



# Open and Accountable Government

2015



Canada<sup>ca</sup>



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2015

*Open and Accountable Government* sets out core principles regarding the roles and responsibilities of Ministers in Canada's system of responsible parliamentary government. This includes the central tenet of ministerial responsibility, both individual and collective, as well as Ministers' relations with the Prime Minister and Cabinet, their portfolios and Parliament. It outlines standards of conduct expected of Ministers as well as addressing a range of administrative, procedural and institutional matters. It also provides guidance to ministerial exempt staff and useful information for public servants and Canadians on Canada's system of government. Finally, on the critical issue of ethical conduct, Ministers are expected to be thoroughly familiar with the *Conflict of Interest Act*.

## **Library and Archives Canada Cataloguing in Publication**

Open and accountable government

Annual (irregular)

[2003]-

Text in English and French on inverted pages.

Title on added t.p.: Pour un gouvernement ouvert et responsable

Issued by Privy Council Office

Issued also online [www.pco-bcp.gc.ca](http://www.pco-bcp.gc.ca)

CP1-11

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PRIME MINISTER - PREMIER MINISTRE

### ***A Message to Ministers***

We have a talented, diverse and committed ministry that I know will bring the responsible leadership needed to implement our ambitious plan and deliver good governance for Canadians.

Our plan for an open and accountable government will allow us to modernize how the Canadian government works, so that it better reflects the values and expectations of Canadians. At its heart is a simple idea: open government is good government. For Canadians to trust our government we must trust Canadians, and we will only be successful in implementing our agenda to the extent that we earn and keep this trust.

To be worthy of Canadians' trust, we must always act with integrity. This is not merely a matter of adopting the right rules, or of ensuring technical compliance with those rules. As Ministers, you and your staff must uphold the highest standards of honesty and impartiality, and both the performance of your official duties and the arrangement of your private affairs should bear the closest public scrutiny. This is an obligation that is not fully discharged by simply acting within the law.

The trust of Canadians will also rest on the accountability of our government. In our system, the highest manifestation of democratic accountability is the forum of Parliament. You are accountable to Parliament for the exercise of the powers, duties and functions with which you have been entrusted. This requires you to be present in Parliament to answer honestly and accurately about your areas of responsibility, to take corrective action as appropriate to address problems that may arise in your portfolios, to correct any inadvertent errors in answering to Parliament at the earliest opportunity, and to work with parliamentary colleagues of all political persuasions in a respectful and constructive manner.

We also share collective responsibility for the actions of the Government. This means that Ministers must be prepared to explain and defend the government's policies and actions before Parliament at all times, and that the government must speak to Parliament and Canadians with a single voice. This in turn requires that Ministers be able to engage in full and frank discussion at Cabinet, with the assurance that what they say will be held in confidence. Ministers are bound to this confidentiality by their oaths as Privy Councillors.

You are responsible for ensuring that your departments are managed well and with complete integrity, and must discharge your portfolio responsibilities with careful regard to the particular powers, duties and functions assigned to you by statute and convention. In meeting this responsibility you can rely on the professional, non-partisan advice and support of your deputy minister and department. At the same time, you and your office must respect the non-partisanship of the public service and not seek to engage public servants in work that is outside their appropriate role.

To assist you in meeting these and other duties, *Open and Accountable Government* sets out the fundamental principles of our system of responsible government, including the core tenets of individual and collective ministerial responsibility, and provides you with practical guidance for performing your mandates. I draw your attention in particular to areas of the guide that we have expanded or strengthened for our mandate, including the guidance on non-partisan use of departmental communications resources in Annex G; the expanded material describing the role of the Crown and Governor General and the role of the Attorney General in Annex F; the description of ministerial roles in the governance of Crown corporations and the guidance for ministers communicating with portfolio entities in Annex H; the code of conduct for exempt staff in Annex I; and the guidance on social media use in Annex J.

Creating the culture of integrity and accountability that allows us to earn and keep the trust of Canadians will require constant attention and ongoing commitment by all of us throughout our mandate. This guide will serve as an important reference as we strive to provide an open and accountable government for all Canadians.

A handwritten signature in blue ink, appearing to read "Justin Trudeau", with a long horizontal line extending to the right.

Justin Trudeau  
Prime Minister of Canada



# Introduction

This guide sets out the duties and responsibilities of the Prime Minister and Ministers, and outlines key principles of responsible government in Canada. This essential information will help the Ministry individually and collectively manage the business of the Government of Canada. The Guide also includes information regarding the duties and responsibilities of Parliamentary Secretaries and provides guidance to ministerial exempt staff. It is also a useful guide for both public servants and Canadians on Canada's system of government.

Ministers who want further information or advice about the subject matter of this document may consult the Clerk of the Privy Council or their deputy minister. This document has been prepared by the Machinery of Government Secretariat in the Privy Council Office, which is responsible for supporting the Clerk of the Privy Council and deputy ministers by advising them on matters contained in this Guide.

# Ministerial Responsibility and Accountability

Ministers of the Crown are chosen by the Prime Minister and along with him constitute the Ministry. They all serve at the pleasure of the Prime Minister. Government policy is established by the Cabinet. The Ministry together helps carry out the mandate of the government.

Ministers of the Crown are responsible and accountable to the Prime Minister and Parliament in two fundamental ways:

- individually, for their performance in carrying out the responsibilities of the portfolio assigned to them by the Prime Minister; and
- collectively, in support of the Ministry team and decisions of Cabinet.

Ministers' individual and collective responsibility is an essential principle guiding the role of Cabinet government in Canada, and is at the core of the standards for ministerial behaviour.<sup>1</sup>

## **I.1. Individual Ministerial Responsibility**

Ministers are accountable to the Prime Minister: they are appointed by the Governor General on the advice of the Prime Minister and the Prime Minister may ask for their resignation at any time.

Ministers are also accountable to Parliament. Most ministerial responsibilities are conferred on Ministers by Parliament through statutes that set out the powers, duties and functions for

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<sup>1</sup> Details may be found in *Responsibility in the Constitution*, Privy Council Office, 1993.

which the Minister is individually accountable. In addition, Ministers may also have other authorities in common law. They may also have responsibilities assigned to them by the Prime Minister. Ministers are accountable to Parliament for all areas of responsibility, whether they are assigned by statute or otherwise.

## **I.2. Collective Ministerial Responsibility**

All members of the Ministry are collectively responsible for carrying out the government's policies as established by the Cabinet. They are therefore expected to work in close consultation with their ministerial colleagues. This principle is the foundation of a key constitutional convention known as Cabinet solidarity.

Policies presented to Parliament and to the public must be the agreed policies of the Cabinet. Ministers cannot dissociate themselves from or repudiate the decisions of Cabinet or their Ministry colleagues unless they resign from the Ministry.

Cabinet solidarity is further reinforced by the Privy Councillor's oath requiring Ministers to declare their opinion as decisions are being made, and to strictly uphold the confidentiality of Cabinet decision making.

The Cabinet decision-making process is a key mechanism for achieving overall coherence and coordination in government policy. Ministerial responsibilities may overlap or have implications for other Ministers. The increasing complexity of issues means that policies and programs must be reviewed in relation to each other. Ministers also have responsibilities for representing the different perspectives and interests of their regions, and these inevitably cut across departments. Ministers need to work closely together to ensure that their individual proposals are considered in the broader objectives of the government's agenda.

## **I.3. Ministerial Accountability**

Ministers are accountable to Parliament for the exercise of the powers, duties and functions vested in them by statute or otherwise. Ministers must be present in Parliament to respond to questions on the discharge of their responsibilities, including the manner in which public monies were spent, as well as to account for that use. Whether a Minister has discharged responsibilities appropriately is a matter of political judgment by Parliament. The

Prime Minister has the prerogative to reaffirm support for that Minister or to ask for his or her resignation.

It is critical to the principle of responsible government that all organizations within the executive be the responsibility of a Minister who is accountable to Parliament for the organization. A Minister is accountable to Parliament for the proper functioning of his or her department and all other organizations within his or her portfolio.

Ministers fulfill their accountability with respect to organizations by demonstrating appropriate diligence and competence in the discharge of their responsibilities. What constitutes appropriate ministerial oversight will depend on the nature of the organization and the Minister's role. In some cases, where arm's-length bodies are concerned and most powers, duties and functions are vested in a deputy head or governing body, the Minister's engagement will be at a systemic level—for example, making or recommending appropriate appointments, approving corporate plans, or examining the need for changes to the framework legislation.

Ministerial accountability to Parliament does not mean that a Minister is presumed to have knowledge of every matter that occurs within his or her department or portfolio, nor that the Minister is necessarily required to accept personal responsibility for every matter. It does require that the Minister attend to all matters in Parliament that concern any organizations for which he or she is responsible, including responding to questions. It further requires that the Minister take appropriate corrective action to address any problems that may have arisen, consistent with the Minister's role with respect to the organization in question. It is important that Ministers know and respect the parameters of their responsibilities with respect to arm's-length organizations.



## II

# Portfolio Responsibilities and Support

When a Minister is appointed to a portfolio, the Minister will have powers, duties and functions vested by statute, and the Prime Minister may assign a broad range of additional responsibilities. In exercising the powers conferred by Parliament and in implementing Cabinet decisions, Ministers are supported by a deputy minister and departmental officials. They are also provided with resources for exempt staff,<sup>2</sup> whom they personally appoint to assist them in their official responsibilities by providing political analysis, advice and support that the public service cannot provide.

As head of government, the Prime Minister has a responsibility for the effective operation of the whole of government and often has to answer in the House for the operation of all departments and agencies. This may mean that, in carrying out this overarching responsibility, the Prime Minister will be involved in matters within the responsibility of individual Ministers.

This chapter provides information on the framework and management of ministerial portfolios and on the public service resources that provide support to Ministers.

### **II.1. Powers, Duties and Functions**

Under departmental statutes, it is the presiding Minister who is vested with *powers, duties and functions*. Many of the Ministers' powers are normally exercised on the Ministers' behalf by deputy ministers and departmental officials, who may in some cases act under formal delegations. Ministers are individually accountable to Parliament and the Prime Minister for their own

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<sup>2</sup> See Annex E regarding exempt staff.

actions and those of their department, including the actions of all officials under their management and direction.

Ministers' portfolio responsibilities may include a variety of arm's-length organizations, such as agencies, tribunals and Crown corporations. In the case of such organizations, the enabling legislation may vest powers, duties and functions directly in a deputy head or in a body such as a board or commission, although the Minister will in most cases have residual powers, duties and functions. Ministers' relationships with these organizations must respect the parameters of their legal authorities. A discussion of Ministers' roles with respect to such bodies is found in Annex H, "Portfolio Organizations."

The Prime Minister may assign additional responsibilities to a Minister, either through an Order in Council<sup>3</sup> or as a result of a designation by the Prime Minister. Consequently, ministerial responsibilities can encompass a range of diverse activities, some based on statute, others on specific direction provided by the Prime Minister.

## **II.2. Acting Ministers**

The Prime Minister establishes a standing roster of acting and alternate Ministers who assume additional duties when their colleagues are unable to perform their duties. The roster is formalized by a Minute of Council. The Prime Minister can act for any Minister, but normally does so only when the designated acting Minister or the alternate Minister is not available.

Ministers acting on behalf of their colleagues when unable to perform their duties may exercise the full powers of the Minister, but are advised not to make major decisions in the Minister's temporary absence. In urgent cases, they traditionally consult the Minister, the Prime Minister or other Cabinet colleagues as appropriate.

## **II.3. Parliamentary Secretaries**

Parliamentary Secretaries are chosen by the Prime Minister and are assigned to assist Ministers. They are key

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<sup>3</sup> See Annex D, section 5 regarding Orders in Council.

resources in a Minister's portfolio. Parliamentary Secretaries are not members of the Ministry, and their responsibilities are carried out within the policy and program frameworks set out by their Ministers. They may also be called upon to support other Ministers in the portfolio. For additional information, Parliamentary Secretaries should refer to the *Guide for Parliamentary Secretaries*, available from the Privy Council Office.

Parliamentary Secretaries are expected generally to support Ministers with respect to House and public duties as well as some department-related duties.

With respect to their House and public duties, Parliamentary Secretaries are a fundamental link between Ministers and Parliament. They help Ministers maintain contacts with Senators and other members of the House of Commons in order to promote effective parliamentary decision making and to assist in the advancement or handling of the legislative agenda. They play a liaison role within the caucus, the House of Commons and its committees.

In committees, they can help in sharing departmental information, and can work with committee chairs to plan appearances of Ministers and departmental officials. They are expected to facilitate departmental appearances by representing the Minister's views and intervening if necessary to address political issues that may arise. On Private Members' Business, Parliamentary Secretaries are a link between parliamentarians and the Minister, and can also facilitate interaction with departments in the development of Private Members' Business that the government chooses to support. Parliamentary Secretaries may also be called upon to answer policy questions during Question Period in the Minister's absence, although acting Ministers may respond to particularly sensitive questions. House of Commons Standing Orders provide that Parliamentary Secretaries are ineligible to sponsor an item of Private Members' Business.

A Minister may delegate to a Parliamentary Secretary specific duties for policy development initiatives. Overall responsibility and accountability remain with the Minister, who also remains responsible for the direction of public servants and departmental resources, and has authority to initiate departmental actions.

## **II.4. Public Service and Exempt Staff Support**

In the performance of their departmental duties, Ministers receive support from two kinds of officials with distinct but complementary roles:

- public servants, reporting in a clear chain of command to the deputy minister, provide professional, non-partisan policy advice to Ministers and conduct departmental operations through the exercise of legal authorities flowing from the Minister; and
- ministerial “political” or “exempt” staff provide advice that can address the political aspects of the Minister’s functions but do not play a role in departmental operations.

The roles and responsibilities of deputy ministers and other public servants as well as those of exempt staff in supporting Ministers are discussed at Annex E, “Support to Ministers: The Role of the Public Service and Exempt Staff.”

## **II.5. Central Agencies**

The work of the Prime Minister and Cabinet is supported by a number of central agencies—the Privy Council Office, the Department of Finance and the Treasury Board Secretariat—which help to ensure consultation and coordination across government. The Prime Minister is also supported by the Prime Minister’s Office. The Prime Minister expects Ministers and their departments to work closely with all central agencies to establish an overall program supported by the Cabinet. Further discussion of the role of central agencies is found at Annex G.

### III

## Ministerial Relations with Parliament

In our system of government, Parliament is both the legislative branch and the pre-eminent institution of democratic accountability. Clear ministerial accountability to Parliament is fundamental to responsible government,<sup>4</sup> and requires that Ministers provide Parliament with the information it needs to fulfill its roles of legislating, approving the appropriation of funds and holding the government to account. The Prime Minister expects Ministers to demonstrate respect and support for the parliamentary process. They should place a high priority on ensuring that Parliament and its committees are informed of departmental policy priorities, spending plans and management challenges, including by appearing before parliamentary committees whenever appropriate. Ministers are expected to seek the views of parliamentarians and parliamentary committees on future plans and priorities, and to dedicate time to consulting and engaging their colleagues in Parliament in order to earn their support.

Under responsible government, Ministers exercise executive authority on the basis that they have the confidence of Parliament (more specifically, the House of Commons as the confidence chamber), which requires that they, and through them the officials under their management and direction, be accountable to Parliament for their actions.

Parliamentary review of spending is a key element of this accountability. The *Constitution Act, 1867* sets out the principles underlying the sovereignty of Parliament in the raising and spending of public money. Revenue can only be raised and moneys spent by the government with the authority of Parliament. Ministers must be prepared to respond to questions on spending

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<sup>4</sup> See Chapter 1 and Annex F for more information about responsible government.

for which they are responsible, and to regular parliamentary review of departmental expenditures.

### **III.1. Ministerial House Duties**

The Prime Minister expects Ministers to place a very high priority on their House duties. These duties include the following activities:

- *Daily attendance at Question Period.* Any proposed absences must be cleared with the Prime Minister's Office before other commitments are made. When a Minister is absent, a designated Minister or Parliamentary Secretary answers for him or her.
- *Attendance.* Attendance at other specified times is required according to a mandatory schedule of House duties prepared by the Chief Government Whip. Ministers are personally responsible for arranging replacements if they have to be absent and for notifying the Leader of the Government in the House of Commons and the Chief Government Whip of the arrangements.
- *Piloting legislation.* The Prime Minister expects Ministers to pilot their own legislation through the House and to appear before parliamentary committees of both Houses as required. The government will pursue its legislative agenda by requiring that all government Members of Parliament vote with the government on matters of confidence, which include matters of fundamental importance to the government such as the Main and Supplementary Estimates, the Budget, the implementation of electoral commitments, and matters that address shared values and the protections guaranteed by the *Canadian Charter of Rights and Freedoms*.
- *Private Members' Business.* Ministers are responsible for engaging with House of Commons Private Members' items and Senate Public Bills in their portfolio, in coordination with the government leader in the House of Commons.

