-partisan character of the public service by minimizing the potential that public resources are used for partisan purposes.

The guidelines are pointed and prescriptive in some places. Yet, for the most part, they are pitched at the level of principle. This reflects the fact that, as noted, the day-to-day reality of the public service varies considerably depending on department, region, and

occupation. To try to draft granular, detailed directions to capture and address all eventualities would be a fool's errand. It is impossible to anticipate all of the unexpected and unavoidable urgencies that can arise during a campaign. National security emergencies happen with no warning. Courts might force governments to respond to rulings. Sometimes commercial realities dictate that contracts must be signed. On the international front, the world does not stop because Canada has an election. Ultimately, it is a political decision whether or not something is consistent with the terms of the convention and whether or not something reaches the overall litmus test of routine or urgent business.

It is safe to say, for the most part, that the bulk of front-line civil servants do not see a great deal of difference in their daily work during an election period. Food continues to be inspected, cheques continue to be issued, and programs continue to be administered. However, the caretaker period is a time of escalating preparation for many in the upper echelons of federal departments and agencies, including for those who support them on policy development and related activities.

While the political campaign is being waged in public, senior federal officials work quietly behind the scenes to prepare for the eventual transition to an entirely new government or to a returning government with a refreshed and energized mandate. In this context, senior public servants spend much time watching the campaign unfold. They carefully scrutinize the various platform commitments of each political party to get a sense of which priorities a new government might pursue.

As noted, a department, under the close supervision of its deputy minister (the senior departmental civil servant), typically prepares advice for an incoming minister on policy ideas to consider within the portfolio. Officials will have reviewed the parties' election platforms and worked up strategies to implement the campaign promises, in part to demonstrate that they are aware of the political priorities and ready, willing, and able to implement them loyally. They also prepare materials to assist the new minister and staff to

understand and navigate the sometimes unfamiliar world of Parliament and cabinet decision making.

Although departments have considerable autonomy to formulate the advice that they will provide to their incoming ministers, there is a significant degree of central coordination of briefing materials.<sup>8</sup> These materials are provided primarily by the PCO, often referred to as the “prime minister’s department,” led by the country’s top civil servant, the clerk of the Privy Council. The PCO has a special role to play in ensuring that there is an appropriate degree of system readiness for transition across the federal family. This means ensuring that policy proposals are comprehensive, congruent, and mutually reinforcing. Equally crucial is ensuring that public service leaders are providing consistent advice.

Of course, for some public servants, like other Canadians, the election is also a time of personal engagement in the political process. It is hardly surprising, for example, to find that those attracted to careers in public administration might also want to serve their communities in more political ways. This fact is borne out in the long list of former public servants, from all levels of government, who have gone on to illustrious political careers.

Although public servants do not engage in partisan activities in the context of their work, as Canadian citizens they are entitled to run for office and to engage in political activities, within certain reasonable parameters.<sup>9</sup> The Public Service Employment Act explicitly recognizes and addresses this fact: “An employee may engage in any political activity so long as it does not impair, or is not perceived as impairing, the employee’s ability to perform duties in a politically impartial manner.”<sup>10</sup> This means that, when public servants are on their own time outside work hours, they can go door to door for candidates, put up yard signs, and volunteer for other campaign roles. The key here is *on their own time*.

Care needs to be exercised, particularly in light of digital social media, in which the lines frequently blur between private and professional selves. A senior official within the environment department, for example, might have a passion for the subject and strongly

favour the platform of an opposition party. Although this official would be within her rights to campaign for that party, she would need to weigh doing so against her professional obligations. Could her advocacy affect not only her ability to be impartial but also the perception that she is being impartial? Ultimately, there is a large grey area, and decisions on this front tend to hinge on factors such as the nature of an individual's public service duties and personal visibility within the relevant organization. It can be of little surprise, therefore, that deputy heads are largely prohibited from engaging in any type of political activity other than voting. Their prominent profile and unique role within the public service ecosystem require nothing less.

Ultimately, an individual's right to seek office must be balanced against the need to preserve the impartiality of the civil service itself. For this reason, any federal civil servant who seeks to run for elected office must first seek permission from the Public Service Commission, which will assess the request. Depending on the nature of the individual's responsibilities, the commission might require the candidate to take a leave of absence without pay before and during the campaign. In rare cases, it might even reject the request if there is deemed to be a public interest in doing so.

Despite the excitement and energy of election night, a new government does not immediately take office, regardless of the result of the vote. Even if a government is defeated at the polls, ministers continue to serve until a new cabinet is sworn in. In practice, the period from election day to swearing in varies, though typically it has taken from ten to fourteen days and can take as long as a month.

During this period, the prime minister, or prime minister-designate, assumes the role of cabinet maker, determining the composition and structure of the cabinet and how the government should be organized to achieve its objectives optimally. Much of the technical work has traditionally been supported by the PCO's little-known and highly secretive Machinery of Government Secretariat. It is a small shop populated, as some have quipped, by "practitioners of the dark arts of the Westminster system." This is

typically a quiet time in Ottawa as the city anxiously awaits decisions on cabinet formation. It is a tightly controlled and secretive process involving the highest levels of the Privy Council Office, the prime minister and the Prime Minister's Office (PMO), or, depending on the situation, the new prime minister-designate's trusted inner circle.

