

Political Activities and Political Impartiality in the Public Service

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Foreword

President's Message

Political impartiality in the public service is one of the core values of the new *Public Service Employment Act* (the new PSEA), which is expected to come into force in December 2005. The Public Service Commission (PSC) is ready to address the important issue of political activity by federal public service employees.

In passing the new PSEA in November 2003, Parliament introduced a new regime to govern the political activities of public servants, and gave the PSC an expanded role in this area. The new legislation recognizes the right of employees to engage in political activities, while maintaining the principle of political impartiality in the public service.

In addition to defining "political activity," the new PSEA created more explicit guidelines related to the political activities of public servants.

As designated departmental/agency representatives for political activities (Designated Representatives), you will assist organizations in implementing the new policies, regulations and procedure related to the political activities of public servants. To help you, the PSC has developed this Reference Kit, which provides an overview, information on governance, and resource and communications tools.

Maria Barrados, PhD

Introduction

Why you should read the Reference Kit

This Reference Kit will provide you with the information that you, as a Designated Representative, will need to deal with the provisions of the new *Public Service Employment Act* (the new PSEA) relating to political activities.

Employees will need to be able to make reasonable decisions about whether a given activity would impair or be perceived as impairing their ability to perform their duties in a politically impartial manner. The Reference Kit will help you work more effectively and efficiently with managers, employees and human resources advisors in contributing to this decision-making process.

You will wear many hats. As a resource person, you will provide information, explanations, clarification, advice and guidance. You are also encouraged to play a proactive communications role in educating managers, employees and human resources advisors about their rights and responsibilities under the new PSEA.

The overview section of this Reference Kit provides you with the "big picture" relating to political activities of federal public servants. The governance section gives detailed information on the relevant policies, regulations and procedures. Section Three offers resources tools to implement the new provisions. You will find the communications tools found in Section Four useful for keeping stakeholders informed.

The information in this Reference Kit will also be posted on the Web at http://www.psc-cfp.gc.ca/psea-lefp/political/index_e.htm. The contents will be updated periodically.

The role of designated representatives

As Designated Representatives, you will play an important role in making the new political activities regime work. Implementing the political activities provisions of the new PSEA will be learning experience for everyone. The Public Service Commission (PSC) will work toward ensuring the uniform application across the public service of decisions relating to political activities. It therefore proposes to build on experience by creating a database of lessons learned and best practices. By working closely with employees, managers and human resources advisors, you will contribute to the successful implementation of the provisions of the new PSEA relating to political activities.

Section One – Overview

Deck: Towards the Implementation of a New Regime

Get Ready Session for Designated Representatives (October 19, 2005)

Public Service Commission Web Site: http://www.psc-cfp.gc.ca/psea-lefp/political/political_deck_e.htm

Political Activities: Now and in the Future

Federal employees' involvement in political activities (section 113)

Now ...

The PSC currently has no role to play in this respect, in light of the 1991 Osborne Supreme Court decision, which struck down provisions prohibiting public servants from engaging in political activities, other than the provisions dealing with candidacy.

The Employer and the Office of Public Service Values and Ethics, which is part of the Public Service Human Resources Management Agency of Canada (PSHRMAC), provide guidance to departments regarding unacceptable political activities in the context of the *Values and Ethics Code for the Public Service* (the Code)

Under the New Regime ...

The new legislation recognizes the rights of employees to engage in political activities, while maintaining the principle of political impartiality in the public service.

The PSC's approach in this regard is to provide guidance and a self-assessment tool to help make reasonable decisions with respect to employees' involvement in political activities.

The PSC has the authority to recommend regulations regarding unacceptable political activities, should it deem them it necessary.

The Code will continue to apply to those activities that do not fall within the definition of political activity.

Candidacy in an Election (sections 114 and 115)

Now ...

The PSC's role is currently limited to granting leave without pay requests for candidacy in federal, provincial or territorial elections.

Under the New Regime ...

An employee seeking nomination or wishing to be a candidate may only do so after receiving PSC permission to do so.

The PSC will be responsible for:

- granting permission and leave for candidacy in federal, provincial, territorial and municipal elections; and,
- determining whether successful candidates in municipal elections must take leave or cease to be employed in the public service.

Investigations of allegations of improper political activity (sections 118 -122)

Now ...

The PSC's scope of investigations is currently limited to allegations from candidates or ex-candidates.

Under the New Regime ...

Any person (or any candidate or ex-candidate in the case of deputy heads) may make an allegation of improper political activity by an employee.

The PSC may investigate any allegation and, if the allegation is substantiated, the PSC may dismiss the employee, or take appropriate corrective action (In the case of a deputy head, the PSC reports its conclusion to the Governor in Council, which may dismiss the deputy head).

