

Guidelines on the Conduct of the Public Service during an Election Period

Cabinet Secretariat

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Introduction

Canada's form of government is a democracy based on the British parliamentary system, otherwise known as the Westminster System. During an election in Newfoundland and Labrador, the House of Assembly is dissolved, however, the current government retains full legal authority to govern and to ensure that essential government activities continue.

The **caretaker period** begins once the election writ is issued and continues until after the election reveals a clear result (i.e. the incumbent government is clearly re-elected or a newly elected government is sworn in). Caretaker convention requires that during this period, government will exercise restraint in decision-making, arising from the fact that there is no accountability to an elected House of Assembly and the incumbent government cannot assume that it will command the confidence of the House following the election.

During the caretaker period, the daily business of government continues and routine matters of administration still need to be addressed. Cabinet Ministers will remain as ministers throughout the caretaker period but activity should be restricted to matters that are routine and non-controversial, or require urgent action, such as emerging public health or safety concerns. In accordance with these guidelines, government should avoid making major policy decisions; entering into new major projects or costly undertakings and making executive or board appointments.

Appointments of Parliamentary Assistants and Parliamentary Secretaries will end upon dissolution of the House of Assembly and they will no longer continue to have a role which entitles them to departmental support or access to Cabinet documents. Any functions assigned to the Parliamentary Assistants and Parliamentary Secretaries must be assumed by the Minister responsible. They will however continue in their role as MHAs and representing constituents during the caretaker period.

Political support staff, including Executive Assistants, continue working but may not be involved in the election campaign during normal working hours or while occupying their government offices; those who wish to become involved with the election campaign during normal working hours must either take paid leave or a leave of absence.

If an election results in the incumbent government being re-elected, public service business can return to normal operations on the day following the election. If a new government is elected or if an election result is unclear about which party will form the government, the caretaker guidelines continue to apply until a government is clearly identified and is sworn in.

Definitions

The following definitions apply to these guidelines:

Caretaker period: Begins on the day the House of Assembly is dissolved for an election until after the election reveals a clear result (i.e. the incumbent government is clearly re-elected or a newly elected government is sworn in).

Department: A core government department or agency, including Executive Council and all line departments, the Labour Relations Board, the Public Procurement Agency, the Multi-Materials Stewardship Board, the Newfoundland and Labrador Housing Corporation, the Public Service Commission, The Royal Newfoundland Constabulary and Workplace NL.

Agencies, Boards and Commissions (ABCs): ABCs include all corporations covered by the Transparency and Accountability Act, which includes: 1) a corporation in which a majority of the shares are vested in the Crown, 2) a corporation, commission or body where the majority of the members are appointed by an Act, the Lieutenant-Governor in Council or a minister, 3) a school board elected under the Schools Act, 1997, and 4) a corporation, commission or other body that the Lieutenant-Governor in Council may, by regulation, designate as a public body. References to agencies, boards and commissions do not include 1) a court established under the Judicature Act; 2) a court established under the Court of Appeal Act; or 3) the Provincial Court of Newfoundland and Labrador.

Public bodies: Includes both government departments and ABCs.

Application

Responsibility for implementing and applying these guidelines rests with the executive head of each public body. During the caretaker period, the deputy minister or equivalent will serve as the point of contact for officials within the public body to answer any questions that may arise about the application of these guidelines. Questions regarding the guidelines and their interpretation can be referred to Cabinet Secretariat if required.

The guidelines are primarily reflective of the relationship between ministers and their departments. The relationship between ministers and agencies, boards and commissions varies based on their legislative framework. For this reason, officials from agencies, boards and commissions should comply with these guidelines, unless to do so would conflict with their legal obligations or compelling organizational requirements.

Commitments

Policy Decisions

During an election, the normal routine administration of departments and ABCs must continue. This includes actions such as: front-line service delivery, protection of public health and safety, enforcement of laws and rights, as well as management of financial and human resources. However, departments should be mindful of the caretaker environment and exercise special care when making decisions during this time.

During the caretaker period, implementation of public policy decisions should be delayed and public bodies should not make major policy decisions that are likely to commit financial or other resources or bind an incoming government, during the caretaker period.

While the caretaker convention does not prohibit the incumbent government from making political commitments regarding future policy directions, announcements of new funding and new policies that take effect immediately should not be made during the caretaker period. Occasionally, a significant policy decision may have been made before commencement of the election and needs to be implemented during the caretaker period. Usually implementation of such a decision can continue during the caretaker period, unless the proposed action would be difficult or impossible to reverse, without incurring undue cost or disruption.