- *Committee relations.* Ministers are expected to ensure that policy and legislative issues are brought forward so as to enable meaningful discussion at parliamentary committees. Ministers should also place a high priority on developing good relationships with parliamentary committee chairs and members, and supporting the essential work of the committee. This includes appearing before committees whenever appropriate.
- *Relations with parliamentarians and the government caucus.* In addition to maintaining good relations and open lines of communication with all parliamentarians, Ministers should give attention to their relations with members of the government's caucus. It is important for a Minister to maintain an open dialogue with government members of parliamentary committees that deal with issues within the Minister's area of responsibility. Ministers must also consult with caucus at an early opportunity on policy and expenditure proposals.
- *Other House duties.* The Leader of the Government in the House of Commons assigns and coordinates other House duties to Ministers, such as leading the government's response to Opposition Day motions. The Chief Government Whip is responsible for ensuring attendance at votes.

Ministers' duties and relations with Parliament are very demanding and require significant support, particularly for Question Period and committee work. They require careful daily and long-term coordination with the Prime Minister, the Government Leader in the House, and the Chief Government Whip. Ministers normally assign a senior member of their exempt staff to support their relations with Parliament. This person ensures ongoing liaison with the Chief Government Whip's Office and the Office of the Leader of the Government in the House of Commons regarding House and Senate business, and, acts as a key contact to obtain information from departmental staff for Question Period. Ministers who are assigned a Parliamentary Secretary are expected to make full use of these valuable resources to support them in the House of Commons and before parliamentary committees.

In the context of their accountability to the House of Commons, Ministers are required to answer parliamentary questions within their areas of authority and to correct any error at the earliest opportunity. Parliamentary questions cannot be directed to a former Minister concerning policies or transactions in a portfolio he or she no longer holds. Current Ministers must account to the House for taking any corrective action required to address problems that may have occurred prior to their appointment. Ministers are responsible for the accuracy and completeness of their responses to written questions. The Leader of the Government in the House of Commons co-ordinates the tabling of answers to written questions, and establishes timelines for ministers' responses.

In the case of arm's-length organizations where Ministers do not have direct responsibility for addressing issues raised by Parliament, they must nevertheless provide Parliament with the necessary information and explanations and exercise their authorities as appropriate to ensure that the non-departmental body concerned does address those issues.

### **III.2. Parliamentary Committees and the Role of Departmental Officials**

Public servants do not share in Ministers' constitutional accountability to Parliament but support Ministers in this accountability. This includes appearing before parliamentary committees on behalf of their Ministers to answer questions or provide information that Ministers could not be expected to provide personally. Principles governing such appearances are discussed at Annex E.



# IV

## Standards of Conduct

Full accountability to Canadians is a central objective of the Government. The Prime Minister holds Ministers and Parliamentary Secretaries to the highest standards of conduct for all their actions, including those that are not directly related to their official functions. Ministers and Parliamentary Secretaries are therefore expected to adhere to the following standards in all circumstances, whether they are acting as a Minister or Parliamentary Secretary, a member of the House of Commons, or a private citizen. This chapter outlines key areas where established government standards of conduct apply to Ministers and Parliamentary Secretaries.

### **IV.1. Ministerial Conduct**

Ministers and Parliamentary Secretaries must act with honesty and must uphold the highest ethical standards so that public confidence and trust in the integrity and impartiality of government are maintained and enhanced. As public office holders, Ministers and Parliamentary Secretaries are subject to the Part I requirements of the *Ethical and Political Activity Guidelines for Public Office Holders* set out in Annex A, as well as the best practices for fundraising and dealing with lobbyists that are set out in Annex B. Moreover, they have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny. This obligation is not fully discharged merely by acting within the law.

### **IV.2. Conflict of Interest Act**

Ministers and Parliamentary Secretaries and their staff are subject to the requirements of the *Conflict of Interest Act*.<sup>5</sup> In their capacity as members of the House of Commons they are also

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<sup>5</sup> Available from the Conflict of Interest and Ethics Commissioner, deputy ministers or the Privy Council Office.

subject to the *Conflict of Interest Code for Members of the House of Commons*.

The *Conflict of Interest Act* establishes a rigorous statutory regime for all public office holders, including Ministers, Parliamentary Secretaries and exempt staff, administered by the Conflict of Interest and Ethics Commissioner.

The Conflict of Interest and Ethics Commissioner is responsible for administering both the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*, investigating allegations involving conflicts of interest, applying compliance measures, and briefing Ministers and Parliamentary Secretaries on their responsibilities under the Act and Code. The obligations of the *Conflict of Interest Act* apply to Ministers, Parliamentary Secretaries and exempt staff as well as Governor-in-Council appointees, and some provisions apply to their families. The Act does not apply to Senators or Members of Parliament.

Ministers and Parliamentary Secretaries are held accountable by the Prime Minister for their adherence to the provisions of the *Conflict of Interest Act*. In general, the Act establishes mechanisms to identify and avoid possible conflicts of interest, and, among other measures:

- requires the provision of a confidential report to the Conflict of Interest and Ethics Commissioner on assets and liabilities, former and current activities and those of their spouse and dependent children;
- outlines rules regarding which assets may or may not continue to be directly managed, and gives direction on how to divest of assets;
- sets limitations on outside activities, acceptance of gifts, invitations to special events and hospitality, and post-employment activities; and
- sets out a recusal mechanism to assist Ministers in avoiding conflicts of interest in the performance of their official duties and functions.

Ministers' and Parliamentary Secretaries' adherence to the provisions of the *Conflict of Interest Act*, as well as to the ethical activity guidelines found at Annex A and the best practices for fundraising and dealing with lobbyists in Annex B, is essential to enhancing confidence in our system of government.

Ministers and Parliamentary Secretaries are also held accountable by the House of Commons for their adherence to the provisions of the *Conflict of Interest Code for Members of the House of Commons* in their capacity as Members of Parliament.

### **IV.3. Lobbying Act**

Ministers and Parliamentary Secretaries (as well as other members of the House of Commons and Senate and senior public servants) are prohibited under the *Lobbying Act* from engaging in paid lobbying of the federal government for five years after they leave office. These provisions, as well as the Act's registration requirements for lobbyists, are administered by the Commissioner of Lobbying.

The Commissioner of Lobbying may ask designated public office holders, including Ministers and Parliamentary Secretaries, to verify information about lobbying communications that has been registered by lobbyists. Every effort should be made to meet this responsibility using routine records.

### **IV.4. Invitations, Sponsored Travel and Foreign Honours**

Ministers often receive invitations to participate in or endorse events, community initiatives or publications, to meet with people or to travel to various countries. Ministers must be aware that some invitations may come from individuals or groups who have links to terrorism, crime, or violent or unsavoury foreign regimes.

Ministers are expected to exercise discretion at all times. They are responsible for ensuring the *bona fides* of those with whom they have dealings. When there is any doubt about accepting an invitation, inquiries should be directed to

the Executive Director of Security Operations in the Privy Council Office. The Executive Director will make inquiries, offer general advice to the Minister and arrange briefings as necessary.

Ministers and Parliamentary Secretaries must not accept sponsored travel, i.e. travel whose costs are not wholly paid from the Consolidated Revenue Fund, or by the individual personally, or his or her political party, or an inter-parliamentary association or friendship group recognized by the House of Commons. This includes all travel on non-commercial chartered or private aircraft for any purpose except in exceptional circumstances, and only with the prior approval of the Conflict of Interest and Ethics Commissioner and public disclosure of the use of such aircraft. Any hospitality accepted must strictly adhere to the requirements of the *Conflict of Interest Act*.

Long-standing government policy requires Ministers and Parliamentary Secretaries not to seek the offer of, nor to accept, a foreign order or decoration, either personally or on behalf of a colleague without the approval of the Prime Minister.

# Annex A

## Ethical and Political Activity Guidelines for Public Office Holders<sup>6</sup>

### **Part I: Ethical Guidelines and Statutory Standards of Conduct**

*The following Guidelines apply to all public office holders.*

**Ethical Standards:** Public office holders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of the government are conserved and enhanced.

**Public Scrutiny:** Public office holders have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.

**Decision Making:** Public office holders, in fulfilling their official duties and functions, shall make decisions in the public interest and with regard to the merits of each case.

**Government Property:** Public office holders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities. In no circumstance should any political activities be performed at a government place of work; nor should any government equipment or material be used for such purposes.

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<sup>6</sup> “Public office holders” means all persons falling within the definition of public office holder under the *Conflict of Interest Act*, and includes Ministers, Parliamentary Secretaries, ministerial staff and advisors, and most Governor-in-Council appointees (save for the specific exceptions enumerated in the Act), as well as ministerial appointees whose appointments are approved by the Governor in Council.

## **Statutory Requirements**

Public office holders are subject to the requirements of the *Conflict of Interest Act* as set out in Part IV: Standards of Conduct. Many are also subject to the five-year post-employment restriction on lobbying under the *Lobbying Act*.

## **Administration**

Compliance with these Guidelines is a term and condition of appointment. Before appointment, a public office holder shall certify that he or she will comply with these Guidelines.

## **Part II: Guidelines for the Political Activities of Public Office Holders**

*The following Guidelines do not apply to those public office holders whose roles and functions are necessarily of a political or partisan character, namely, Ministers, Parliamentary Secretaries or their staff. However, the political activities of exempt staff remain governed by Treasury Board's Policies for Ministers' Offices, and the political activities of House of Commons staff are governed by the by-laws established by the Board of Internal Economy.*

## **Context**

Public office holders discharge important public duties and accordingly are expected to comport themselves in a manner befitting the trust and confidence reposed in them. The essence of this obligation is set out in Part I of this Annex. In addition, public office holders are governed by the applicable provisions of the *Conflict of Interest Act* and the *Lobbying Act*.

Public office holders must also ensure that their political activities are consistent with the obligation to discharge their public duties in a non-partisan manner, so as to ensure that public confidence and trust in the integrity and impartiality of government are conserved and enhanced.

Any measures necessary to maintain the public's confidence that public office holders will discharge their function with integrity and in a non-partisan manner must be informed by the democratic rights protected under the *Canadian Charter of Rights and Freedoms*.

The purpose of these Guidelines is to assist public office holders in determining whether a contemplated political activity is compatible with their public duties. The Guidelines are grounded in one general principle: that a public office holder should not participate in a political activity that is, or that may reasonably be seen to be, incompatible with the public office holder's duty, or otherwise be seen to impair his or her ability to discharge his or her public duties in a politically impartial fashion, or would cast doubt on the integrity or impartiality of the office.

Public office holders exercise a wide variety of functions and come from a wide variety of backgrounds. Accordingly, it is not possible to set out, for all public office holders and for all circumstances, a set of definitive or binding rules. In all cases, public office holders should be guided by the general principle and the guiding factors set out below.

Every public office holder is under the obligation to consider these Guidelines before embarking on any political activity and, where there is any doubt, shall refrain from the activity in question.

For the purpose of these Guidelines, political activities include, but are not limited to:

- contributing money, within the law, to political parties, candidates or leadership campaigns at any level of government;
- being a member of a political party at any level of government in Canada;
- seeking nomination to run as a candidate or being a candidate in an election of any level of government in Canada;

- fundraising for political purposes;
- managing a political campaign or campaigning personally on behalf of a candidate in an election;
- personally displaying campaign material;
- attending partisan or social events sponsored by one particular political party, a Minister, a Member of Parliament or a Senator where such events are exclusively or primarily of a political or partisan character; and
- expressing partisan views in a public setting where this may reasonably be seen to be incompatible with, or impair the ability to discharge, the office holder's public duties.

Political activities do not include attending all-party candidates meetings in order to inform one's right to vote, or expressing partisan views in a private setting. In addition, in all cases all public office holders have the right to vote.

### **General Principle**

A public office holder should not participate in a political activity that is, or that may reasonably be seen, to be incompatible with the public office holder's duties, or reasonably seen to impair his or her ability to discharge his or her public duties in a politically impartial fashion, or would cast doubt on the integrity or impartiality of the office.

### **Guiding Factors**

In considering whether the general principle applies in a given situation, public office holders should be guided by the following factors:

- The nature of the organization, including whether it is quasi-judicial in character, in which case a much more stringent standard is required.



- The nature of the public office holder’s duties, including:
  - the level of authority within the organization;
  - the level of influence over others;
  - the degree and type of discretion vested in the public office holder;
  - the type and level of involvement in the development of policy;
  - the relationship with or connection between the public duties and the contemplated political activity;
  - whether the duties are full-time or part-time;
  - the visibility and profile of the public office holder’s duties; and
  - the impact of the public office holder’s duties on the public.
- The nature of the contemplated political activity, including:
  - its profile or visibility; and
  - its active or passive character.
- The duty of loyalty to the Government of Canada.

### **Specific Cases**

#### **1. Quasi-judicial Governor-in-Council appointees, whether full-time or part-time**

In light of the nature of their duties, members of quasi-judicial bodies are subject to a much more stringent standard and should generally avoid all political activities.

## **2. Deputy heads, deputy ministers, chief executive officers and equivalents**

Deputy heads who are subject to the *Public Service Employment Act* are subject to section 117 of that Act, which provides that:

“A deputy head shall not engage in any political activities other than voting in an election.”

These Guidelines impose a similar prohibition on all deputy heads, deputy ministers, associate deputy ministers, associate deputy heads and persons of equivalent rank, including the deputy heads and chief executive officers of Crown corporations, whose appointment is made or approved by the Governor in Council, whether or not such persons are subject to either Part 7 or section 117 of the *Public Service Employment Act*. Such persons must limit their political activities to voting in the elections of any level of government in Canada.

### **Persons Subject to the *Public Service Employment Act***

All questions with respect to the political activities of any public office holders appointed pursuant to, or subject to, the *Public Service Employment Act* fall within the exclusive jurisdiction of the Public Service Commission. This group includes those deputy heads, deputy ministers, associate deputy ministers, associate deputy heads, chief executive officers or equivalents who are subject to either Part 7 or section 117 of the Act, as well as special advisors to a Minister who are appointed under section 127.1(1) of the Act. The Public Service Commission has the power to investigate allegations of improper political activities on the part of such public office holders. Questions with respect to obligations under the *Public Service Employment Act* are to be referred to the Public Service Commission.

### **Administration and Interpretation**

Compliance with these Guidelines is a term and condition of appointment. Before appointment, a public office holder shall certify that he or she will comply with these Guidelines.

It is recognized that there will be circumstances in which either the participation of public office holders in political activities

has not been covered under these Guidelines, or the application of these Guidelines is unduly restrictive. The general principle and guiding factors are controlling, and resort should be had to these in all cases. Inquiries about these Guidelines and their interpretation should be addressed to the Privy Council Office (or where the *Public Service Employment Act* is engaged, the Public Service Commission) before a public office holder commences the proposed activity. Where there is any doubt, public office holders are expected to refrain from the contemplated activity or to resign from office in order to undertake it.

As stated above, persons subject to either Part 7 or section 117 of the *Public Service Employment Act* should take note of the substantive provisions of that Act, and must refer questions about their obligations under that Act to the Public Service Commission.

# Annex B

## Fundraising and Dealing with Lobbyists: Best Practices for Ministers and Parliamentary Secretaries

Ministers and Parliamentary Secretaries must avoid conflict of interest, the appearance of conflict of interest and situations that have the potential to involve conflicts of interest.

The following is a summary of best practices that Ministers and Parliamentary Secretaries are expected to follow to maintain appropriate boundaries between their official duties and political fundraising activities. It is important that Ministers and Parliamentary Secretaries familiarize themselves with these practices and apply them in all appropriate circumstances. In addition, they must ensure that their staffs are well acquainted with the practices and that adequate processes are in place in their offices to ensure compliance.

The practices complement, and do not replace, other rules that Ministers and Parliamentary Secretaries must observe, including the *Conflict of Interest Act*, the *Conflict of Interest Code for Members of the House of Commons* and the *Lobbying Act*. Ministers and Parliamentary Secretaries should communicate with the Office of the Conflict of Interest and Ethics Commissioner if they have any questions or concerns relating to their obligations under the *Conflict of Interest Act* or the *Conflict of Interest Code for Members of the House of Commons*, and should familiarize themselves with the Commissioner's *Guideline on Fundraising and the Conflict of Interest Act*.

### **General Principles**

- Ministers and Parliamentary Secretaries must ensure that political fundraising activities or considerations do not affect, or appear to affect, the exercise of their official duties or the access of individuals or organizations to government.

- There should be no preferential access to government, or appearance of preferential access, accorded to individuals or organizations because they have made financial contributions to politicians and political parties.
- There should be no singling out, or appearance of singling out, of individuals or organizations as targets of political fundraising because they have official dealings with Ministers and Parliamentary Secretaries, or their staff or departments.

### **Departmental Stakeholders**

In this document, “departmental stakeholders” includes:

- lobbyists registered to lobby Ministers and Parliamentary Secretaries, their staff or their departments;
- employees of lobbying firms retained to lobby Ministers, Parliamentary Secretaries, their staff or their departments;
- employees of corporations and organizations whose employees are registered to lobby Ministers, Parliamentary Secretaries, their staff or their departments; and
- individuals employed in, contracted by, or who otherwise represent corporations and organizations that have current or anticipated official dealings with Ministers, Parliamentary Secretaries, their staff or their departments.