Roles and Responsibilities

The Public Service Commission

The Public Service Commission (the PSC) is responsible for safeguarding the political impartiality of the federal public service, by exercising its authority regarding:

- Federal public service employees' engagement in political activities (other than candidacy):
 1. providing tools to assist employees and guidance/advice to organizations in the application/interpretation of the legislation and in making reasonable decisions as to whether a given political activity would be problematic.; and
 2. monitoring and evaluating the matter over the years to build a database of cases and lessons learned; and
 3. recommending regulations to the Governor in Council (GIC) regarding unacceptable political activities, should it deem them necessary, based on experience gained.
- Seeking candidacy, by:
 1. establishing related regulations, operating policy and procedures;
 2. granting permission and/or leave without pay to employees who wish to seek candidacy, including setting any requirements for approval; and
 3. monitoring to ensure candidacy requirements are met.
- Investigations of allegations of improper political activity, by:
 1. developing regulations, policies, guidelines and procedures;
 2. conducting investigations, as required; and
 3. taking corrective action (or reporting to the GIC on deputy heads), and following up with organizations.
- Educating, informing, providing advice, training and tools to stakeholders (i.e., departments and agencies, parliamentarians, the public), as required.
 1. Maintaining list: organizational designated contacts

2. Reporting (e.g., to Parliament, etc.); monitoring & evaluating; maintaining database; employee survey.

Supporting Tools and Mechanisms

- Statutory provisions and regulations related to political activities, including candidacy and investigations
- Approach (framework) and tools: guidance, self-assessment tool, operational policies, FAQs, roles and responsibilities document (of stakeholders and within the PSC); periodical reminders; paragraph for letters of offer; input into orientation sessions; input in training modules of the CSPS; delivery of information sessions and workshops.
- Organizational structure with the necessary resources to support the related roles and responsibilities (e.g., possible creation of a single point of contact, i.e., one-stop shop or 1-800 number; and of Investigations Branch, etc.);
- Internal procedures for dealing with requests for advice from organizations and for conducting investigations;
- Departmental accountability mechanism/document;
- Long-term evaluation mechanism, monitoring and trends analysis and feedback received from Web-based tool and other mechanisms, such as employee surveys, to allow for adjustment of policies, guidance, guidelines and regulations based on concrete evidence.
- Working group within PSC and with PSHRMAC - Values and Ethics (to continue after implementation)
- Direction-giving & decision-making bodies: PSC partners (steering committee, to continue after implementation); bilateral process with PSHRMAC (Values and Ethics) and Commission (MOC & COM)

Departments and agencies to whom Part 7 of the PSEA applies are responsible for:

- providing politically impartial services to Canadians;
- designating a contact person within their organization for political activities (e.g., HR advisor or other);
- keeping their employees informed about the new political provisions (issuing periodical reminders);
- informing/training their managers and employees;
- providing input to the PSC, when required, in a timely manner regarding the employee's duties and any sensitive aspects of the work;
- providing assistance to the PSC in the conduct of its investigations;
- implementing corrective measures prescribed by the PSC when an allegation is founded; demonstrating they were taken;
- seeking guidance from the PSC, when applicable;
- ensuring any requirements imposed regarding a request are respected, e.g., "cooling-off" period;
- reporting to the PSC (in context of accountability);

- providing assistance/advice to employees seeking clarification as to the application of the new regime to their specific circumstances (federal public service employees' engagement in political activities);
- ensuring employees respect the legislative requirements related to seeking candidacy and submit requests in accordance with applicable policy;
- including module in organizational orientation sessions on political activities and creating links with PSC Web site;
- looking into situations of inappropriate involvement of their employees and taking disciplinary measures, where applicable; e.g., the Employer and deputy heads have personnel management rights in this regard as defined in the *Financial Administration Act*, which means that they can take disciplinary measures when appropriate even in the absence of an allegation.
- Including paragraph about political activities in letters of offer.