A prime minister or prime minister-designate will also appoint a transitional team to offer advice on cabinet formation, government priorities, strategies for engaging caucus members and other political parties, and the contents of the Speech from the Throne that will open the new session of Parliament.<sup>11</sup> Transitional team members might be experienced political advisers who have worked at various levels of the government. Therefore, they are equipped with first-hand knowledge about how to take the first steps of a new government's mandate or the return of an incumbent government. This team is disbanded once the transitional period is over, though often there are members of the team who go on to be appointed as political staff.

Once the prime minister or prime minister-designate has chosen the members of the cabinet, the new ministers are informed via a discreet meeting or telephone call and advised to prepare for the swearing-in ceremony. Arrangements are made between the PCO, the PMO, and Rideau Hall to determine the timing and details of the ceremony. Once new ministers are sworn in, they spend some time together as a new team prior to the new session of Parliament.

These early days are a time for a prime minister to engage with cabinet members and to impress on them the expectations of them as members of the executive team. In 2015, Prime Minister Trudeau released a document entitled *Open and Accountable Government*, which provided guidance to ministers and exempt staff on the meaning and significance of concepts such as responsible government, ministerial responsibility, and cabinet solidarity.<sup>12</sup> The document describes the relationship between public servants and political staff, and it identifies the prime minister's expectations for all public office holders, including standards of ethical behaviour. Prime

Minister Harper issued a similar document in 2006 called *Accountable Government: A Guide for Ministers*.<sup>13</sup> Early in the mandate, a prime minister will also issue to each minister a mandate letter outlining political expectations and priorities for the minister and portfolio.

These early days are a time for deputy ministers and their senior departmental staff to get to know their new ministers and their political staff. These first meetings are often seen as critical to forming the positive working relationship so important to delivering results for Canadians. Part of this relationship building is providing thoughtful and fearless advice. Another aspect is ensuring that appropriate “concierge services” are offered to both incoming and outgoing ministers and their offices. This means having office space, phones, and email ready on day one. It also means ensuring that matters of human resources, such as compensation issues, are dealt with quickly and efficiently.

## Overcoming Obstacles

Each of the distinct phases outlined above is marked by different challenges faced and experienced by various parts of the public service. The pre-writ period can be particularly challenging, for example, for those public servants involved in government communications or in managing grants and contributions. Challenges arise because of the natural tendency of governments to ramp up activity dramatically as an election call looms, such as trying to tie up loose ends and deliver on priority commitments before Canadians go to the polls. Workloads suddenly increase, and timelines constrict. Equally, for many departments, the writ period itself can be a complex balancing act between providing support to a minister during a campaign and respecting the caretaker principles. For some senior officials, this can become a considerable preoccupation.

One of the most significant challenges is the degree of secrecy that typically cloaks the preparation of transitional materials. This

is particularly true in the preparation for cabinet formation – one of the most secretive processes in the government. The need for discretion often means that this period is governed by a “need-to-know” culture. This runs counter to a political and public service environment that increasingly places a premium on openness and transparency and on cross-departmental collaboration. Often the need to preserve secrecy can become an impediment to carrying out thorough work on tight timelines. This is the inevitable price to be paid, however, to preserve both the public service’s capacity to offer frank and honest advice and ministers’ freedom to decide whether or not to take it.

Ultimately, an effective transition provides a strong argument in favour of the presence of a stable, impartial public service. In some systems of governance, for instance in the United States, it is typical for the top layers of the civil service to be replaced following a change in government. Although this approach assures a degree of ideological alignment between “political masters” and those entrusted to implement their wishes, this sudden change in leadership can result, at least temporarily, in paralysis from the resulting loss of institutional memory and the need to adjust to new personalities and leadership styles. Under the Westminster model, while talented political leaders and their staff often come and go depending on the will of the electorate, the public service as an institution provides continuity of expertise, knowledge, and service. As this chapter has shown, continuity is at the forefront regardless of which political party obtains the most seats in a federal election and goes on to form the government.

## Notes

*Note:* The views and interpretations in this chapter are those of the authors and do not necessarily reflect the position of the government of Canada.

<sup>1</sup> Canada, Privy Council Office, *26th Annual Report to the Prime Minister*.

<sup>2</sup> Treasury Board of Canada Secretariat, *Values and Ethics Code for the Public Sector*.

- <sup>3</sup> Zussman, *Off and Running*, 14.
- <sup>4</sup> Jaconelli, “The Nature of Constitutional Convention”; Lagassé, “The Crown and Government Formation.” Lagassé argues that the caretaker guidelines do not meet the test of a convention.
- <sup>5</sup> Lagassé, “Clarifying the Caretaker Convention”; Lagassé, “The Crown and Government Formation.”
- <sup>6</sup> Canada, Privy Council Office, *Guidelines on the Conduct of Ministers*.
- <sup>7</sup> Aucoin, Jarvis, and Turnbull, *Democratizing the Constitution*.
- <sup>8</sup> Savoie, *Governing from the Centre*.
- <sup>9</sup> See Charter of Rights and Freedoms, sections 1–2.
- <sup>10</sup> Public Service Employment Act, section 113.
- <sup>11</sup> Walsh, “Ford’s Transition Team Features Powerful Federal Conservative Duo.”
- <sup>12</sup> Canada, Privy Council Office, *Open and Accountable Government*.
- <sup>13</sup> Canada, *Accountable Government*.

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