### **Specific Best Practices**

In order to ensure that there is no differential treatment or appearance of differential treatment for individuals, corporations or organizations because of their financial support of politicians or political parties, Ministers and Parliamentary Secretaries should adopt the following best practices:

- Ministers and Parliamentary Secretaries should not seek to have departmental stakeholders included on

fundraising or campaign teams or on the boards of electoral district associations.

- Ministers and Parliamentary Secretaries should establish and maintain appropriate safeguards to ensure that lists and contact or other identifying information of departmental stakeholders are not provided to those engaged in fundraising activities.
- Ministers and Parliamentary Secretaries should ensure that government facilities and equipment, including ministerial or departmental letterhead, are not used for or in connection with fundraising activities.
- Ministers and Parliamentary Secretaries should ensure that the solicitation of political contributions on their behalf does not target:
  - departmental stakeholders, or
  - other lobbyists and employees of lobbying firms.

Note that this is not intended to restrict general fundraising appeals made to a broad group of supporters or potential supporters.

- Ministers, Parliamentary Secretaries and their staff should not discuss departmental business at any fundraising event, and should refer any person who wishes to discuss departmental business to make an appointment with the Minister's office or department as appropriate.
- Ministers and Parliamentary Secretaries should ensure that fundraising communications issued on their behalf do not suggest any connection between fundraising and official government business.
- Ministers, Parliamentary Secretaries and their staff should exercise caution in meeting with consultant lobbyists, and should give particular consideration to whether it is appropriate to meet a consultant lobbyist in the absence of the lobbyist's client.

# Annex C

## Access to Information and Administrative Matters

Ministers have direct administrative responsibilities flowing from their ministerial duties. Ministers are personally responsible for the conduct and operation of their offices and the exempt staff in their employ. This chapter provides information on administrative matters concerning Ministers and their offices. Detailed requirements are set out in the Treasury Board's *Policies for Ministers' Offices*.

### **C.1. Public Access to Information and Privacy**

The *Access to Information Act* provides a right of public access to information in records under the control of government institutions, subject only to certain necessary exceptions limited and specified in law. Ministers, their deputy ministers and heads of agencies are ultimately responsible for the application of the Act in their respective institutions and within the overall ministerial portfolio. Under the Act, decisions can be reviewed by the Information Commissioner and, ultimately, by the Federal Court. The government is committed to ensuring that government data and information is open by default, in formats that are modern and easy to use.

The *Privacy Act* imposes conditions that protect personal information held by government institutions. Under the Act, decisions can be reviewed by the Privacy Commissioner and, ultimately, by the Federal Court. In accordance with the legislation, Ministers may delegate these matters to their deputy minister or other senior officials, but may wish to be advised of particularly important files.

The *Access to Information Act* and the *Privacy Act* do not apply to Confidences of the Queen's Privy Council for Canada. However, a decision of the Federal Court of Appeal has made accessible, subject to exemptions in the Acts, background explanations, analysis of problems or policy options contained in

Cabinet documents once a Cabinet decision has been made public, or, if the decision has not been made public, four years after the decision was made. Government policy requires that government institutions consult with the Privy Council Office in all instances where information that may qualify as a Cabinet confidence has been identified in response to a request under the *Access to Information Act*.

When producing *papers in Parliament*, Ministers are expected to ensure that requests for information (for example, in response to a Notice of Motion) are met. Matters related to the production of papers in Parliament are coordinated with the Leader of the Government in the House of Commons.

## **C.2. Cabinet, Institutional, Ministerial and Personal Records**

Records kept in the offices of Ministers must be broken down into four categories: Cabinet documents, institutional records, ministerial records, and personal and political records. Records in these categories are filed separately, for reasons of operating efficiency and confidentiality and to facilitate compliance with statutory requirements.

*Cabinet documents* belong to the Prime Minister. Cabinet documents are formal records designated by the Privy Council Office as belonging to the Cabinet Paper System. They include Memoranda to Cabinet (MCs), decks, Cabinet Committee Reports (CRs), records of decisions (RDs), agendas, aides-mémoire and documents prepared for Ad Hoc Cabinet Committees or Reference Groups of Ministers. This category also includes formal Cabinet documents related to the Treasury Board and any sub-committees of Treasury Board, including submissions, précis, agendas, schedules, minutes of meetings and letters of decision.

The efficient operation of the Cabinet and the necessary confidentiality of ministerial discussions depend, in part, on the proper handling of Cabinet documents. Ministers must ensure that Cabinet documents provided to them are always safeguarded in accordance with the security requirements set by the Privy Council Office or, for Cabinet documents related to the Treasury Board, by the Treasury Board Secretariat. Parliamentary Secretaries must also respect this protocol when they are given access to such documents. Ministers must assign members of their staff specific responsibility for controlling the flow and ensuring the security of



these documents. When a Cabinet item has been dealt with, the associated Cabinet documents must be returned to the Privy Council Office or the Treasury Board Secretariat, as appropriate.

Certain Cabinet documents that are clearly marked for Ministers' eyes only cannot be reviewed by exempt staff. Some Cabinet documents must remain in the Cabinet room. Cabinet documents must not be photocopied, scanned or transmitted electronically, and they must be carried in a secure briefcase. A record containing Cabinet confidences that is not a Cabinet document is either an institutional record (if it originated with the institution), or a ministerial record (if it originated with the office of the Minister, for example, a briefing note containing political advice to a Minister regarding a Cabinet matter).

*Institutional records* relate to the business (policies, programs, activities and services) of the department and associated agencies, and are kept in a separate registry. These records are presently subject to the *Access to Information Act*.

*Ministerial records* include official records pertaining to the office of the Minister, other than records that fall into the categories of personal or political records, institutional records or Cabinet documents. Ministerial records are not subject to the *Access to Information Act*.

*Personal and political records* are personal, as opposed to official, in nature (e.g. a Minister's constituency business, party political matters, private and personal life) and are kept in separate ministerial files. Like ministerial records, personal and political records are normally excluded from the application of the *Access to Information Act*, provided that they are maintained separately from institutional records.

When a Minister leaves office, Cabinet documents must be returned to the Privy Council Office or Treasury Board Secretariat, institutional records must be left with the department, and ministerial records must be transferred directly to Library and Archives Canada. Ministers may remove only their personal and political papers. However, to ensure the security of sensitive documents in personal and political papers, Ministers should use storage facilities and archival services offered by Library and Archives Canada.

Former Prime Ministers have control over the confidences of the government they headed. When a change of government occurs, the outgoing Prime Minister traditionally leaves the Cabinet records of the government in the custody of the Clerk of the Privy Council. The Clerk of the Privy Council plays a central role in administering the convention governing access to Cabinet and ministerial papers.

Subject to any arrangements a former Prime Minister may make with his or her successor, former Ministers may have access to Cabinet papers for the period of time when they held office, but only for that period, and only to papers relating to that office or to which they would normally have had access. Requests for access are addressed to the Clerk of the Privy Council and Secretary of the Cabinet or, for requests concerning Treasury Board documents, to the Secretary of the Treasury Board. Cabinet papers to which access is provided may be read on the premises of the Privy Council Office or the Treasury Board Secretariat as appropriate.

Former Ministers may have access to ministerial records that are transferred to Library and Archives Canada on the premises of Library and Archives Canada. They may also have access to institutional records that were prepared in their departments during the period of time when they held office. For access to institutional records, they can contact the deputy minister and arrange to review them on departmental premises.

Former Ministers are bound for life to respect their oath as Privy Councillors, including maintaining the secrecy of Confidences of the Queen's Privy Council for Canada, and remain subject to the *Security of Information Act*. They must also honour their commitments to other Ministers and colleagues. When talking or writing about their experience in government, former Ministers must consult their former department's Access to Information Office to ensure that they do not disclose matters that remain confidential. Any questions should be addressed to the Clerk of the Privy Council.

### **C.3. Financial and Resource Management**

Ministers' expenditures are subject to statutory and Treasury Board policies governing the use of public moneys. These conditions are set out in the Treasury Board

Secretariat's *Policies for Ministers' Offices*, and cover matters such as:

- security clearance requirements;
- exempt staff and hiring by contract;
- salary rates and employee benefits;
- departmental staff assigned to Ministers' offices;
- contracting policies and procedures;
- budgets, expenditure authorization, and accounting for expenditures charged to Ministers' budgets;
- office accommodation and supplies; and
- travel and use of government aircraft and ministerial vehicles.

Ministerial responsibilities include ensuring that all expenditures in Ministers' offices are properly and prudently managed and are related to the conduct of official business. Under the *Access to Information Act*, Ministers offices are required to annually publish their expenses. Deputy ministers and the Treasury Board Secretariat can provide further information.

Expenditures by Ministers and Parliamentary Secretaries are expected to conform to applicable government policies and withstand close public scrutiny, including by Parliament. Ministers, their exempt staff and Parliamentary Secretaries are required to disclose publicly, by posting on their departmental websites, all hospitality and travel expenses related to government business. Reports must cover the financial quarter and be posted on departmental websites within 30 calendar days following the last day of the quarter. Ministers should be aware that high standards are expected of them. This policy also applies to deputy ministers and other senior government officials.

#### **C.4. Security**

The Prime Minister holds Ministers personally accountable for the security of their staff and offices, as well as of “Confidences of the Queen’s Privy Council for Canada” (commonly referred to as Cabinet confidences) and other sensitive information in their custody. The Privy Council Office briefs Ministers on applicable security requirements.

Confidences of the Queen’s Privy Council for Canada are defined in section 69 of the *Access to Information Act* and section 70 of the *Privacy Act*. They include Cabinet documents and other information related to Cabinet decision making.

Deputy ministers are accountable to their Ministers for the security of departmental personnel, information, facilities and other assets. All individuals who work in or for Ministers’ offices (e.g. employees, contractors, students and persons on loan, assignment or secondment), irrespective of their work location, require Level 2-Secret security clearances, as a minimum, *prior to appointment*. They must also comply with other security requirements for the safeguarding of government information and assets. Clearances and security briefings are arranged by the deputy minister.

The Royal Canadian Mounted Police (RCMP) provide material to Ministers on security precautions they can take to ensure their safety. A 24-hour, 7-day emergency contact number is provided to Ministers by the RCMP. In the case of a specific threat, the RCMP can offer additional assistance (e.g. a driver, vehicle and bodyguard).

Ministers are required to notify the deputy minister immediately of any potential compromise of Cabinet confidences or other security incident. Deputy ministers or the Clerk of the Privy Council can provide further information on security matters.

#### **C.5. Ministerial Travel Coordination**

All proposed ministerial travel is coordinated with the Prime Minister’s Office well in advance and before making commitments. Ministers are also expected to consult the Leader of the Government in the House of Commons or the Chief Government Whip and to ensure the availability of acting Ministers. When making use of government aircraft, Ministers

should make every effort to ensure joint travel in the interests of efficient use of government resources. However, for security purposes, no more than eight Ministers of the Crown may travel on the same aircraft at the same time.

Generally speaking, Ministers should limit travel abroad, especially while Parliament is in session. They should inform their deputy minister and the RCMP of their travel plans in order to be advised of any particular security concerns and suggested protection measures. The actual arrangements for official foreign travel are coordinated by the Department of Foreign Affairs, Trade and Development.

Ministers planning *private travel abroad* also need to inform the Minister of Foreign Affairs well in advance, since security or policy considerations may be involved. All goods acquired by Ministers abroad are subject to normal customs requirements and examination, and must be declared on arrival.

# Annex D

## Cabinet Decision Making

The Cabinet is the political forum where Ministers reach a consensus and decide on issues. It is the setting in which they bring political and strategic considerations to bear on proposed ministerial and governmental actions. These considerations must necessarily reflect the views and concerns expressed by Canadians, caucus colleagues and other parliamentarians. Once a consensus is reached, Ministers can fulfill their collective responsibility to Parliament. This Annex addresses the main elements of the organization and conduct of decision making in the Cabinet.

### **D.1. Basic Rules for Cabinet Business**

A number of basic ground rules for the conduct of Cabinet business are essential to maintain Cabinet solidarity and enhance its practical effectiveness.

Decision making is *led* by the Prime Minister. Through the Cabinet and its committees, the Prime Minister provides Ministers with the principal forum in which they can resolve different perspectives. The Prime Minister *organizes* Cabinet and Cabinet committee decision making, determines the agenda for Cabinet business and chooses committee chairpersons to act on his or her behalf. The Privy Council Office is the Cabinet's secretariat and administers the Cabinet decision-making process on behalf of the Prime Minister.

Cabinet government works through a process of compromise and consensus building, which culminates in a Cabinet decision. The Cabinet and Cabinet committees do not vote on issues before them. Rather, the Prime Minister (or committee chairperson) "calls" for the consensus after Ministers have expressed their views. As the Cabinet secretariat, the Privy Council Office records and communicates the decision.

Consultation among the Ministers, departments and portfolios involved *must precede* the submission of a proposal to

the Cabinet by the responsible Minister or Ministers. Ministers must also consult caucus at an early opportunity on policy and expenditure proposals. Ministerial discussions in the Cabinet or Cabinet committee focus on the decisions required and provide Ministers with an opportunity to participate in and influence those decisions.

Ministers have the right to seek their colleagues' consideration of proposals for government action in their area of responsibility. This is, of course, subject to the agenda set by the Prime Minister for government priorities. Cabinet committee agendas are set by the committee chairpersons acting on the Prime Minister's behalf.

Confidences of the Queen's Privy Council for Canada, more commonly referred to as "Cabinet confidences," must be appropriately safeguarded from unauthorized disclosure or other compromise. The Cabinet's collective decision-making process has traditionally been protected by the rule of confidentiality, which enhances Cabinet solidarity and collective ministerial responsibility. Confidentiality ensures that Ministers can frankly express their views before a final decision is made. The Prime Minister expects Ministers to announce policies only after Cabinet decisions are taken, in consultation with the Prime Minister's Office and the Privy Council Office.

Cabinet business is extensive, and Cabinet consensus at times is difficult to achieve. Given the limited time available to Ministers and the importance of clear decisions to government operations, Cabinet business must be conducted efficiently and according to accepted ground rules that are fully understood and respected. Cabinet discussion is not used to air introductory or preliminary discussions of issues. Deputy ministers are expected to ensure that other affected departments are adequately informed in advance and that coordination across portfolios is pursued, so that other Ministers are prepared for Cabinet discussion and government decisions are coherent and aligned with overall objectives. When departments directly involved differ on a matter, the dispute should not be referred to the Cabinet until all other means of resolving it have been exhausted.

## **D.2. Decision-Making Process and Procedures**

### ***a) The Policy and Fiscal Frameworks***

Cabinet decision making is steered by electoral commitments as well as by certain key statements of government policy and priorities. The Speech from the Throne, delivered by the Governor General at the beginning of each session of Parliament, outlines the government's program for Parliament. As a reflection of the overall priorities of the government and the Prime Minister, the Speech provides a general *policy framework* for the upcoming parliamentary session.

The Minister of Finance presents the government's annual Budget which reflects the *fiscal framework* agreed to by the Cabinet. The President of the Treasury Board subsequently tables the Main Estimates.

These frameworks provide for the overall direction of the government. They both shape and reflect the ongoing work of Cabinet committees.

### ***b) The Process***

The Cabinet process begins when an issue is raised by a Minister in the form of a Cabinet document or through general discussion at a meeting. The supporting documents are normally circulated to all Ministers by the Privy Council Office before the issue is discussed at the appropriate Cabinet committee. Ministers and their departments are expected to adhere to deadlines established for the provision of these documents to the Privy Council Office in advance of the meeting, in order to ensure that committee members are able to have an informed and focused discussion that makes best use of Ministers' time. As well, Ministers may take the opportunity to update their colleagues on the progress of certain key initiatives being developed or implemented in their departments.

The Cabinet committee's report is subject to confirmation by the Cabinet. Records of final decisions are circulated to all Ministers and their deputy ministers for action under Ministers' individual authority. Policy announcements may be made after a Cabinet decision. If Treasury Board approval of the resources required to implement a decision cannot be obtained prior to an



announcement, appropriate caveats should be inserted in communications material to avoid pre-empting the authorities of Treasury Board.

### **D.3. Legislative Program**

The content of the government's legislative program is ultimately the responsibility of the Prime Minister, assisted by the Government House Leader. The main thrusts of the program are determined by the Cabinet. The Leader of the Government in the House of Commons coordinates the process of translating the Cabinet's policy decisions into bills to be placed before Parliament.

The first stage in this process is Cabinet approval of a Minister's policy proposal, including drafting instructions. After Cabinet has approved a Minister's policy proposal, a bill is then drafted by the Department of Justice to reflect the Cabinet decision. Priorities in drafting are established by the Leader of the Government in the House of Commons, who also undertakes final scrutiny of a bill before it is approved by the Cabinet for introduction in Parliament on his or her recommendation.<sup>7</sup> The Leader of the Government in the House of Commons has flexibility in establishing priorities for consideration of bills by the House, although Cabinet discussions of House business provide the overall direction for the government's legislative program. The Leader of the Government in the House of Commons is supported in this regard by his or her own exempt staff and Parliamentary Secretary, the Privy Council Office, the Deputy Leader of the Government in the House, and the Chief Government Whip.