Supporting Tools and Mechanisms

- The organizations' Designated Representative will receive:
 - A tool kit, which will include:
 - statutory provisions;
 - Frequently Asked Questions (FAQs);
 - PSC Web site address;
 - Guidance and a self-assessment tool to assist them in guiding their employees as to federal public service employees' engagement in political activities (same as employee tool)
 - regulations, policies, guidelines, procedures related to candidacy and investigations;
 - employee brochure/document;
 - model letters 1) for periodical reminders about employee rights and obligations to be issued by their organization, 2) for reminders, and 3) for elections (jointly with Values and Ethics).
 - a paragraph for inclusion in their letters of offer; and
 - input for inclusion in their organizational orientation sessions (joint document with Office of the Public Service Values and Ethics).
 - They will also have access to a designated telephone number at the PSC for advice, as required (possibly via a one-stop shop);
 - In addition, they will be informed and trained through an information session and workshop module at "roll-out" and on a periodical/as required basis, thereafter; e.g., possibly annually or when a federal election is called
- Managers and Executives will:
 - be briefed and informed of their responsibilities by their organizations' Designated Representative (information session DECK provided to the Designated Representative by the PSC)
 - have access to that Designated Representative for advice.
 - also be made aware of their responsibilities and receive training from the CSPPS in the context of labour relations courses they are offering, where appropriate; (Note: links will also be made re: training related to the *Values and Ethics Code*)

Employees are responsible for:

- respecting the legislative requirements, regulations and policies related to candidacy;
- examining their own specific circumstances in order to make reasonable decisions as to whether or not they can engage in a given political activity; and
- seeking advice from their manager and/or head of human resources (or the Designated Representative with their organization), when in doubt.

- They should also be aware that the Employer and deputy heads have personnel management rights in this regard as defined in the *Financial Administration Act*, which means that they can look into situations of inappropriate involvement of their employees in political activities and take disciplinary measures, where applicable.

Supporting Tools and Mechanisms

- Employee brochure, which will inform them about the new regime (including federal public service employees' engagement in political activities)
- Web-based self-assessment tool, which will assist them in making reasonable decisions as to whether a given political activity would impair or could be perceived as impairing their ability to perform their duties in a politically impartial manner (this will be part of overall Web site)
- Will have access to their managers, head of HR or their organization's Designated Representative
- Will receive periodical reminders from their organizations of their rights and obligations (This is part of the overarching tools: PSC will provide sample letters for reminders and for elections)
- New employees will receive information on political activities through their letters of offer (one paragraph) and their orientation sessions.

Office of Public Service Values and Ethics (PSHRMAC) will:

- continue to play a role in the context of the *Values and Ethics Code for the Public Service*, as it applies to activities that do not fall within the definition of "political activity" under the new PSEA.
- need to make links to PSC Web site (and vice versa);
- provide input into joint products, i.e., orientation sessions, Canada School of Public Service (CSPS) courses, reminder letters, etc.
- participate in aspects of communications, learning and education related to political activities
- participate on an ongoing basis with the PSC to ensure, to the greatest extent possible, the provision of coherent and seamless advice, guidance, support and direction to employees and departments/organizations in respect to areas of common interest and distinct responsibilities to help them make reasonable decisions with respect to political activities

Supporting Tools and Mechanisms

- Statutory provisions, regulations, products, communications strategy, information sessions, etc.

Unions

Supporting Tools and Mechanisms

- Will have access to products, tools (Web site), information sessions

Parliamentarians

Supporting Tools and Mechanisms

- Will possibly be invited to technical briefings; will have access to a tool kit, with legislation, regulations and, guidelines to assist their constituents, and access to a comprehensive Web site

The public

Supporting Tools and Mechanisms

- Web site, which will include a one-pager; and
- Access to a designated telephone number at the PSC for advice, as required (possibly via a one-stop shop or 1-800 number)

Section Two - Governance

Part 7 of the *Public Service Employment Act*

Justice Canada Web site: <http://laws.justice.gc.ca/en/P-33.01/97175.html#rid-97227>

Guidance Document

Public Service Commission Web Site: http://www.psc-cfp.gc.ca/psea-lefp/political/guidance_e.htm

Regulations for Candidacy

Canada Gazette Web site: <http://canadagazette.gc.ca/part1/2005/20051001/html/regle3-e.html>

Regulations for Investigations

Canada Gazette Web site: <http://canadagazette.gc.ca/part1/2005/20051001/html/regle4-e.html>

Form: Template for Allegation of Improper Political Activity

- [PDF Format](#)
- [HTML Format](#) (Canada Gazette Web site)

Section Three - Resource Tools

Self-Assessment Tool

Public Service Commission Web Site: <https://www5.psc-cfp.gc.ca/patool/frontdoor.do?language=en>

Case Study: Political Activities Other Than Candidacy

The Self-Assessment Tool - A Practical Application

Exercise 1:

- Identify one or two political activities to be used to demonstrate the tool.

Exercise 2:

- A public servant works in a Minister's office as a support staff. He works in the correspondence unit and has low visibility.
- He is exploring the idea of helping his Minister in his political campaign.
- He would accept outside employment from the Minister on her own time and would continue to work in the Minister's office.
- What advice would you give this employee?