Decisions on whether and how to implement significant policy decisions that were made in close proximity to the announcement of an election require careful judgement on whether implementing the decision is appropriate or necessary. If the decision is a matter of contention in the campaign, it should be deferred where possible. In addition, if a public policy decision was made prior to the announcement of the election but not publicly announced, care should be taken to ensure any public communications on the decision and its implementation could not be construed as using government resources for partisan purposes. Any questions related to the application of this direction should be brought to the Clerk of the Executive Council.

If an election results in the incumbent government clearly being re-elected, public service business can return to normal operations on the day following the election. In this scenario, departments may continue to advance policy and programming matters in a fashion consistent with the administration prior to the election. Where a particular past policy or practice has been highlighted for potential change during an election, it is recommended that advice be sought on new policies and procedures prior to taking any new decisions in this regard.

If an urgent situation or emergency arises, the deputy minister should consult with the Clerk of the Executive Council on proposed actions. Whether a particular policy decision qualifies as 'major' is a matter of judgment. Relevant considerations include not only the significance of the decision in terms of policy and resources, but also whether the decision is a matter of contention in the election campaign. If, during the caretaker period, a matter arises that is not urgent or emergent but meets any of the following criteria, a decision on whether and how to proceed should be deferred until the outcome of the election is known, or in the case of a new government, until the new government is sworn in:

- Matters that are significant or controversial;
- Matters that have long-term implications that would limit the freedom of action of an incoming government;
- Matters that cannot be reversed;
- Matters that require a new policy direction; or,
- Matters that require a change to an existing policy.

Decisions that fall into one or more of the categories above should be deferred, if possible, until the caretaker period has passed. Where deferral is not possible, temporary or holding arrangements should be pursued that do not commit the government in the longer term. All questions related to deferral or temporary arrangements should be brought to the Clerk of the Executive Council. If deferral or temporary arrangement is not possible, a decision should be made only after the minister responsible and any required representatives of the Premier's Office consults with the leadership of the other political parties during the caretaker period.

Where it is clear that a new party will form the next government but the government has not yet been sworn in, the incumbent government should not undertake new policy initiatives and should seek the advice of the leadership of the incoming government on any significant matters of legal, economic or other importance that cannot be delayed until the new government formally takes office. The level and type of consultation may vary depending on the complexity, urgency and confidentiality of the issue. For example, in the case of emergency assistance required as a result of a hurricane or other natural or man-made disaster, consultation is not required, however, notification on the steps government intends to take should be provided. This is consistent with the Emergency Services Act, which provides authority to the Lieutenant-Governor in Council to declare a provincial emergency for all or part of the province.

Appointments

Wherever possible, Government should defer making appointments to public service executive positions, as well as ABC appointments during the caretaker period. If deferring

the appointment is impractical as it would impact the proper functioning of the public body, such as an unexpected resignation, it is recommended that an acting appointment be made for a limited period.

Major Contracts, Undertakings and Funding Contributions

During the caretaker period, new non-routine tenders should not be initiated, however, procurement for routine goods and services and/or goods and services that support the ordinary operations of government (e.g., purchase of machine parts or office supplies) can proceed in the normal fashion. In the event of an emergency, procurements required to maintain public health and safety, or the daily administration of a government service, can also proceed in the normal fashion. If the minister is not available, the deputy minister or equivalent can sign routine contracts during the caretaker period.

Public bodies must avoid entering into major contracts or undertakings, or providing major financial contributions to external organizations, such as non-routine grants, during the caretaker period. When determining whether a contract, undertaking or contribution qualifies as 'major', the following matters should be considered:

- The dollar value of the commitment; and
- Whether the commitment:
 - Involves routine administration (such as hosting fees for a long-standing government website);
 - Implements or entrenches a new policy, program or administrative structure; or,
 - Requires Cabinet or ministerial approval to pursue.

For any tenders issued prior to the caretaker period, decisions on whether to proceed with the tender award should be deferred, whenever possible, until after the caretaker period concludes. If a public body determines that a decision to award a contract cannot be deferred for legal, commercial or other reasons and/or requires that a tender be issued, the deputy minister or equivalent must seek direction from the Clerk of the Executive Council before proceeding.

Intergovernmental Relations

Meeting and Events

During the caretaker period, the government and public servants should take caution when participating in intergovernmental events, including first ministers meetings, ministerial meetings, and meetings of senior officials and working groups. Ministers and deputy ministers should refrain from attending in-person intergovernmental meetings and

conferences, unless it is determined that being absent would have an adverse impact on the province. Such a determination should be made in consultation with the Clerk of the Executive Council and the deputy minister of Intergovernmental Affairs.