### **D.4. The Cabinet and Cabinet Committees**

Cabinet committees are an extension of the Cabinet itself. The Prime Minister establishes both standing and temporary (or special purpose) committees, chooses their membership, prescribes their procedures and changes them as he or she sees fit. The Privy Council Office provides Ministers with information on the Prime Minister's decisions regarding the structure and operations of Cabinet committees.

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<sup>7</sup> See *Cabinet Directive on Law Making*, available from the Privy Council Office.

Committee chairpersons act for the Prime Minister with his or her authority, including setting the committee agenda. For the most part, decisions are taken by the appropriate committee, subject to confirmation by the Cabinet. This system settles as many questions as possible at the committee stage in order to lessen the workload of the Cabinet and to allow it to concentrate on priority issues and broad political concerns.

The Treasury Board is established by law as a committee of the Queen's Privy Council for Canada, and many of its decisions have the force of law. It provides oversight of the government's financial management and spending, as well as oversight on human resources issues. The Treasury Board may act as the Cabinet committee for the public service and expenditure management (under the *Financial Administration Act*). The Board is the employer for the public service, and establishes policies and common standards for administrative, personnel, financial and organizational practices across government. It also controls the allocation of financial resources to departments and programs. The Treasury Board also fulfills the role of the Committee of Council in approving regulatory policies and regulations, and all Orders in Council, excluding appointments.

Ministers may be invited by the committee chairperson to attend any meeting of a Cabinet committee, whether or not they are a member of the committee. Parliamentary Secretaries may occasionally attend Cabinet committee meetings as requested by the Prime Minister. The Prime Minister designates certain Ministers as ongoing members of each committee, and they are expected to attend these regularly. If Ministers are not able to attend a meeting, they should inform the chairperson of their views on agenda items by letter. The Minister of Finance and the President of the Treasury Board are *ex officio* members of all Cabinet committees.

Meetings are conducted as informally as possible in both official languages. Most Cabinet committees meet on a regular schedule. This allows for effective planning and ensures that meetings and decisions can proceed without delay. As the Cabinet secretariat, the Privy Council Office provides the Cabinet and its committees with the support required to prepare for and conduct meetings, including arranging meetings, circulating agendas, distributing documents, providing advice to the chairperson of each committee on agenda items and preparing Cabinet minutes

and decisions for review by the Chair before finalization. Public servants, exempt staff or other individuals do not attend Cabinet or its committees without prior approval of the appropriate Committee Chair and the Privy Council Office.

#### **D.5. Orders in Council**

Some actions of the executive require a formal legal instrument. Orders in Council are legal instruments made by the Governor in Council pursuant to statutory authority (or, infrequently, royal prerogative). Recommendations to the Governor in Council are signed by the responsible Minister. They take legal effect only when made by the Governor General.

#### **D.6. Financial Procedure**

According to the Constitution, revenue can be raised and moneys can be spent by the government only with the authority of Parliament. Bills which propose new spending or seek to impose a tax or duty must originate in the House of Commons. The *Constitution Act, 1867*, requires that bills which authorise new spending or spending for a new purpose must be recommended to the House by the Governor General in the form of a Royal Recommendation, which is obtained by the Leader of the Government in the House of Commons. In addition, bills which seek to impose a tax or duty must be preceded by the adoption of a Ways and Means motion which can only be moved by a Minister. This ensures executive control over revenue raising and spending initiatives.

Parliament exercises its authority over government financial administration by means of a package of instruments comprising enabling legislation such as the *Appropriation Act*, financial documentation such as the Main Estimates (Parts I, II and III and the Public Accounts), and a review process by the House of Commons, the Senate and the Auditor General.<sup>8</sup>

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<sup>8</sup> For more details, see Audrey O'Brien and Marc Bosc, *House of Commons Procedure and Practice*, 2nd Edition, House of Commons, Ottawa, 2009.

## D.7. International Treaties

International relations are a prerogative of the Crown, which in Canada is exercised by Ministers as the Crown's representatives. Under this authority, Ministers and officials acting on their behalf negotiate, sign and ratify international conventions and treaties.

Depending on the subject matter, treaties may be negotiated by the Minister responsible for that policy area, or by the Minister of Foreign Affairs. Under the *Department of Foreign Affairs, Trade and Development Act*, the Minister of Foreign Affairs plays a coordinating role and ensures that the negotiation of individual treaties conforms to the foreign affairs policy of the Government.

Before entering into a treaty negotiation, Ministers should ensure that it has a policy mandate to begin negotiations. In most cases, Ministers will seek Cabinet approval for a negotiating mandate. This includes situations where a proposed treaty:

- would require legislative changes to implement;
- relates to the mandate of more than one Minister;
- creates new obligations for Canada;
- is extremely complex;
- is multilateral;
- is likely to represent a significant change in Canada's foreign policy;
- will have a major impact on domestic policy;
- will have a major impact on federal-provincial relations;  
or
- will entail significant financial pressure on the fiscal framework.

Ministers may also be specifically requested by Cabinet or the Prime Minister to bring forward a proposal with respect to a particular treaty.

In bringing their proposals for a treaty negotiating mandate to Cabinet, Ministers are expected to clearly set out the expected purpose of the agreement, its relation to existing agreements, its potential foreign policy implication, its possible domestic impact, an outline of any financial obligation that may be incurred, and any legislative changes that may be necessary if the negotiations prove successful. Ministers should also indicate the results of consultations with other government departments, provinces and territories, aboriginal groups or non-governmental organizations and industry stakeholders. Ministers may seek blanket policy authority to enter into negotiation of a number of similar treaties. Such a blanket authority may be considered when a Minister is faced with negotiating a series of identical or very similar bilateral treaties with numerous countries. In some cases, a general authority for a Minister to negotiate such treaties is found in statute.

Once a specific mandate is received from Cabinet or authority already exists and approval is granted by the Minister of Foreign Affairs, negotiation may commence. The Minister of Foreign Affairs, supported by the Department of Foreign Affairs, Trade and Development and its Treaty Law Division, advises responsible Ministers and their departments on any restrictions or pitfalls to be avoided in the negotiation of an instrument and other aspects of negotiation process and substance. Draft clauses under consideration may be provided to that Department to ensure that the clauses contained therein are written in accordance with Canadian domestic law and public international law, as well as international and Canadian treaty practice.

At each step, Ministers and officials negotiating on their behalf should consider whether the terms and conditions being discussed conform to the mandate approved by Cabinet, and negotiators should pay special attention to whether terms and conditions proposed may exceed the financial authority granted or require broader legislative changes than originally envisioned. If the authority risks being exceeded, the responsible Minister may need to seek a revised mandate from Cabinet.

Once the parties to a negotiation have reached agreement on a draft text, it should be provided to the Department so that it can complete a linguistic and legal review, assist in negotiating and completing administrative articles and final clauses covering matters such as signature, entry into force, amendment, and termination to

ensure that these meet international law and practice and Canadian law and policy, oversee the preparation of an accurate clean text in both official languages and ensure that all versions accurately reflect the agreement reached by the negotiators.

Once a treaty has been negotiated, signature requires that Cabinet provide policy approval of the treaty, and that an Order in Council be issued providing authority to exercise the Crown prerogative to sign it. For this purpose, the responsible Minister and the Minister of Foreign Affairs will bring forward to Cabinet a Memorandum to Cabinet seeking approval of the text of the treaty in both official languages, and policy approval to sign and ratify the treaty and for all resources and statutory amendments required to implement it. Once approved by Cabinet, the Minister of Foreign Affairs will recommend to the Governor in Council an Order providing legal authority to sign the treaty and, as necessary, providing Ministers and officials with the Instrument of Full Powers required to sign for Canada (the Prime Minister, the Governor General, and the Minister of Foreign Affairs have standing at international law to sign for Canada without producing an Instrument of Full Powers).

The Department of Foreign Affairs, Trade and Development maintains the official archive of all Canadian treaties and similar arrangements. The Department also supports the Minister of Foreign Affairs in preparing the text of the treaty and accompanying explanatory documents for tabling in Parliament.

Once the treaty has been tabled and any necessary legislation adopted, the Government will make a decision on whether to proceed to bind Canada to the treaty by way of ratification. The Minister of Foreign Affairs will recommend to the Governor in Council the issuance of a second Order in Council providing authorisation to ratify, and is responsible for any subsequent actions necessary (e.g. ratification, accession, acceptance) for Canada to establish its consent to be bound to the treaty.

# Annex E

## Support to Ministers: The Role of the Public Service and Exempt Staff

This Annex discusses the distinct but complementary roles of public servants and exempt staff in supporting Ministers in the performance of their departmental duties.

### **E.1. Deputy Ministers**

Deputy ministers are professional, non-partisan public servants. They are chosen by the Prime Minister on the advice of the Clerk of the Privy Council and are appointed by the Governor in Council.<sup>9</sup> Their role is to provide their Minister with the broadest possible expert advice and support needed for the Minister's portfolio responsibilities, and to undertake the day-to-day management of the department on behalf of their Minister. However, deputy ministers do not exercise direct authority over non-departmental bodies within the portfolio.

Deputy ministers are accountable for a wide range of responsibilities including policy advice, program delivery, internal departmental management and interdepartmental coordination. As deputy ministers, they do so in a manner that supports both the individual and collective responsibilities of their Minister. They are accountable on a day-to-day basis to their Minister, and a cooperative relationship between the two is critical. The advice that deputy ministers provide should be objective and must respect the law. If conflict occurs between the Minister's instructions and the law, the law prevails.

The Prime Minister is responsible for the unity and direction of the Ministry and the government's policies. As a result of their role in the collective management of the government, deputy ministers are also accountable to the Prime Minister for responding to the policies of the Ministry as a whole and to the

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<sup>9</sup> See Annex F, section 3 for a definition of Governor in Council.

requirements of the Treasury Board and the Public Service Commission. This includes ensuring that appropriate interdepartmental consultation occurs on any matter that may touch upon broader ministerial responsibilities. In this capacity, deputy ministers are required to keep the Clerk of the Privy Council informed of any significant issues that may arise with respect to their responsibilities or those of their Minister. If the issue is of sufficient concern, the Clerk of the Privy Council will inform the Prime Minister.

Deputy ministers are accountable to the Treasury Board and the Clerk of the Privy Council for the overall management capacity and performance of the department. In order to assist in managing this accountability and to ensure performance is subject to regular review, deputy ministers are required to implement the Treasury Board Secretariat's Management Accountability Framework. The Comptroller General of Canada also sets reporting requirements on departmental spending, and deputy ministers and departmental comptrollers must ensure that all requirements for expenditure planning, control and oversight are met, including in the development of policy proposals. Deputy Ministers have a responsibility to directly inform the Secretary of the Treasury Board of any significant financial issues or management issues within their portfolio.

### *Accounting officers*

The *Financial Administration Act* provides that deputy ministers and deputy heads of other government entities are designated accounting officers for their organizations. Accounting officers are required to appear before the appropriate parliamentary committee to answer questions regarding a specified range of responsibilities and duties relating to departmental management. These responsibilities include managing departmental resources in accordance with government policies and procedures, maintaining effective systems of internal control and signing the departmental accounts. Deputy ministers have long had these management responsibilities.

Under the law, the responsibilities of accounting officers arise within the framework of ministerial responsibility and accountability to Parliament (i.e. deputy ministers are accountable to Ministers, while Ministers are accountable to Parliament). Thus the legislation specifies that accounting officers are accountable



*before* committees—that is, they are required to provide information and explanations to committees, and in so doing to assist Parliament in holding the government to account. However, accounting officers are not accountable *to* committees. Accountability to Parliament for all matters pertaining to the portfolio, including management, rests with the Minister.

Where the accounting officer and the Minister are unable to agree on the interpretation or application of a Treasury Board policy, directive or standard, the accounting officer shall seek written guidance from the Secretary of the Treasury Board. Such guidance should be sought through a letter from the accounting officer to the Secretary setting out the issue in a clear and balanced manner. A copy of this letter should be provided to the Minister. If, after the Secretary of the Treasury Board has provided guidance in writing, the matter remains unresolved, the Minister shall seek a decision from the Treasury Board through a submission to the Board. The decision would be shared with the Auditor General as a confidence of the Queen’s Privy Council for Canada. For unresolved questions not related to the interpretation or application of Treasury Board policies, directives or standards, the deputy minister (or other deputy head) would have recourse to the Clerk of the Privy Council, who may ultimately seek the consideration of the Prime Minister.

Further details on the accountability and duties of deputy ministers are included in *Guidance for Deputy Ministers*, a companion to this Guide. Guidance for accounting officers may be found in *Accounting Officers: Guidance on Roles, Responsibilities and Appearances Before Parliamentary Committees*.

## **E.2. Departmental Officials**

In exercising their powers, duties and functions as the heads of government departments, Ministers receive frank and candid policy advice and loyal operational support from a professional, non-partisan public service. With the exception of deputy ministers, who are chosen by the Prime Minister on the advice of the Clerk of the Privy Council, public servants are appointed under a merit-based appointment regime overseen at arm’s length from Ministers by the Public Service Commission. They serve democracy by supporting, without partisan bias, the program of the elected government of the day, with faithful regard to the laws of Canada and to codified public service values and

ethics. These codifications also note that Ministers have a responsibility for maintaining the tradition of the political neutrality of the public service.

Given the scope and complexity of the powers, duties and functions vested in Ministers, by practical necessity the majority are exercised on the Minister's behalf by departmental officials pursuant to common law principles that have been codified in legislation or pursuant to express delegations of authority from the Minister. This includes taking routine decisions, such as awarding grants and contributions under established criteria, entering into routine contracts and responding to access to information requests.

The department reports to the Minister through the deputy minister in a clear chain of command. Deputy ministers are the bridge between the department and the Minister. Although it is normal for ministerial staff to transmit instructions or gather information on behalf of the Minister, significant contact between the Minister's office and departmental officials should take place through or with the knowledge of the deputy minister's office. Both the Minister and the deputy minister have a responsibility to ensure that interactions between the Minister's office and departmental officials respect the lines of reporting and accountability, departmental decision-making processes and systems of internal control established by the deputy minister.

As both the legal authority and accountability to Parliament for departmental decision making rests with the Minister, it is within the Minister's authority to reserve any particular decision to him or herself. When this occurs, Ministers are held directly and personally accountable for decisions. It is important in all cases, including when authorities are delegated, that Ministers determine appropriate program and policy frameworks for public servants to follow in assessing specific files, and that Ministers have the benefit of public service analysis regarding whether criteria have been met before making their decisions.

There may be programs whose criteria leave limited scope for discretion, and for which the Minister may wish to delegate decision making to public servants, who have a basis in law for exercising authorities on the Minister's behalf. Ministers should ensure that delegations are being properly exercised and that

they are informed about the kinds of decisions being taken and the effectiveness of the program in delivering on its objectives.

### **E.3. Ministerial Exempt Staff**

In addition to public servants, Ministers are supported in their official functions by their own office staff. The employment of such staff is provided for under the *Public Service Employment Act*, but they are not members of the public service and are exempt from Public Service Commission staffing and other controls. They are known as “exempt” or “political” staff.

Exempt staff hold public office within the Government of Canada, are paid with public funds, and are charged with supporting their Minister in the performance of his or her public duties. They are subject to a broad range of terms and conditions set by the Treasury Board for the government as a whole and also to the same statutory conflict of interest and post-employment regime and ethical guidelines as Ministers and deputy ministers. They are also subject to the *Code of Conduct for Ministerial Exempt Staff* set out in Annex I.

The purpose of establishing a Minister’s office is to provide Ministers with advisors and assistants who are not departmental public servants, who share their political commitment, and who can complement the professional, expert and non-partisan advice and support of the public service. Consequently, they contribute a particular expertise or point of view that the public service cannot provide.

The exact nature of the support that exempt staff provide will depend on the direction of the Minister. Examples could include reviewing briefings and other advice prepared by the department; assisting the Minister in developing policy positions, including those that reflect the Minister’s political perspective; preparing speeches and politically oriented communications; liaising with other Ministers’ offices and caucus; and providing advice as a specialist in a particular field relevant to a policy initiative being developed by the Minister.

Exempt staff can ask departmental officials for information, transmit the Minister’s instructions, or be informed of decisions in order to address communications and strategic issues. However, they do not have a role in departmental operations and have no

legal basis for exercising the delegated authority of Ministers. Nor may exempt staff give direction to departmental officials on the discharge of their responsibilities, or on issues related to the management of departmental resources or operational matters.

Good working relations between the Minister's office and the department, characterized by mutual respect, cooperation, and the sharing of information where it is relevant or needed for their respective work, are essential in assisting the Minister and deputy minister in managing departmental work. Such a relationship requires that exempt staff in the Minister's office respect the non-partisanship of public servants and not seek to engage them in work that is outside their appropriate role.

In meeting their responsibility to respect the non-partisanship of public servants, exempt staff have an obligation to inform themselves about the appropriate parameters of public service conduct, including public service values and ethics, and to actively assess their own conduct and any requests they make to departmental officials in the light of those parameters. Ministers and deputy ministers should be vigilant in ensuring that the appropriate parameters of interaction between officials and exempt staff are observed.

To the extent practicable, relations between officials and exempt staff should be conducted through the deputy minister's office. The deputy minister's office should be informed about contact between exempt staff and public servants in the department, and any procedures or guidelines established by the deputy minister for communications between exempt staff and departmental officials should be followed. Exempt staff should not withhold departmental advice or briefing material from the Minister or impede direct communications between the Deputy Minister and the Minister, but may supplement departmental advice or briefing material with their own advice.

A Minister's office may also include a limited number of public service *departmental assistants*. They are public servants in the employ of their departments who are assigned to the Minister's office and who are expected to carry out their duties in a non-partisan manner. Their role is to liaise with the department as well as to provide administrative support and general assistance to the Minister on departmental or other government matters.

As Members of Parliament, Ministers receive other support provided by the House of Commons. Such support is provided and used only in accordance with established House of Commons rules.

#### **E.4. Supporting Ministerial Accountability to Parliament**

Appearances before House and Senate committees by Ministers and their officials are an essential part of informing Parliament, which enables parliamentarians to represent the views of their constituents, and to hold the government to account for its policies and management. Ministers should promote an ongoing dialogue with parliamentary committees on their department's policy priorities, legislative and spending issues, and management challenges. Ministers, supported by the public service, should appear regularly before their respective parliamentary committees to seek the committee's input into policy and spending priorities, and to discuss departmental performance and results. Ministers are expected to provide, consistent with Treasury Board guidelines, informative and balanced reports to Parliament, most importantly the Estimates, the Report on Plans and Priorities, and Departmental Performance Reports. Ministers and their officials must cooperate with the committees in their work and seek the views of parliamentarians and committees on future plans and priorities.

The principles of ministerial accountability guide Ministers and their officials appearing before parliamentary committees, including when officials appear in their capacity as accounting officers. Ministers are responsible for providing answers to Parliament on questions regarding the government's policies, programs and activities, and for providing as much information as possible about the use of their powers, including those delegated by them to others.

*Ministers are also responsible for deciding which questions they should answer personally and which questions may be answered by officials speaking on their behalf. A parliamentary committee may require the accounting officer for an organization to appear and answer questions regarding a range of responsibilities relating to departmental management, as set out in statute, and may do so even in cases where the Minister may have testified before the committee with respect to matters of departmental management. However, the general principles*

governing appearances of public servants before committees apply, as accounting officers appear before committees within the framework of ministerial accountability to Parliament. Officials can assist Ministers by factually answering questions at parliamentary committees, but they are to explain rather than defend or debate policies. When appearing before a parliamentary committee, officials maintain the traditional non-partisanship of the public service. The authoritative political presence of either the Minister or his or her political representative is required if politically controversial matters are likely to arise.

As members of parliamentary committees, Parliamentary Secretaries are essential resources and play a key role by representing their Ministers. Ministers should ask their Parliamentary Secretaries to address partisan issues raised during departmental appearances and to act as a liaison between the committee and the Minister and the department.

Ministers should ensure that appearances by public servants before parliamentary committees are fully consistent with ministerial accountability, including when they appear in their capacity as accounting officers. Public servants are ultimately accountable to Ministers through their deputy minister and not to Parliament.<sup>1010</sup>

In appearing on behalf of their Minister before committees, departmental officials are often able to provide more detailed information on departmental plans and performance than Ministers can provide. The deputy minister and other officials must be prepared to describe in detail the plans, activities and performance of the department in areas such as financial management, program and service delivery, and human resources management.

Accounting officers have a responsibility to be duly briefed on matters that are within the ambit of the responsibilities specified in section 16.4 of the *Financial Administration Act*. In particular, they should be able to give committee members an account of—that is, provide information and explanations concerning—their compliance with relevant laws and government policies as they relate to the organization of departmental resources and the maintenance of systems of internal control.

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<sup>10</sup> See Notes on the Responsibilities of Public Servants in Relation to Parliamentary Committees, available from the Privy Council Office.

Public servants also have a duty to hold in confidence some of the information that comes into their possession in the course of their duties. There is a tension between that obligation and the request of parliamentarians for disclosure of that same information. When appearing before parliamentary committees, public servants should refrain from disclosing that kind of confidential information, for instance because the information is confidential for reasons of national security or privacy, or because it consists of advice to Ministers. Accounting officers should not disclose confidential information, including advice to Ministers, even where that information pertains to matters of organizational management. In practice, officials should endeavour to work with Members of Parliament, in cooperation with Ministers and their offices, to find ways to respond to legitimate requests for information from Members of Parliament, within the limitations placed on them.

In the context of a committee hearing, information that is not in the public domain can only be made available on the specific authorization of the Minister, and within the context of statutory obligations. This approach has been recognized in an April 2010 ruling by the Speaker of the House of Commons. The Speaker noted that committees ordinarily accept the reasons that a public servant gives for declining to answer a specific question or series of questions, which may be perceived as a conflict with the witness' responsibility to the Minister, and that the solution for committees facing such situations is to seek answers from those who are ultimately accountable, namely the Ministers themselves.

On their own initiative or in response to a request from a parliamentary caucus, Ministers can also inform Parliament by directing departmental officials to provide factual briefings to parliamentary caucuses. Briefings organized for one caucus are made available to other caucuses and, accordingly, House Leaders or leaders of each party are kept informed of such briefings. It is never appropriate for the deputy minister or departmental officials to act in a partisan manner. Any questions of a political nature or expressions of disagreement with government policy should be referred to the Minister.

# Annex F

## Federal Government Institutions: The Executive

Canada is a constitutional monarchy and a democracy with a system of responsible parliamentary government. The structure of Canadian government is set by Canada's written constitution (the *Constitution Acts*, 1867-1982) and by an "unwritten" constitution comprised of conventions and customs first established in the British Westminster model of government, which, since 1867, have evolved through the history of responsible government in Canada to fit the Canadian context.

The unwritten constitution establishes key elements of Canadian democracy regarding executive authority in government as exercised by the Prime Minister and the Cabinet, who are accountable to the House of Commons, which is made up of the elected representatives of the people of Canada. This Annex outlines the basic roles and responsibilities of executive authority at the federal level.

### **F.1. The Crown, the Governor General and the Queen's Privy Council for Canada**

#### **The Head of State and Her Representative**

The *Constitution Act, 1867* vests executive government and authority of and over Canada in The Queen, Canada's sovereign and Head of State. By law, Canada's sovereign is the same person as the sovereign of the United Kingdom.<sup>11</sup> The Governor General is the representative of The Queen in Canada, and exercises the power and functions of the Crown on her behalf.

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<sup>11</sup> Pursuant to section 35(1) of the *Interpretation Act*, references in Acts and regulations to "Her Majesty", "His Majesty", "the Queen", "the King" or "the Crown" means the Sovereign of the United Kingdom, Canada and Her or His other Realms and Territories, and Head of the Commonwealth.



The Governor General's authorities as The Queen's representative in Canada are provided in two documents. The Office of the Governor General is established under Letters Patent issued by the Sovereign, most recently by King George VI in 1947. The *Letters Patent of 1947* provide for the delegation of The Queen's executive powers to the Governor General so that he or she can act on The Queen's behalf. The *Constitution Act, 1867* provides that the Governor General exercises authorities vested in The Queen by statute on the advice of the Privy Council.

Virtually all of The Queen's authorities in respect of Canada are exercised by the Governor General. The only powers that are not delegated to the Governor General are: the power to amend the Letters Patent; the power to appoint a Governor General; the power to approve the creation of new honours for Canada; and the power to appoint additional Senators under section 26 of the *Constitution Act, 1867*. These powers are exercised personally by The Queen on the advice of the Prime Minister.

### **The Office of the Governor General**

The Queen appoints the Governor General on the recommendation of the Prime Minister. The Governor General's appointment is "at pleasure" – he or she may serve as long as it pleases The Queen – and therefore does not have a formally set term of office. However, recent Governors General have generally served for approximately five to seven years. The Prime Minister may also advise The Queen on the duration of the Governor General's appointment, including on whether he or she should continue in office beyond the anticipated end of his or her term. The Governor General's term in office ends upon the installation of his or her successor.

As noted above, the Letters Patent of 1947 establish the office of the Governor General. The Governor General exercises a wide range of functions, including both constitutional and symbolic roles. The Governor General's roles include:

- fulfilling constitutional functions such as appointing Prime Ministers, swearing in Ministers and Privy Councillors, summoning, proroguing and dissolving

Parliament, and granting Royal Assent to bills approved by Parliament to give them the force of law;

- reading the Speech from the Throne in Parliament, outlining the Government's agenda for the coming parliamentary session;
- performing international functions such as welcoming and hosting world leaders, accepting ambassadors' diplomatic credentials, and representing Canada abroad;
- performing duties as Canada's Commander-in-Chief of the Canadian Armed Forces, including visiting troops and military bases, and bestowing military honours;
- promoting national identity and unity by visiting Canadian communities, and hosting events at Rideau Hall;
- recognizing Canadian excellence through the Canadian Honours system; and
- overseeing Canada's heraldic system, including coats of arms, badges and flags.

## **The Governor General and Responsible Government**

The powers conferred on the Governor General must be read in conjunction with the longstanding conventions of responsible government. Under this system, the Governor General, an unelected and non-partisan official, is almost always bound to act only on the advice of the elected government that commands the confidence of the House of Commons. The requirement to act on the advice of the government is reflected in both the *Constitution Act, 1867* and the *Letters Patent of 1947*.

The Prime Minister is the chief advisor to The Queen and Governor General. In this capacity, the Prime Minister may convey the government's views on matters of state to the Governor General and may advise him independently of Cabinet on such items as the appointment of Ministers and on summoning, proroguing and dissolving Parliament. Formal advice may be submitted by the Cabinet in the form of an Order in

Council or Minute of Council. The Governor General's consent must be obtained, when required, before decisions can take legal effect or be announced.

There may be rare situations in which the Governor General could be called upon to exercise his or her personal discretion instead of acting on or contrary to ministerial advice. The narrow sphere in which there is a possibility of the Governor General personally exercising discretionary authority is commonly referred to as the "reserve powers", the use of which would be guided by the application of convention and past practice to current circumstances, and informed by any consultations that the Governor General sees fit to hold with the Prime Minister or others. These include:

- the appointment of a Prime Minister;
- the dismissal of the Prime Minister; and
- granting or refusing the dissolution of Parliament.

### **The Privy Council**

The *Constitution Act, 1867* states that the Governor General is advised on the exercise of executive authorities by the Privy Council. Privy Councillors are summoned and sworn in by the Governor General on the recommendation of the Prime Minister. They take an oath of office and are appointed for life, unless removed by the Governor General on the recommendation of the Prime Minister.

The Privy Council includes current and former Ministers as well as a small number of individuals holding honorary positions or who are sworn in to occupy particular offices (e.g., members of the Security Intelligence Review Committee). In practice, the Governor General is advised by the Prime Minister and Cabinet of the day – the Privy Councillors who currently are part of the executive and government commanding the confidence of the House. It is exceedingly rare for the full Privy Council to meet as a body and, even then, it does so only for ceremonial purposes.

As previously noted, advice may be submitted formally to the Governor General by the Cabinet. Some government decisions – for example, the exercise of various regulatory

powers – are required by law to be approved by the Governor in Council; that is, the Governor General acting on the advice of Cabinet. Orders in Council are the legal instruments made by the Governor in Council pursuant to statutory authority or, less frequently, under royal prerogative. Orders in Council have full legal effect once they are signed by the Governor General.

### **The Administrator**

An Administrator may be appointed if the Governor General is physically incapable of performing his or her functions, is removed or is absent from the country for over thirty days, or dies while in office. As set out in the *Letters Patent of 1947*, the Chief Justice of the Supreme Court of Canada would be appointed as Administrator in these rare situations. If the Chief Justice is unable to act as Administrator, the Senior Justice would take his or her place. The Administrator can assume all of the Governor General's powers, authorities, and privileges, including the ability to dissolve Parliament.

### **Deputy Governors General**

Under the *Constitution Act, 1867* the Sovereign can authorize the Governor General to appoint Deputy Governors General to assist him or her in discharging his or her powers, functions and authorities. This authorization is provided in the *Letters Patent of 1947*. The Chief Justice of Canada and the Justices of the Supreme Court have traditionally been appointed as Deputy Governors General. These Deputy Governors General can perform the majority of the Governor General's legal functions, including those assigned to the Governor in Council and granting Royal Assent to bills. However, the authority to dissolve Parliament, which would in turn lead to an election, can only be exercised by the Governor General, or in the event of his or her incapacity, by the Administrator. Unlike the Administrator, Deputy Governors General are also not entitled to receive the honours or privileges accorded to the Governor General.

The Secretary and Deputy Secretary to the Governor General have also been appointed as Deputy Governors General. In this capacity these officials within the Governor General's office can perform a number of the Governor General's functions, including issuing Orders in Council and granting Royal Assent, but are not authorized to exercise the Governor

General's power to dissolve Parliament, recall or prorogue Parliament or appoint members of the Ministry.

## **Lieutenant Governors**

Lieutenant Governors are The Queen's representatives for all purposes in the ten provinces. The *Constitution Act, 1867* provides for the appointment, by the Governor General, of a Lieutenant Governor for each province.

Although Lieutenant Governors are federal appointments by the Governor in Council, it has been established judicially that a Lieutenant Governor is "as much the representative of Her Majesty for all purposes of provincial government as the Governor General is for all purposes of the Dominion government." Like the Governor General, Lieutenant Governors, acting on the advice of their respective executive councils (the provincial equivalent of the Privy Council), appoint the Ministry, summon and dissolve the Legislative assembly, grant Royal Assent and approve Orders in Council. They also fulfil a ceremonial and cultural role similar to that of the Governor General at the provincial level.

## **F.2. The Prime Minister's Functions and Powers**

The Prime Minister, as the leader of the political party that has the confidence of the House of Commons, is commissioned by the Governor General to form a government.

The Prime Minister is, above all, responsible for organizing the Cabinet and for providing the direction necessary to maintain the unity of the Ministry. This unity is essential if the government is to retain the confidence of the House of Commons.

The following principal functions and exclusive powers of the Prime Minister are essential in making Cabinet government work:

- The Prime Minister *leads the process of setting the general direction of government policy*. The Prime Minister is responsible for arranging and managing the processes that determine how decisions in government are made, and for reconciling differences among Ministers. The Prime Minister establishes the government's position before

Parliament by recommending to the Governor General the summoning and dissolution of Parliament, by preparing the Speech from the Throne outlining the broad policy agenda for each new parliamentary session and by determining whether proposed government legislation approved by the Cabinet is subsequently put before Parliament. The Prime Minister approves the Budget presented by the Minister of Finance.

- The Prime Minister *chooses the principal holders of public office*. The Prime Minister selects Ministers and may ask for their resignation at any time. The Prime Minister also recommends *senior public sector appointments* to the Governor General.
- The Prime Minister decides on the organization, procedures and composition of the Cabinet. This includes establishing Cabinet committees, selecting their membership and convening the Cabinet itself. In practical terms, the Prime Minister forms a team, decides on the process for collective decision making, and builds and adapts the machinery of government in which the team will operate.
- The Prime Minister *determines the broad organization and structure of the government* in order to meet its objectives. The Prime Minister is responsible for allocating Ministers' portfolios, establishing their mandates, clarifying the relationships among them and identifying the priorities for their portfolios through mandate letters. The Prime Minister's approval is required for the creation of new institutions and the elimination of existing organizations, some of which may also be subject to parliamentary decisions. Any proposals made by Ministers for significant
- organizational change or for altering their own mandates or those of other Ministers must first be approved by the Prime Minister.
- The Prime Minister *has the overall responsibility for the government's relations with Parliament and the Sovereign*.

- The Prime Minister *establishes standards of conduct* for Ministers and other public office holders, as set out here and in the ethical and political activity guidelines and best practices for fundraising and dealings with lobbyists (see Annexes A and B).
- As head of government, the Prime Minister has *special responsibilities* for national security, federal-provincial-territorial relations and the conduct of international affairs. The Prime Minister may also take a special interest in any other area of a portfolio responsibility as circumstances require. Ministers should pay special attention to activities within their own portfolio that touch on these special responsibilities or otherwise involve the Prime Minister.

### **F.3. The Ministry, the Cabinet and the Governor in Council**

Ministers are members of the *Ministry* and *Cabinet*. Members of the Ministry are appointed by the Governor General on the Prime Minister's recommendation. Before taking up their responsibilities, they are sworn in as Privy Councillors by the Clerk of the Privy Council at a ceremony presided over by the Governor General. In this ceremony, Privy Councillors swear the oath of allegiance, the Privy Councillor's oath and, in the case of Ministers, the oath of office for their respective responsibilities. The Privy Councillor's oath includes the undertaking to maintain Cabinet secrecy. Privy Councillors are entitled to be styled "The Honourable" and to use the initials "P.C." after their names for life.