Where it is approved that the minister or deputy minister will participate in an intergovernmental in-person meeting, event or conference, they will attend as observers only. The province's representatives should clearly note during the deliberations that the province is unable to commit to any policy, initiative or investment during the caretaker period, and that no outcome of the meeting is binding on the Government of Newfoundland and Labrador. Any communiques resulting from intergovernmental meetings or events during the caretaker period may include disclaimers that note that Newfoundland and Labrador was unable to participate in the proceedings due to the on-going provincial election. Disclaimers can also be requested to be updated following the conclusion of the caretaker period, if the government decides to support the outcomes of the meeting or event.

Departments should also refrain from participating in minister and deputy minister intergovernmental conference calls, including bilateral and multilateral phone conversations, unless it is determined that not participating would adversely impact the province. In the event the minister or deputy minister does participate in such a conference call, it should be clearly noted that the province is in a caretaker period and that no commitments from the call are binding on the province.

Officials must obtain the deputy minister's approval to participate in any officials' level intergovernmental meetings in person or by telephone. Officials participating must clearly note that they are participating as observers only and the province is in a caretaker period and that no positions agreed at the meeting or conference call are binding on the province.

Any questions related to participation in intergovernmental meetings should be directed to the deputy minister of Intergovernmental Affairs who will consult with the Clerk of the Executive Council, as required.

Intergovernmental Negotiations

Ordinarily, where an intergovernmental or international negotiation is of a bilateral nature, it should be deferred until a new government is in place. However, in the case of multilateral negotiations, public servants should adopt observer status during the caretaker period. The lead negotiator should communicate in writing to the other parties that the province has moved into a caretaker period and that the province is unable to make any decisions or advance positioning during this period.

Where it is not feasible to defer involvement or adopt observer status, officials may attend but must limit their role to providing information on the past position of government with a clear qualifier that the position of the province is subject to change following the election. If this is not practical, the minister responsible should consult with the opposition leadership or incoming government, in the event of a change in government, to inform them of the negotiations and the position officials will take during the caretaker period.

Any questions related to participating in intergovernmental negotiations should be directed to the deputy minister of Intergovernmental Affairs who will consult with the Clerk of the Executive Council as required.

Intergovernmental Agreements

Agreements may be signed if Cabinet authority is in place, they are routine in nature (e.g., a renewal or extension of a longstanding agreement, information-sharing for program administration, etc.), relevant funding has been appropriated by the House of Assembly, and no signing ceremony or public event is planned. If Cabinet authority is in place, but the agreement is not routine in nature (e.g., contemplates a major policy shift or outlines a new program or policy), signature of the agreement should be deferred until after the end of the caretaker period. Any questions regarding whether or not the agreement is routine in nature should be directed to the Clerk of the Executive Council.

Where Cabinet authority is not yet in place to sign the agreement prior to the election, a submission seeking such authority should also be deferred until Cabinet has been reestablished after the election.

In the event of a change in government, departments are recommended to seek confirmation of any existing direction pertaining to the intergovernmental agreement prior to signature.

Visits from Foreign Dignitaries

Foreign dignitaries whose visits are scheduled for the caretaker period should be advised that during an election, ministers are unable to meet with ambassadors or consuls general from foreign states, except in extraordinary circumstances as determined in consultation with the Provincial Protocol Office. Officials may meet with foreign dignitaries provided the other usual qualifiers about avoiding political comment and providing only factual information are observed. During the caretaker period, the deputy minister or equivalent responsible must approve whether or not officials meet with any representatives of foreign states.

The Provincial Protocol Office will lead on informing any relevant foreign dignitaries during the caretaker period.

Cabinet Operations

Cabinet meetings are not normally held during the caretaker period, unless an emergency arises of a public health and safety nature. In addition, Cabinet Secretariat will not receive submissions and Minutes of Council/Orders in Council will only be issued in emergency situations.

Public bodies will normally have advance notice of the timing of elections and therefore measures should be taken to ensure that any outstanding Orders in Council are pursued prior to the thirty days preceding a fixed election date or as soon as possible once it is known that an election will be called.

Maintaining the Neutrality of the Public Service

The public service is a non-partisan body. Government services and programs must be delivered and advice provided in a politically neutral manner at all times.