Unlike the Privy Council, the Cabinet has no standing in statute. In practice, the Cabinet is the fundamental and final forum for reaching a politically authoritative consensus on government issues under the Prime Minister's leadership.

The *Governor in Council* is the term for the Cabinet acting in a legal capacity. Formally, it is the Governor General acting on the advice of the Cabinet. Parliament does not assign powers to the Cabinet or to Ministers collectively, but rather to the Governor in Council.

By convention, members of Cabinet (Ministers) must normally be members of Parliament (normally but not necessarily the House of Commons) or become members within a reasonable

period (since Confederation, all but three Prime Ministers have included non-Parliamentarians in their Ministry; of the 90 such individuals appointed as Ministers, 13 were named to the Senate at the time of or shortly after their appointment). If a Minister is not a Member of Parliament or Senator, in keeping with the principles of responsible government, these Ministers are generally expected to seek a seat within a reasonable period and resign from the Ministry if they are unsuccessful.

Two laws provide a general framework around the appointment of members of the Ministry and their duties:

- The *Parliament of Canada Act* stipulates that “no person accepting or holding any office, commission or employment ... in the service of the Government of Canada ... is eligible to be a member of the House of Commons unless they hold an office for which a salary is provided in section 4 or 5 of the *Salaries Act* or are a Minister of State”. In other words, the only Members of Parliament who can hold government offices are the Prime Minister and Ministers.
- The *Salaries Act* sets the salaries of certain public officials, including the Prime Minister and any Minister created in statute. While some countries have legislation limiting the number of Ministers that may be paid, the *Salaries Act* is enabling rather than restrictive, as it does not limit the number of Ministers who can be appointed. The *Salaries Act* is amended when legislation is passed creating a new department (e.g., adding the Minister of the Economic Development Agency of Canada for the Regions of Quebec).

Ministers are the repositories of the authority of the Crown; the executive power of the Crown is exercised largely through the powers, duties and functions assigned to them. Departmental statutes (e.g., the *Department of Industry Act*) stipulate that they are to be presided over by a Minister, and set out the Minister’s powers and duties. The *Salaries Act* includes twenty-five ministerial positions that must be filled as they are required by departmental legislation. However, individual Ministers may be cross-appointed to two or more of these positions.

The *Salaries Act* also includes a number of positions that can be appointed or left vacant at the discretion of the Prime Minister. These include positions for which there are no associated statutory powers, duties or functions (e.g., the Government Leaders in the



House of Commons), as well as statutory positions whose functions can be assumed by the portfolio Minister if the position is not filled (e.g., the Associate Minister of National Defence within the portfolio of the Minister of National Defence).

The Prime Minister establishes a standing roster of acting and alternate Ministers who assume additional duties when their colleagues are unable to perform their duties. The roster is formalized by a Minute of Council, a legal instrument known as the Acting Ministers Minute.

The Prime Minister may choose to appoint a Deputy Prime Minister. This position is designated by the Prime Minister at his or her discretion. The title, originated in 1977, has no standing in law, and does not carry any formal duties or tasks, though the Prime Minister may assign specific tasks in conjunction with the title. In the past, Deputy Prime Ministers have played a variety of roles, as determined by the Prime Minister, ranging from ceremonial functions (e.g., representing the government at events) and answering questions during Question Period to playing important policy roles.

The Prime Minister may also have Ministers without Portfolio who are members of the Cabinet without departmental responsibilities. Their number and the functions assigned to them are at the Prime Minister's discretion. Ministers without portfolio were originally named to provide regional representation in Cabinet. As Prime Ministers began to give these Ministers special responsibilities and commensurate salary, the distinction between Ministers with statutory responsibilities and Ministers without portfolio blurred. The position was widely used until the late 1970s and has fallen into disuse.

#### **F.4 Parliamentary Secretaries**

Parliamentary Secretaries are appointed to assist Ministers pursuant to the *Parliament of Canada Act*. With the exception of a brief period in 2003, they have not been members of the Ministry. There is no obligation to appoint any Parliamentary Secretaries and they are appointed at the discretion of the Prime Minister. Parliamentary Secretaries are appointed by the Governor in Council on the Prime Minister's recommendation, to assist Ministers in such manner as the Minister directs, for a specific period of time.

The maximum number of Parliamentary Secretaries that may be appointed is established by the number of Ministerial positions listed in the *Salaries Act*. Appointments are for a maximum of twelve months but can be renewed. A Parliamentary Secretary's term also ends upon the dissolution of Parliament.

Because they are not members of the Ministry, Parliamentary Secretaries do not play a formal role in the Cabinet decision making process. They are, of course, Members of Parliament, and can influence government decisions in these capacities.

Parliamentary Secretaries do not have an inherent right of access to Cabinet documents, although the responsible Minister may authorize specific exceptions on a case-by-case basis, on his or her own responsibility. For example, a Minister may wish to authorize that his or her Parliamentary Secretary be given material on draft legislation in order to prepare for its introduction and consideration in the House. If a Parliamentary Secretary has been asked to work on particular policy priorities by the Prime Minister or Minister, the Minister may wish to authorize access to Cabinet documents specifically related to the Parliamentary Secretary's work.

Parliamentary Secretaries do not attend meetings of Cabinet or of Cabinet committees. Parliamentary Secretaries are not legally designated substitutes or alternates for their Ministers, nor are they bound by the rules concerning Cabinet solidarity and collective responsibility of members of the Ministry. However, they are expected to work together with their Minister, the Government's House leadership and other Parliamentary Secretaries on legislative and other issues. They are bound to respect any Cabinet confidences which they may learn in the course of their duties. Parliamentary Secretaries take an oath of office and secrecy.

The responsibilities customarily exercised by Parliamentary Secretaries may be divided into House and public business, and department-related duties including, where authorized by a Prime Minister or the Minister, policy-related priorities.

The Leader of the Government in the House of Commons has a central role in coordinating the activities of Parliamentary Secretaries in the House and in committees in order to maximize their contribution to the activities of the Government. The main

responsibility of a Parliamentary Secretary is to assist the Minister in carrying out his or her duties in the House and to speak on the Government's behalf when issues arise in the absence of the Minister. The role of Parliamentary Secretaries in supporting their Ministers' House duties include:

- attending Question Period;
- piloting the Minister's legislation through the legislative process on the floor of the House, in parliamentary committees (although they do not vote on committees) and with caucus and opposition MPs;
- supporting the Minister's position on Private Members Business;
- supporting the Minister on committee issues and appearing before parliamentary committees; and
- carrying out other House duties assigned to them and coordinated by the Government House Leader, such as participating in the Late Show, leading the Government's response to Opposition Day motions, and responding to Parliamentary returns.

Parliamentary Secretaries may also be called upon to answer policy questions during Question Period in the Minister's absence, although acting Ministers may also respond. Parliamentary Secretaries also assist Ministers with steering government legislation through all stages in the House and in assisting, where appropriate, in the Senate.

On Private Members' Business, Parliamentary Secretaries are a link between parliamentarians and the Minister, and can also facilitate interaction with departments in the development of Private Members' Business which the Government chooses to support. Given that they work under the direction of a Minister, Parliamentary Secretaries do not introduce their own Private Member's bills or motions.

They play a necessary liaison role within the Government's caucus and throughout the House of Commons and its committees. Parliamentary Secretaries will not vote on committees. However, they can help in sharing departmental information, and can work

with committee chairs to plan appearances of Ministers and departmental officials to ensure productive dialogue. They are expected to facilitate departmental appearances by representing the Minister's views and addressing political issues that may arise.

A Minister may ask Parliamentary Secretaries to support them in developing policy or on other initiatives. Parliamentary Secretaries may also assist with the following activities: liaison between parliamentary committees and the public service, relations with the public and interest groups and a leadership role, if requested, at international meetings.

Overall responsibility and accountability remains with the Minister, who also continues to be responsible for the direction of public servants and departmental resources, and has authority to initiate departmental actions. Parliamentary Secretaries must have their Minister's concurrence before making any statements and they have no authority over officials in the Minister's department.

## **F.5 Ministers and the Law**

### ***Legal parameters for government activity***

Legal requirements form part of the framework of rules that establishes daily practices and sets parameters on how decisions are made in government. Whether acting individually or collectively, the Prime Minister and Ministers exercise their authorities according to structures and within limits laid down by the Constitution, Parliament, and the courts. All government activity must take place in accordance with the law. Ministers having any doubts on the legality of a particular action should ask their deputy minister and obtain the view of the Department of Justice. The following key constitutional provisions or statutes impact on decisions and their implementation:

- *The Constitution Act, 1867*, formerly called the *British North America Act, 1867*.
- *The Constitution Act, 1982*, which includes the *Canadian Charter of Rights and Freedoms*.
- *Acts of Parliament*, including departmental statutes that define the scope of Ministers' mandates; confer powers, duties and functions on Ministers that they

may exercise in delivering on their mandates and for which they are accountable; and create departments, over which Ministers preside, to organize resources to support them in the discharge of their responsibilities.

- The *Public Service Employment Act* provides a framework for a continuing, professional and non-partisan Public Service of Canada.
- The *Financial Administration Act* shapes virtually all aspects of government management, in particular through its establishment of the role of the Treasury Board in overseeing departments and other organizations. The Treasury Board is the Cabinet committee responsible for managing the Public Service of Canada and for approving expenditures of departments and agencies. Its decisions and policies limit Ministers' discretion to manage and direct their departments, and some have the force of law.
- The *Access to Information Act* establishes a public right to access general information contained in government documents. Under its provisions, the government may withhold material only if it falls within one of the Act's exceptions or is excluded from the Act's coverage. The *Privacy Act* similarly provides a right of access to one's own personal information held by the government, and protects personal information in the government's control by setting out rules governing the collection, use, disclosure, retention and disposal of personal information.
- Other important Acts that impact on Ministerial responsibilities generally include the *Official Languages Act*, the *Canadian Human Rights Act*, the federal *Employment Equity Act*, the *Public Servants Disclosure Protection Act* and the *Conflict of Interest Act*.

### ***Role of Minister of Justice and Attorney General***

The Minister of Justice is responsible for a number of statutes and areas of federal law, including criminal justice, family justice, access to justice, Aboriginal justice, public law and private

international law. In this capacity, the Minister of Justice is also responsible for the development of new policies, programs and services for Canadians. Under the *Department of Justice Act* (“*Justice Act*”), the Minister of Justice is also *ex officio* the Attorney General of Canada. The Attorney General is the chief law officer of the Crown, and has a historic constitutional duty, crystallised in the Minister of Justice’s obligations under the *Justice Act* (paragraph 4(a)) to “see that the administration of public affairs is in accordance with law”. This includes upholding the constitution, the rule of law, and respect for the independence of the courts.

In addition, the Attorney General has carriage of all litigation for or against the Crown federal and any department (*Justice Act* paragraph 5(d)). The Attorney General represents the Crown and not individual departments or agencies of the government. He or she therefore seeks to protect interests for the whole of government when providing advice and conducting litigation. While some cases may focus exclusively on the interests of one department, an increasing number of cases may have implications for multiple departments or consequences for future development of the law. The Attorney General must act in the public interest, advance principled legal positions, and maintain high standards of civility and advocacy. If legislation or Crown decisions are challenged in courts, however, the Attorney General’s mandate is to vigorously defend the government’s position.

In the civil litigation context, departments generally act as instructing clients, although in having carriage of all litigation the Attorney General must keep in mind his or her duty to ensure that public affairs are administered in accordance with law. Depending on the complexity or sensitivity of a case, it may be appropriate for the Attorney General to consult with the Prime Minister as well as Cabinet colleagues whose mandates could be affected by particular litigation.

In supporting the Minister in these roles, the Department of Justice acts as a policy department with broad responsibilities for overseeing all matters relating to the administration of justice that fall within the federal domain. It also provides a range of legal advisory, litigation and legislative services to government departments and agencies – including the provision of departmental legal services units – and acts as a central agency

responsible for supporting the Minister in advising Cabinet on all legal matters.

As the government's legal adviser, the Department of Justice helps federal departments develop, reform, and interpret laws. Ministers are expected to ensure that the legal issues and risks associated with proposals being brought forward for Cabinet consideration are clearly identified and fully considered and that the proposals are compliant with the *Canadian Charter of Rights and Freedoms*, and their departments should engage their Department of Justice legal services units for this purpose at the earliest possible stages of development. With respect to proposals for new legislation, once Cabinet has approved drafting instructions, specialists in the responsible Minister's department work with Department of Justice legislative drafters, who provide the legal expertise to draft the bill.

Under the *Justice Act* and associated regulations, the Minister of Justice is responsible for examining government bills and regulations to determine whether any provision is inconsistent with the *Canadian Charter of Rights and Freedoms*. The Minister and Department of Justice are further responsible for ensuring that all draft regulations are legally valid, that they are clear in both official languages, and that they take into account both of Canada's legal systems (the civil law in Quebec and the common law in the rest of the country).

As Attorney General, the Minister of Justice is also ultimately responsible for the federal prosecutorial function, with jurisdiction to prosecute all non-*Criminal Code* federal offences (except those under the *Canada Elections Act*) in the provinces, as well as authority to prosecute both *Criminal Code* and non-*Criminal Code* offences in the three territories, and concurrent jurisdiction with provincial Attorneys General for the prosecution of specific offences in areas such as terrorism and organized crime. The *Director of Public Prosecutions Act* ("*DPP Act*") establishes a statutory regime wherein this prosecutorial decision-making is exercised free from inappropriate political control, direction and influence, while maintaining the Attorney General's ultimate responsibility and accountability to Parliament for this function.

For this purpose, the *DPP Act* establishes the Office of the Director of Public Prosecutions ("*DPP*"), who acts as the Deputy

Attorney General of Canada in initiating and conducting federal prosecutions on behalf of the Minister, and is supported by a departmental entity that is separate from the Department of Justice. The *DPP Act* includes provision for the Attorney General to provide direction to the DPP with respect to the prosecutorial function in general, or with respect to specific prosecutions, in a manner that is publicly transparent. The Attorney General may also intervene in or assume conduct of a prosecution; for example, to defend the constitutionality of federal legislation.

The Attorney General and the DPP are bound by the constitutional principle that the prosecutorial function be exercised independently of partisan concerns. However, it is appropriate for the Attorney General to consult with Cabinet colleagues before exercising his or her powers under the *DPP Act* in respect of any criminal proceedings, in order to fully assess the public policy considerations relevant to specific prosecutorial decisions. Similarly, the DPP and Crown counsel working under the DPP often need to consult with officials in government departments and agencies that have information or expertise that may be relevant to particular prosecutorial decisions. Interdepartmental consultation is also important because of the shared responsibilities among government departments for enforcing federal laws. Specific Ministers and departments are responsible for administering and enforcing specific legislation that also contain offence provisions prosecuted by the DPP (for example, the Minister of National Revenue is primarily responsible for administering and enforcing the *Income Tax Act*, while the Minister of Transport administers and enforces the *Aeronautics Act*). Formal consultation may also be warranted in cases that are of significant public interest, which raise legal issues of national importance or which involve certain specialized areas of the law; for example, cases before the Supreme Court of Canada, larger scale environmental prosecutions, challenges to the constitutionality of federal legislation, war crimes, crimes against humanity and cases involving official language rights, aboriginal law or national security issues. The Office of the DPP has issued guidelines to its prosecutors on the conduct of such consultations.

### ***Legal assistance and indemnification***

Ministers, ministerial exempt staff and other federal government officials are subject to the Treasury Board *Policy on Legal Assistance and Indemnification*. As “Crown servants”



under the Policy, these officials may receive appropriate legal representation and be protected from personal liability in instances where they are subject to legal claims despite the fact that they are acting in good faith, within the scope of their duties and in the interests of the Crown. Depending on the circumstances, this may include legal assistance provided to the Crown servant by the Department of Justice, or compensation for legal fees paid to private counsel.

Under the policy, requests for legal assistance or indemnification for Ministers must be approved by the Prime Minister, and requests from ministerial staff are approved by the responsible Minister (with requests for former Ministers and former staff subject to approval by the Clerk of the Privy Council). Ministers must also approve legal assistance for departmental officials that exceeds certain monetary thresholds. Ministers are responsible under the policy for ensuring that requests meet certain eligibility criteria, and should seek the advice of officials who may have knowledge of the facts, as well as the legal advice of the Department of Justice prior to making this decision. The decision should be made before the Crown official engages legal counsel, in order to avoid a potential conflict situation, which would be detrimental to the interests of both the Crown servant and the Crown.

# Annex G

## Central Agencies, Communications and Appointments

This chapter provides information on the roles of central agencies to support the Prime Minister, the importance of coordinating communications and consultations, and the role of Ministers in the appointment process. The Prime Minister expects Ministers and their departments to work closely with all central agencies to coordinate issues and to establish an overall program supported by the Cabinet.

### **G.1. Central Agencies**

#### ***a) Privy Council Office***

The Privy Council Office provides the Prime Minister with public service support and directly assists the Prime Minister in performing all of his or her duties and responsibilities as head of government. It is also the Cabinet secretariat. Through ongoing consultation with departments and agencies, the Privy Council Office provides the Prime Minister with comprehensive information and analysis on contemplated policies and priorities. Specifically, it provides information on the organization of the government and its relations with Parliament and the Crown, the appointment of senior public office holders, the overall spending program of the government, the functioning of the Cabinet decision-making system, the development of major policies, the management of intergovernmental relations and other specific issues.

The Privy Council Office also provides the necessary support to other Ministers in the Prime Minister's portfolio.

The Privy Council Office is headed by the Clerk of the Privy Council, whose role in the Government of Canada is combined with that of Secretary to the Cabinet. The Clerk is a non-partisan public servant selected by the Prime Minister. The Clerk of the Privy Council acts as the Prime Minister's deputy minister and principal source of public service advice. In addition, this person is

also Head of the Public Service, as designated by statute. In that capacity, he or she is responsible for the quality of expert, professional and non-partisan advice and service provided by the public service to the Prime Minister and the Cabinet. He or she reports annually to the Prime Minister on the state of the public service.

The Clerk of the Privy Council has special responsibility for supporting the continuity of government across election cycles and is the custodian of the records of the current and previous ministries.

### ***b) Department of Finance***

The Department of Finance is responsible for the government's macro-economic policy, including tax policy and tax expenditures, as well as the overall fiscal framework, and for analyzing the economic and fiscal impact of proposals by any Minister. The Department of Finance supports its Minister and maintains a broad socio-economic analytical capacity.

### ***c) Treasury Board Secretariat***

The Treasury Board Secretariat supports the President of the Treasury Board. As the administrative agency of the Treasury Board, the Secretariat supports the Board, which is a committee of the Queen's Privy Council for Canada, and assumes its legal responsibilities under the *Financial Administration Act* and other statutes. It has a central oversight role to play in government-wide management practices and ensuring value for money. The Comptroller General ensures improved financial management government-wide. The Chief Human Resources Officer is mandated to make human resources management—pensions and benefits, labour relations and compensation—more effective, and to reduce overlap and duplication of roles.

The Treasury Board Secretariat submits recommendations and provides advice to the Treasury Board on all matters relating to general administrative policy and organization in the Public Service of Canada, financial and asset management policies and procedures, review of annual and long-term expenditure plans and programs, and determination of related priorities.

## **G.2. The Prime Minister's Office**

The Prime Minister's Office consists of the Prime Minister's political staff. The Office serves the Prime Minister and is fully accountable to him or her.

The Prime Minister's Office supports the Prime Minister in exercising his or her duties as head of government, leader of a political party and Member of Parliament. The political staff in the Prime Minister's Office provide advice on policy development and appointments, discuss House of Commons proceedings with him or her, and facilitate the Prime Minister's relations with Ministers, the caucus and the party as a whole. In addition, the Prime Minister's Office schedules the Prime Minister's time, organizes his or her public statements and relations with the media, and handles his or her correspondence.

In general, the Prime Minister's Office plays an important role in enabling the Prime Minister to guide the political strategy of the government and is a point of communication and coordination with Ministers, Parliamentary Secretaries and Members of Parliament. It also works closely with the Privy Council Office. Together, these two organizations provide advice and support from different perspectives on the issues of daily concern to the Prime Minister.

## **G.3. Federal-Provincial-Territorial Relations**

The Prime Minister is responsible for the overall management of federal-provincial-territorial relations, since they touch on virtually all areas of the federal government's activities. The Privy Council Office is the public service department that advises and assists the Prime Minister in carrying out his responsibilities related to intergovernmental affairs.

In general, the Prime Minister expects each Minister to be responsible for the federal-provincial-territorial aspects of policies and programs within his or her own portfolio, and to ensure coordination with other intergovernmental initiatives.

## **G.4. Appointments**

Governor-in-Council appointments are made to a wide range of positions, from deputy ministers and heads of agencies to

chief executive officers and directors of Crown corporations. These positions are very demanding, requiring hard work and difficult decisions. It is essential that all appointees be well qualified, and appointments should reflect Canada's diversity. Senior government appointees must be chosen through a process that ensures broad and open consideration of proposed candidates.

By legislation or under Standing Orders of the House of Commons, some appointments—including those of agents and officers of Parliament—are subject to parliamentary review and resolution prior to being made final. In addition, other Governor-in-Council appointments (with the exception of judicial positions) are tabled in the House of Commons after each appointment is made in order to give the appropriate standing committee the opportunity to call the appointee and examine his or her qualifications.

The Prime Minister has the following key responsibilities regarding appointments:

- All appointment recommendations are *subject to the Prime Minister's approval* before they go forward to the Governor in Council.
- Remuneration and terms and conditions of employment for most Governor-in-Council appointments, both full-time and part-time, are set or approved by the Governor in Council on the recommendation of the Prime Minister. On this matter, the Prime Minister is supported by the Privy Council Office. Remuneration for some Governor-in-Council appointments is set by Crown corporations' by-laws or other means.

In addition, the following are important aspects of the appointment process:

- To open the process and identify candidates, vacancies for full-time and part-time Governor-in-Council positions are generally advertised in the *Canada Gazette* and on the Governor-in-Council Appointments website ([www.appointments-nominations.gc.ca](http://www.appointments-nominations.gc.ca)).
- Appointment recommendations take into consideration the desire to ensure that Governor-in-Council

appointments reflect Canada's diversity, in terms of linguistic, regional and employment equity representation.

- Governor-in-Council appointees must comply with the requirements of the *Conflict of Interest Act* as well as the ethical and political activity guidelines found at Annex A of this Guide. The Conflict of Interest and Ethics Commissioner administers the *Conflict of Interest Act* and provides advice to office holders and potential appointees.
- All Governor-in-Council appointees are subject to an assessment process and rigorous background and other checks prior to appointment.
- The Prime Minister's Office coordinates the announcement of appointments after they have been given legal effect through signature by the Governor General.

## **G.5. Judicial appointments**

Under Canada's court system, the federal government is responsible for appointing judges to the superior courts of the provinces and territories, as well as federal courts such as the Federal Court of Appeal, the Federal Court and the Tax Court of Canada.

Federal judicial appointments are made by the Governor in Council, on the recommendation of the Minister of Justice (with respect to the appointment of puisne judges) or the Prime Minister (with respect to the appointment of Chief Justices and Associate Chief Justices). Recommendations are made from among qualified candidates whose names have been reported to the Minister by Judicial Advisory Committees, which include members representing the bench, the bar, law enforcement associations and the general public and are administered by the Office of the Commissioner of Federal Judicial Affairs. Before recommending an appointment, the Minister may consult with members of the judiciary and the bar, with his or her appropriate provincial or territorial counterparts, as well as with members of the public. With respect to provincial and territorial court judges who apply for appointment to a superior court, the Minister may consult with that

candidate's current Chief Judge as well as with the Chief Justice of the court for which the candidate is being considered.

## **G.6. Communications and Public Announcements**

Communicating with the public is an important responsibility of the government. Communications must be factual, timely and clear. All government communications must therefore be coordinated to ensure they are consistent with overall government objectives and decisions, including Treasury Board policies.

Particular care must be taken to ensure that departmental communications resources and personnel are used only for official Government of Canada communications issued through official channels, and not for party political activities. Amongst other things, this means that party symbols and identifiers and partisan content should not be present in department-supported communications, events and social media channels. It also means that Ministers should take care to ensure that their own personal and party political social media accounts are clearly distinguished from official Government of Canada accounts. Guidelines for this purpose are provided in Annex J.

Communications implications are among the issues considered by the Cabinet when it decides on a policy. The content and timing of each public statement of a policy or the announcement of some government action (including appointments, new programs, or financial commitments and agreements) are coordinated by the responsible Minister, acting with the Minister's office and department, the Prime Minister's Office and the Privy Council Office.

The Prime Minister expects Ministers to consult as well with affected parliamentarians on impending announcements, and to work with their own deputy ministers.

Members of the Parliamentary Press Gallery, indeed all journalists in Canada and abroad, are professionals who, by asking necessary questions, contribute in an important way to the democratic process. Professionalism and engagement with them by Ministers and their staff is essential.

# Annex H

## Portfolio Organizations

This Annex discusses Ministers' relationships with the diverse range of organizations for which they may be responsible as heads of portfolios. It includes guidance on practices for the coordination of portfolio activities, as well as discussions of ministerial relationships with two kinds of organizations tending to have high levels of independence, Crown corporations and administrative tribunals.

By convention, a Minister should not speak about or otherwise become involved in a colleague's portfolio without first consulting the colleague and gaining his or her approval. The practice has evolved whereby Ministers and their offices do not deal directly with public servants, but go through the office of the responsible Minister.

### H.1. Types of Portfolio Organizations

In most cases, a Minister heads a portfolio that can include a variety of organizations. These organizations are varied, reflecting the range of organizational models needed to deliver differing policy objectives, and have varying relationships with the responsible Minister. Portfolio organizations can include:

- **Ministerial departments:** The primary vehicles for developing government policies and programs, ministerial departments are generally broadly mandated and have presiding Ministers vested with powers, duties and functions.
- **Department-like organizations:** These organizations generally have narrower mandates, with many focused on the performance of regulatory, service delivery, investigative and research functions. While some or all authorities may be vested in the organization or its deputy head, they are subject to the overall control and direction of the Minister.



- **Adjudicative, regulatory and oversight bodies:** These organizations can take many forms under a variety of names (e.g. agencies, boards, commissions, offices, centres). With mandates focussed on adjudicative, regulatory and oversight functions, authorities for these organizations are vested in the organization or its deputy head, with varying degrees of autonomy from and residual responsibilities for Ministers. Included in this category are administrative tribunals, which make decisions and hear appeals at arm's length from the government following quasi-judicial processes.
- **Departmental corporations:** These organizations are established as distinct corporate entities to perform administrative, research, supervisory, advisory or regulatory functions of a governmental nature, and may employ a corporate governance structure that includes a governing board. They are subject to the same departmental administrative regime under the *Financial Administration Act* and other instruments as the other types of organizations described above.
- **Crown corporations:** These organizations are also established as separate corporate entities, and their governance structures include the use of a board of directors to oversee management. Unlike the other types of organizations described above, Crown corporations are not subject to the same departmental administrative regime, and operate with considerable operational autonomy under governance provisions in Part X of the *Financial Administration Act* and/or their constituting statutes. This provides these organizations with the requisite managerial and administrative flexibility to perform functions that require engagement with customers, suppliers and/or competitors in commercial or quasi-commercial contexts, while also allowing appropriate control and oversight on the part of Ministers. Further information about the roles and responsibilities of various government actors in the governance of Crown corporations is provided below at H.3.

## **H.2. Integrated Portfolio Coordination**

Portfolios are generally organized to bring together bodies that share common purposes. The integrity and coherence of government activities depend strongly upon Ministers' ability to coordinate their respective portfolios in an integrated way while respecting any necessary degrees of independence.

All organizations are different. They have differing mandates, a variety of organizational structures and differing relationships with the Minister. In accordance with the enabling legislation, Ministers exercise varying degrees of control and responsibility for the organizations in their portfolio. Building on existing statutory roles under a Minister's authority, portfolio coordination seeks to ensure that all organizations work together in the most effective fashion in support of the Minister and the government.

The deputy minister, as the Minister's principal source of public service support and policy advice, is expected to advise the Minister on all matters under the Minister's responsibility and authority. While the deputy minister does not have direct authority over non-departmental bodies in the portfolio, he or she plays a key role in promoting appropriate policy coordination, and building coherence in the activities and reporting of the portfolio bodies. Deputies can provide advice to Ministers on the appropriate means to ensure integration in the undertakings of their portfolio, while respecting any accountability requirements and mandates set out by legislation.

Depending on the portfolio, the deputy may also be assigned certain specific responsibilities by the Minister. In those cases, it is important that the Minister provide clear guidance to all agency heads on his or her expectations of the portfolio integration role of the deputy. This role must not infringe upon the arm's-length relationship with portfolio organizations or the accountability of the deputy heads of these organizations to the Minister, and the heads of portfolio organizations may communicate directly with the Minister, as appropriate.

In turn, agency and Crown corporation heads—while maintaining the necessary arm's-length relationship and managerial autonomy required for their bodies—should seek out opportunities to contribute to the overall functioning of the portfolio.

Ministers need to make sure that the perspectives of these bodies are brought to bear in the policy development process within the portfolio.

A variety of mechanisms to support portfolio responsibilities can be applied successfully, including, for example:

- regular meetings, either bilateral or including some or all portfolio organizations;
- mandate letters from the Minister to the organization (which must respect the entity's degree of independence from the Minister); and
- the establishment of portfolio secretariats, where warranted by the size and nature of the portfolio.

For many portfolios, it may be appropriate to adopt a coordinated and timely approach to supporting the Minister's responsibility for providing information to Parliament and Canadians regarding portfolio organizations. This could include:

- the preparation of coordinated responses for Question Period, or coordinated materials for committee appearances or parliamentary returns; and
- where appropriate, depending on the nature and the relative independence of the portfolio organizations in question, coordination of activities relating to public communications, such as identification of key issues and strategies, joint environmental scanning, and sharing of information and materials.

Additionally, all portfolio organizations should cooperate in providing timely and accurate data pursuant to the Treasury Board's Policy on Reporting of Federal Institutions.

The development of memoranda to Cabinet, Treasury Board submissions or other reports on departmental initiatives may also present opportunities for coordination and enhanced policy coherence.

These tools should be tailored to specific circumstances, and deputy ministers need to work with their Ministers and with the heads of other portfolio organizations to find the most effective approaches given the unique features, scale and scope of the portfolio. A particularly important consideration is that there must be no interference with decision making by quasi-judicial bodies. However, in all cases, regular and consistent contact between deputy ministers and the heads of other organizations in the portfolio will support an environment for mutual understanding and collaboration.

### **H.3. Crown Corporations**

As noted above, Crown corporations are incorporated bodies with distinct legal identities, with control and accountability frameworks set out in their enabling legislation and/or Part X of the *Financial Administration Act*. Under these statutes, each Crown corporation is typically empowered to carry out a range of activities, and is provided with a specified legal purpose or stated parameters – often referred to as the corporation’s mandate – within which it is allowed to operate.

A central aspect of the Crown corporation model is the role of the board of directors. The board is responsible for the oversight of a Crown corporation’s business activities and other affairs, and has the responsibility to act in the best interests of the corporation and to exercise due care and diligence. Members of a Crown corporation’s board of directors are appointed by the Government.

Responsibility over the day-to-day operations of a Crown corporation is vested in a Chief Executive Officer (CEO). The CEO is accountable to the board of directors for the overall management and performance of the corporation. Most Crown corporations’ CEOs are appointed by the Governor in Council to hold office during pleasure.

The majority of a Crown corporation’s legislative powers are vested in and exercised by the board of directors and CEO, and Crown corporations are not subject to the financial, administrative, budgeting and human resources regimes that apply to “departments” under the *Financial Administration Act*. This provides these organizations with the requisite managerial and administrative flexibility to perform functions that require

engagement with customers, suppliers and competitors in commercial or quasi-commercial contexts.

At the same time, Crown corporations remain government organizations and instruments of government policy for which Ministers are ultimately accountable, both individually and collectively. As a result, under the statutory framework that applies to Crown corporations Ministers retain important levers of control and oversight to ensure that the overall direction and performance of these organizations align with the policies for which the Government creates and maintains them. Although some Crown corporations are subject to specific variations, this generally includes the following roles within the Ministry:

- Each Crown corporation has a responsible Minister, who is accountable for providing guidance to boards for how a Crown corporation's objectives are to be interpreted, as well as monitoring and engaging with a Crown corporation on an as needed basis to ensure the corporation is meeting expectations. This role includes:
  1. Engaging regularly with the Crown corporations in the Minister's portfolio – through such means as annual mandate letters and meetings with the Chair – to convey the Government's expectations concerning each corporation's public policy objectives. Responsible Ministers should consult the Minister of Finance and the President of the Treasury Board, as appropriate, to ensure that this engagement also communicates government-wide policies and objectives.
  2. Guiding the development of and reviewing potential new activities of a Crown corporation in respect of the potential public policy objectives and benefits.
  3. Guiding the development of appropriate performance indicators and stretch targets by a Crown corporation relating to the delivery of public policy objectives.
  4. Recommending a Crown corporation's corporate plans for approval by the Governor in Council and

its operating and capital budgets for approval by the Treasury Board.