Political Activity

The private political activities of Government of Newfoundland and Labrador public servants falls outside the guidelines set out in this document. However, all employees of the Provincial Government are encouraged to review the Political Activity Policy, which is available online at: www.gov.nl.ca/exec/hrs/working_with_us/political.html

Marketing and Awareness Activities

Marketing and advertising activities will be curtailed during the caretaker period; advertising related to government programs, services and operations will not be permitted. This includes traditionally-placed messages from public bodies (for example, messages for Fire Prevention Week, Small Business Week, etc.); annual promotion of government programs; regional or national publications; local or national television, and on-line corporate advertising, if there is a possibility of viewership within the province. If advertising has been booked, the department responsible must cancel or defer it. Exceptions may be granted in specific cases with the approval of the Associate Secretary to Cabinet for Communications.

The following exceptions will also apply:

- Advertising to promote health and safety of the public such as school closures, public advisories, and communications related to emergency situations;
- Legal advertising in provincial newspapers;
- Recruitment of essential personnel; and
- The province's tourism campaigns through the Department of Tourism, Culture, Industry and Innovation can continue during the caretaker period, due to their specialized objectives and messaging about the province.

Public bodies should not initiate any new marketing or public events, however, participation by public servants in previously or externally-planned public conferences and stakeholder events is permitted if it is usual, routine and non-controversial in nature. Similarly, attendance at national and international trade shows, conferences and seminars, including booths, banners and corporate literature should be avoided but may proceed with the approval of the deputy minister or equivalent if the event is usual, routine and non-controversial. Otherwise, participation in events should occur only if the event is essential. Speeches should be confined to bringing greetings and welcoming delegates, and should avoid any discussion of policy matters. Presentations or panel discussions at conferences should be confined to technical matters only.

Advertising, including ads in programs or show guides is not permitted. Outside of the province, related advertising including advertisements in programs or show guides as well as sponsorships and associated advertising is permitted; however, editorials, advertorials and paid advertising in industry specific magazines and publications around trade shows, conferences and seminars is not permitted if there is significant potential viewership in Newfoundland and Labrador.

Provincial Government officials must exercise judgment if they are scheduled to speak at public functions during the caretaker period, such as a conference held by an industry association or community group. Messaging delivered from a public servant should be neutral, routine and non-controversial. In the case of non-controversial issues, officials may speak, but should explain that the government is in a caretaker period and that they will limit their statements to factual issues and matters of administration. Officials should also avoid publicly promoting policies during the caretaker period. In the case of controversial issues, officials should decline invitations to speak noting that the on-going election prevents the public service from speaking to the issue at hand.

The determination on whether an issue is controversial rests with the deputy minister or equivalent during the caretaker period. It is recommended that all public bodies require deputy minister or equivalent approval for all public engagement activities during the caretaker period, where this protocol may not ordinarily be the case.

Communications

Announcing the Election

In general, communications activity that promotes government programs, policies or services will be avoided during the caretaker period. However, it is important that the electoral process be on public record. The following is appropriate to go through the normal process with the Communications and Public Engagement Branch:

- A media advisory of the photo opportunity or media availability of the election call.
- A news release announcing the election date (no references to campaign strategy or political party).

Ministerial Interviews

The minister responsible for the public body continues to be the spokesperson for the department/entity, and necessary interviews should be provided by the minister. Interviews should be confined to topics relating to operations of government, such as matters impacting public safety or public health issues. Directors of communications should contact the Associate Secretary to Cabinet for Communications with questions regarding specific situations.

Ministerial Messages

A regular communications activity is supplying ministerial messages to organizations to be published in booklets prepared for conferences, tournaments, AGMs, etc. Messages from the minister will not be provided for use during the caretaker period.

News Releases

News releases, statements and public advisories will be kept to a minimum during the caretaker period and new programs, policies or funding commitments will not be announced unless they are addressing an exceptional circumstance such as a public emergency, or the lack of announcement will mean a material loss to government.

Announcements will be limited to operational communications (e.g., Justice and Public Safety enforcement notifications, Occupational Health and Safety (OHS) proceedings or charges, notifications of road closures, emergency situations or matters affecting public health). In these cases, quoting Cabinet ministers should be avoided, however, there may be circumstances where it is appropriate to do so (issue of public health, for example). As always, news releases, statements and public advisories must be submitted to the

Communications and Consultations Branch for review and distribution. Normal approval processes will continue to apply.

Use of Government Premises

There may be occasions where Provincial Government premises can appropriately be used during the caretaker period by political parties for public events such as media conferences. Where candidates, other than the Premier or ministers acting in their official capacities, seek to visit premises or facilities, departments should provide assistance to government and opposition parties. Government resources must not be used to support political activity and events must not unduly disrupt the daily operation of any facilities. Public servants must not engage in political dialogue or provide logistical support for political functions. The deputy minister or equivalent must approve any such requests.