5. Monitoring Crown corporation performance with respect to the delivery of public policy objectives (including reviewing, on a regular basis, the alignment and appropriateness of a Crown corporation's mandate with the Government's public policy objectives).
- In addition to his or her role as the responsible Minister for specific Crown corporations in the Finance portfolio, the Minister of Finance is responsible for reviewing and monitoring the impact of Crown corporations' activities on the fiscal framework, principally through reviewing and monitoring the funding of their activities and providing related approvals for their borrowing transactions and, if required, corporate plans and capital budgets, as well as taking necessary actions to ensure a Crown corporation's operations are aligned with the Government's fiscal priorities. This role includes:
    1. Engaging with Crown corporations and their responsible Ministers, either directly or indirectly through the Department of Finance, to convey the Government's fiscal priorities and expectations.
    2. Guiding the development of appropriate performance indicators and stretch targets by a Crown corporation, either directly or indirectly through the Department of Finance and/or responsible Ministers, relating to the Government's fiscal priorities and the Crown corporation's financial performance.
    3. Monitoring Crown corporation performance with respect to the impact of their activities on the fiscal framework and the sources of funds for their activities.
    4. Identifying and providing advice on potential new activities proposed by a Crown corporation in

respect of the potential impact on the fiscal framework and the funding of the corporation.

- The Treasury Board is responsible for exercising its decision-making authority under the *Financial Administration Act* with respect to the approval of Crown corporation budgets, as well as that of the Governor in Council with respect to the approval of corporate plans. In making such decisions, the Treasury Board should seek to ensure that a Crown corporation's operations are aligned with the Government's overall priorities and designed, implemented and delivered to realize their desired results and achieve value for money. This role includes:
  1. Reviewing and approving Crown corporation corporate plans and budgets on the basis of their alignment with the Government's priorities, including its public policy objectives and fiscal priorities, and their ability to deliver desired results and achieve value for money (this role includes identifying, assessing and approving potential new activities proposed by a Crown corporation within a corporate plan).
  2. Collaborating with responsible Ministers and the Minister of Finance in guiding a Crown corporation's development of appropriate performance indicators and stretch targets relating to the Government's overall priorities.
  3. Monitoring and evaluating Crown corporation performance in relation to the Government's overall priorities, in the context of the review and approval of Crown corporation corporate plans.
  4. Monitoring and taking action when appropriate in relation to Crown corporation employee compensation-related developments, in line with Treasury Board authorities under the FAA (i.e., sections 89.8 and 89.9).

## H.4. Administrative Tribunals

### *Characteristics of Administrative Tribunals as Part of the Executive*

Administrative tribunals are created, usually by statute, to make decisions in specific areas at arm's length from government—decisions that may be described as “quasi-judicial.” As confirmed by the Supreme Court of Canada, while administrative tribunals possess adjudicative functions, they operate as part of the executive branch of government, under the mandate of the legislature. They are not courts, and do not occupy the same constitutional role as courts. The degree of independence required of a particular government decision maker or tribunal is determined by its enabling statute.

### *The Principle of Non-Intervention in Quasi-Judicial Decisions*

The decisions made by administrative tribunals often concern individual rights or interests (such as qualification for program benefits), are technical in nature (such as scientific regulation and licensing), or are considered sensitive and vulnerable to political interference (such as broadcasting).

Parliament's intention to lessen or remove political influence in decision making in such areas underlies the principle that Ministers should not intervene with administrative or “quasi-judicial” tribunals on any matter that requires a decision *in their quasi-judicial capacity*. However, the principle is subject to a number of important nuances:

- the principle does not apply to every aspect of the organization's work, but specifically to decisions made in a quasi-judicial capacity;
- the extent to which the quasi-judicial decision-making process itself is insulated from ministerial involvement is largely determined by the constituent legislation; and
- whatever the degree of independence of an administrative tribunal, the responsible Minister is at some level accountable for the effective functioning of all portfolio organizations, including tribunals. Hence, it



is important that tribunals be attuned to the broader context in which the government operates.

### *Quasi-Judicial Versus Non-Quasi-Judicial Functions*

Many federal entities possess some functions of a quasi-judicial nature. Sometimes the quasi-judicial function is predominant, but often a significant part of the organization's work is "executive" in nature, for example, developing regulations, issuing licences or permits, monitoring and supervising compliance, and conducting research.

The provisions of their enabling statutes will accord administrative tribunals varying degrees of autonomy in exercising these executive functions. For example, the Minister or Governor in Council may have authority to make or approve regulations or standards; issue directions, either on broad policy or more specific matters (e.g. classes of persons to whom licences may not be issued); or require the body to conduct particular studies or reports.

Where a Minister has a role to play in a function that is not quasi-judicial, such as approving the entity's annual budget, it is important that the Minister's authority not be used, or appear to be used, to do indirectly what the Minister is not able to do directly. The parties should be mindful of the context in which an authority is exercised.

### *The Varying Independence of Quasi-Judicial Functions*

Even with respect to quasi-judicial decision-making processes, some enabling statutes explicitly provide for ministerial involvement. As the Supreme Court of Canada has confirmed, enabling statutes do not have to accord tribunals court-like independence, even with respect to their adjudicative functions.

In some cases, the legislation provides the government with neither the capacity to give direction on decision making, nor to interfere with decisions once made, except to appeal to another adjudicative body (such as to the courts for judicial review). However, in other cases, the Minister or Governor in Council may have a range of powers that could impact directly or indirectly on decisions, such as directive powers; authority to make or approve rules, regulations or standards which elaborate on statutory

decision-making criteria; and power to vary or overturn adjudicative decisions, or to refer them back to the tribunal for reconsideration.

### *The Need for Interventions to Be Consistent with the Enabling Statute*

It is essential that Ministers and portfolio deputies have a clear understanding of each of the tribunals in the portfolio and the nature of the Minister's role. The portfolio deputy is the Minister's principal source of public service advice and support on managing relationships with administrative tribunals. However, as the deputy minister does not have direct authority over arm's-length portfolio entities, the Minister and deputy should work to achieve portfolio-wide understanding with respect to the role the Minister wishes the deputy minister to play. Agency heads, in turn, have a responsibility to work cooperatively with the Minister and the deputy minister to the full extent consistent with their statutory independence.

An engagement between the Minister and the organization need not be explicitly authorized in statute in order to be appropriate, provided it is consistent with the legislative regime.

Even in cases where the entity's functions are almost solely adjudicative and the government has no explicit statutory levers to affect a decision, it is important to maintain an ongoing open dialogue, and to seek information of a general nature (as opposed to information on specific cases before the tribunal), and to discuss matters of general relevance to both parties, such as administration and budgeting, the tribunal's mandate and enabling legislation, and the Minister's responsibility to answer for the tribunal in Parliament.

### *Key Practical Considerations*

- Administrative or "quasi-judicial" tribunals are part of the executive branch of government under the mandate of Parliament. The responsible Minister is ultimately accountable for the effective functioning of the tribunal and must answer questions in Parliament for all matters pertaining to it.

- The independence of administrative tribunals is not an absolute standard arising from a constitutional separation of powers. An administrative tribunal's independence, in both quasi-judicial and non-quasi-judicial functions, is determined by its enabling statute.
- Ministers must not intervene, or appear to intervene, with tribunals on any matter requiring a decision in their quasi-judicial capacity, except as permitted by statute.
- In all cases, even where the Minister or Governor in Council has authorities to send back or overturn decisions once made, it is inappropriate to attempt to influence the outcome of a specific decision of a quasi-judicial nature.
- Examples of appropriate communications/intervention include:
  - the exercise of a ministerial/Governor-in-Council authority set out in statute, including discussions regarding the possible exercise of an authority;
  - the exchange of views on matters of general relevance to both parties, such as management and budgeting, the tribunal's mandate and enabling legislation, the Minister's responsibility to answer for the tribunal in Parliament, and portfolio coordination;
  - communication of the government's broader agenda, and its possible impact on the tribunal;
  - communication by the tribunal concerning the potential impact of proposed legislation or other initiatives; and
  - communication by the tribunal concerning the effectiveness with which the current legislative framework supports the tribunal in delivering on its mandate.

## **H.5. Dealings with portfolio organizations on behalf of constituents**

As Members of Parliament, Ministers perform a representative role that includes assisting their constituents in their interactions with federal government organizations. In doing so, they should ensure that they do not use their status as public office holders to further or seek preferential treatment for private interests – including those of constituents – in a manner that is contrary to their obligations under the *Conflict of Interest Act*. The Conflict of Interest and Ethics Commissioner has published a Guideline on how to avoid such conflicts, and is able to provide briefings on this subject to Ministers and members of their staff, including those dealing with constituency issues. In particular, Ministers should observe the following guidelines when providing constituency services:

- Ministers should clearly indicate when they are acting in their capacity as Members of Parliament, and should not use ministerial titles, letterheads, or signifiers in doing so.
- There are limitations on the ability of Ministers to act on behalf of constituents with respect to quasi-judicial bodies. Ministers must not intervene, or appear to intervene, with such bodies on any matter requiring a decision in their quasi-judicial capacity. However, Ministers and their staff may seek information on the status of a matter or other information that is available to the public.
- Ministers should ensure that their staff follow any specific procedures established by departments for dealing with inquiries (e.g., regarding such matters as disability benefits, employment insurance, old age security, or citizenship and immigration).
- Ministers and their staff should not make representations on behalf of constituents to Crown corporations and other arm's length organizations in the Minister's portfolio. It is recommended that the office of the Minister establish procedures, in cooperation with the portfolio organizations in question, to enable the Minister's staff to pass on as a referral any

representations or inquiries that the Minister or his or her staff receive from parliamentarians, other Ministers or their offices, the Minister's own constituents or, more generally, the public.

- However, Ministers remain accountable to Parliament for the organizations in their portfolio, and are responsible for taking appropriate corrective action to address any problems that may arise, consistent with the Minister's role with respect to the organization in question. This applies regardless of whether the problem has been brought to the attention of the Minister by the representations of a constituent, or any other source.

# Annex I

## Code of Conduct for Ministerial Exempt Staff

### Introduction

This Code of Conduct applies to all “exempt staff” (i.e., all persons appointed to positions in the office of a Minister under section 128 of the *Public Service Employment Act*).

As described in Annex E, Section 3, the purpose of establishing a Minister’s office is to provide Ministers with advisors and assistants who are not departmental public servants, who share their political commitment, and who can complement the professional, expert and non-partisan advice and support of the public service. Consequently, they contribute a particular expertise or point of view that the public service cannot provide, and their work is crucial to the effective performance by Ministers of their official duties. Examples of such work include reviewing briefings and other advice prepared by the department; assisting the Minister in developing policy positions, including those that reflect the Minister’s political perspective; speechwriting; preparing and delivering politically oriented communications; liaising with other Ministers’ offices and caucus; and providing advice as a specialist in a particular field.

This Code sets out the core expectations for exempt staff members as they carry out their essential roles. Ministers are responsible for ensuring that exempt staff are aware of and comply with this Code, which is a term and condition of their appointment.

### **1. Exempt staff members must conduct themselves with integrity and honesty**

As public office holders, exempt staff members are expected to act with honesty and uphold the highest ethical standards so that public trust in integrity, objectivity and impartiality of the government

is conserved and enhanced. Specifically, exempt staff members must

- comply with the *Ethical Guidelines* outlined in Annex A, as well as their conflict of interest and post-employment obligations under the *Conflict of Interest Act* and *Lobbying Act*;
- treat with respect and courtesy all those with whom they have contact during the course of their employment;
- not knowingly or intentionally encourage or induce other government officials, including parliamentarians, Ministers, public servants and other exempt staff members, to act in manner contrary to the law, parliamentary obligations, applicable codes of conduct, and Treasury Board policies;
- comply with all other applicable Canadian laws;
- not deceive or knowingly mislead Parliament, Ministers, public servants, investigatory bodies or the public; and
- in the conduct of their personal affairs, including their use of social media, conduct themselves in a manner that does not bring the Minister's office into disrepute.

## **2. The paid work of exempt staff members must support the Minister's duties**

While exempt staff are appointed outside of the non-partisan staffing controls of the *Public Service Employment Act* and are expected to be politically aware and committed, their salaries are paid from public funds, for the purpose of assisting the Minister in the exercise of his or her official duties. As such, the paid time of exempt staff should only be used for ministerial business, and not for party political activities. Specifically,

- exempt staff members must follow the election leave requirements set out in the *Policies for Ministers' Offices* with respect to their participation in nomination and election campaigns;
- any party political or other work by an exempt staff member that is not in support of the Minister's official

duties must be done on the staff member's own time, and must not take them away from their paid duties;

- the use of government facilities and resources by exempt staff members – including travel and hospitality expenses, communications technology, and Ministers' Regional Offices – must be for official government business only, and must comply with the *Policies for Ministers' Offices* and any other applicable Treasury Board policies; and
- exempt staff members should avoid anything that might lead to a reasonable perception that their paid time is being used for party political purposes.

### **3. Exempt staff members must be diligent and loyal in supporting their Ministers**

Exempt staff members are employed to serve the objectives of the Minister's portfolio and the Government as a whole. In order to perform their roles effectively, Ministers must be able to rely on the information, advice and support provided by exempt staff members. Exempt staff members must therefore act with care, diligence, discretion and loyalty in the performance of their duties, obligations that arise from their status as public office holders and from private employment law. Specifically, exempt staff members must

- comply with any authorised and reasonable direction received in the course of their employment;
- take all reasonable measures to ensure that information provided to Ministers is accurate and complete;
- not disclose sensitive government information without authorization under the relevant legal framework;
- comply with all applicable security standards with respect to the handling of sensitive government information; and
- maintain appropriate confidentiality concerning their interactions with Ministers, public servants and other exempt staff members.



#### **4. Exempt staff members and public servants must work together effectively to support the Minister**

As described in Annex E, public servants and exempt staff members play distinct but complementary roles in supporting the Minister. Good working relations between the Minister's office and the department are characterized by mutual respect, cooperation, and the sharing of information where it is relevant or needed for their respective work. Specifically, exempt staff must:

- make themselves aware of the ethical standards, expectations, and obligations of public servants set out in the *Values and Ethics Code for the Public Sector* and departmental codes of conduct;
- not seek to engage public servants in any activity that is inconsistent with their ethical and legal obligations or the professional, non-partisan role of the public service;
- acknowledge that exempt staff do not have the authority to direct public servants in their own right, and that public servants are not subject to their direction;
- to the extent practicable, conduct their relations with departmental officials through the Deputy Minister's office;
- recognize that decisions about the exercise of legal powers, duties and functions, the expenditure of public funds and the management of the department are the preserve of the Minister, the Deputy Minister and other public servants in the Minister's department, and that exempt staff do not have a role in departmental operations;
- facilitate direct and effective communication between the Minister's office and the department;
- not take any action that would undermine the authority of the Deputy Minister as the deputy head of the department and the Minister's primary source of public service advice with respect to the portfolio; and
- not suppress or supplant the advice prepared for the Minister by departmental public servants, beyond commenting on such advice.

# Annex J

## Personal and partisan use of social media by Ministers and Parliamentary Secretaries

These Guidelines are intended to assist Ministers and Parliamentary Secretaries in maintaining a clear distinction between official Government of Canada social media accounts (i.e., accounts that are created and managed by government officials and for which content is generated using government resources) and their own personal or partisan accounts. This separation is necessary in order to help the public distinguish between official government communications and other types of communications and ensure ongoing trust in a non-partisan public service.

Government of Canada social media accounts are a key component of government communications, and their use is subject to Treasury Board policy, including the requirement to be non-partisan.

Government of Canada official accounts tend to fall into two categories: departmental accounts, and thematic accounts, which focus on a particular area of content and/or serve a specific audience. These should be used to communicate government policies, programs, announcements and initiatives. These official accounts must not contain party symbols and identifiers or partisan content.

Ministers and Parliamentary Secretaries may maintain personal and/or partisan social media accounts that are distinct from Government of Canada accounts. The distinction between these different types of accounts is the same distinction that exists between government-supported websites and the personal/partisan websites that are maintained by Ministers and Parliamentary Secretaries. In both cases, the same general principle applies: government resources must only be used to manage, create or modify content for use on official Government of Canada channels (e.g. print, social

media accounts, mobile applications or websites). Such government resources include, but are not limited to, employees, networks and devices.

In order to avoid the appearance that the Government of Canada supports or endorses a particular political party or partisan messaging, departments are asked not to follow, retweet, at-mention or otherwise link to the personal or political social media accounts of Ministers or Members of Parliament.

Ministers and Parliamentary Secretaries may choose to use their personal/partisan social media accounts to link to, share or highlight content that is published on government accounts and websites, where such linkage is equally available to any outside party.

In this context, the creation of official Government of Canada ministerial social media accounts may not be necessary as the messaging from these accounts would be largely redundant in relation to any departmental or thematic account content. Ministers should note that if they proceed with the development of an official Government of Canada ministerial account, these accounts:

- would be required to be compliant with applicable Treasury Board policies;
- should not carry partisan messaging or symbols; and
- would be managed by departmental officials, not the Minister's office, and would require adequate resourcing for long-term maintenance of the account.

Ministers and Parliamentary Secretaries should avoid anything that could cause confusion as to whether their personal/partisan social media accounts are Government of Canada accounts. For example, they should avoid the use of their official titles in naming their accounts, and should not use Government of Canada symbols, identifiers or website links – including images of public servants – in their profiles and templates. However, where social media accounts provide for biographical descriptions of the user, it is appropriate for Ministers and Parliamentary Secretaries to indicate current or former offices held.