Social Media

Activity on all departmental social media accounts will be limited to exceptional circumstances such as emergency, public health or safety concerns or necessary public information on operational issues.

Factual information may be provided in response to direct questions on social media. No discussion of policy or programs can occur on departmental accounts during this time.

Officials should review the Social Media Policy and Guidelines, which apply at all times, including during the caretaker period. The Social Media Policy and Guidelines are available online at: <https://www.gov.nl.ca/socialmedia/>

Any questions related to this section of the guidelines should be directed to the Associate Secretary to Cabinet for Communications.

Public and Stakeholder Engagement/Consultations

During the caretaker period, the public service does not undertake consultation or engagement sessions with the general public or targeted stakeholders. Any consultations that are on-going at the time that the election is called must be postponed until after the caretaker period concludes.

Similarly, engagement of the public service with stakeholders, such as meetings between the executive team of a department and representatives of community organizations, industry associations, or other lobby groups, should be limited or deferred where possible.

Information Requests

Compliance with the Access to Information and Protection of Privacy Act, 2015 *is* required during the caretaker period and nothing in these guidelines modifies the processes outlined in legislation. The Access to Information and Protection of Privacy Act, 2015 can be viewed at: www.assembly.nl.ca/Legislation/sr/statutes/a01-2.htm

Requests from Media

Communications staff will not proactively seek media coverage during the election period and should not initiate contact with media. Media requests will, as always, be addressed promptly. Requests for information will be limited to technical and factual information and, if possible, provided not for specific attribution, i.e., be attributed to “spokesperson for Department of ...”

In order to avoid any perception of participating in a policy debate, departmental statements will not comment on existing or proposed programs or provide policy rationale.

Requests from Ministers

During the caretaker period, ministers may continue to request factual material from departments. Material relating to the day-to-day business of government should continue to be supplied to ministers in the usual ways determined by ministers and the executive prior to the call of the election.

In most instances, departments should not provide policy advice during the caretaker period. Deputy Ministers and equivalents are charged with determining whether any urgent issues arise that would necessitate the provision of policy advice to the minister during the caretaker period. This includes policy advice provided in briefing notes, PowerPoint presentations, emails and verbal briefings.

In the case where the minister has directed that policy work be undertaken in advance of the call of the election, public officials can proceed with such policy development, provided this does not require input and engagement with the minister or external stakeholders outside of the core provincial public service.

Requests from Political Parties

Departments should continue with standard processes of providing factual information requested by political parties and processing of other information requests under the Access to Information and Protection of Privacy Act, 2015.

Routine Administration

Routine administration may proceed during the caretaker period. As noted previously in the guidelines, the deputy minister or equivalent is required to oversee the implementation of and compliance to the guidelines by their officials.

Tabling Responses to Reports

Reports cannot be tabled in the House of Assembly once an election has been called. If a government-commissioned report is delivered to the government during an election, any formal, public response to its content should be made only after the caretaker period has concluded. Public bodies may, however, undertake appropriate preparatory work and consultation within the core provincial public service so that they are in a position to provide early advice to the incoming government.

Financial Supports to Ministers

During the caretaker period, the covering of expenses for ministers and their staff should be assessed on a case-by-case basis. Claims relating to the management of essential government business can be covered by departments; for example, to support ministers attending an urgent Cabinet meeting or primarily in connection with their ministerial duties. Public bodies must not cover claims relating to the election campaign or a political event, such as the purchase of cell phones, tablets and laptops. In the case of claims that cover a combination of government and political business, departments can grant a partial reimbursement to cover government activities only.

Legislation

Legislation will not normally be proclaimed during the caretaker period and regulations should not be approved.

Correspondence

During the caretaker period, it is recommended that courtesy replies be provided to incoming correspondence. During this time, it is advisable that correspondence be sent under the signature of the deputy minister or equivalent. It is recommended that the following elements be included in all correspondence from a department during the caretaker period:

- Replies should include a statement explaining the caretaker status of the current government;
- The content of correspondence should reflect factual information;
- Replies should not assume that the current government will or will not return to office;

- Replies that require an explanation of government policy must not commit government to post-election action; and
- New policy or program commitments of a political nature should not be communicated through official correspondence on Provincial Government letter head during this period.

Collective Bargaining

During the caretaker period, the government should not engage in collective bargaining for the renewal of a collective agreement, Memorandum of Agreement or Agreement in Principle with respect to human resources. Memoranda of Agreement or Agreements in Principle should not be signed until the caretaker period has concluded.