Exercise 3:

- An employee comes to you to indicate that he would like to engage in political activities related to school board elections, i.e., he wishes to publicly support a school board candidate during a public meeting.
- This employee is the Director General of Policy in his department. He has a lot of influence on the outcome of policies and has frequent direct dealings with the Minister's staff.
- What advice would you provide as to whether or not this activity is problematic?
- Would your advice differ if the employee had no influence on the outcome of policy and had no dealings with the Minister's staff?

Exercise 4

- An employee comes to you seeking advice as to whether or not her spouse's political activities could be perceived as impairing her ability to perform her duties in a politically impartial manner (i.e. the spouse wishes to become a candidate in a federal election; he or she is not a federal employee).

Exercise 5:

- An employee comes to you indicating his desire to write to the editor of a local newspaper to complain about the government in power about its policy on the environment. He wants to know if this is problematic in the context of the political activities regime.
- What advice would you provide the individual?

Exercise 6:

- An employee with dual citizenship is seeking to engage in a political activity in support of a political party in the U.S. and comes to you for advice. What would you advise?

Possible Answers:**Exercise 2:**

- The tool could be used in small groups using the factors set out in the Guidance Document. Advice would be provided after applying the tool.

Exercise 3:

- Here again, the tool could be used in small groups using the factors and series of questions.
- Advice would be provided after applying the tool.
- The PSEA deals with political activities within the context of federal, provincial, territorial or municipal elections.
- School boards do not fall within the definition of what constitutes a municipality which is defined as: "an incorporated or unincorporated regional municipality, city, town, village, rural municipality, township, county, district or other municipality, however, designated; or any other local or regional authority that is determined by the Governor in Council to be a municipality for the purposes of this part" (Part 7 of the PSEA).
- To date, the Governor in Council has not determined any other entity to be a municipality. Therefore an activity related to school board elections would not be subject to the new regime for political activities. It would however, be subject to the *Values and Ethics Code*.

- The advice would not differ if the employee had no influence on the outcome of policy and had no dealings with the Minister's staff.
- (Note: the same answer would apply with respect to activities associated with Indian band elections; i.e., an employee is seeking a leave of absence hoping to be elected chief of an Indian band.)

Exercise 4

- The political activities of others should not be problematic for the employee. For instance, having dinner with your spouse or friend who is politically engaged (e.g., is an MP), should not be perceived as impairing your ability to perform your duties in a politically impartial manner.
- However, should she (the federal employee) decide to engage in a political activity related to that of the spouse; i.e., she decides to campaign for her spouse, this could become problematic and would have to be assessed in light of the employee's specific circumstances; the fact that her spouse puts up a political lawn sign should not impair or be perceived as impairing her ability to perform her duties in a politically impartial manner.

Exercise 5:

- Given that this activity does not fit the definition of a political activity under the PSEA, the employee should be advised that the activity does not fall with the parameters of the PSEA but needs to be examined in light of the *Values and Ethics Code for the Public Service* (the Code), particularly with respect to the employees' duty of loyalty owed to their employer.
- You should also provide the individual with a copy of the Code (if he or she does not have one), refer the person to the appropriate designated individual within your organization for further advice and to the appropriate Web site for additional information.

Exercise 6:

- The PSEA applies to political activities at the federal, provincial, territorial or municipal level in Canada. Therefore, the activity the employee wishes to engage in would fall under the application of the *Values and Ethics Code for the Public Service*.

Case Study: Candidacy

Case Study # 1: Joe

- Joe is a media relations officer at Administrative Services Canada. He is an IS-03, acting at the IS-04 level. His work involves meeting members of the media and answering their questions on government programs and activities.
- Joe has been talking openly at work about his interest in running for municipal office. He has told people in the office that politically active people have approached him and invited him to step forward as a potential candidate in the next municipal election.
- This employee's director has become aware of Joe's interest in political candidacy and the two of them have talked about it in general terms. The director is now wondering whether he should take any action in relation to this situation. Should he? If not, why not? If so, what actions should be taken?

Reference:

- PSEA, ss. 115. (1) "An employee may seek nomination as, or be, a candidate in a municipal election before or during the election period, only if the employee has requested and obtained permission from the Commission to do so."
- The key point is that before Joe announces his decision to run, he must have PSC permission to seek nomination.
- Be aware that there is usually an exploratory period, a period before the employee actively makes a decision to seek nomination. During this time the individual looks at whether it is personally feasible to seek the nomination. Joe is perhaps still not sure about what he wishes to do. As soon as he has made the decision, he must have either permission to seek nomination while continuing to work or go on an approved leave of absence to seek the nomination.
- The director should advise Joe that he needs PSC permission to be a candidate in a municipal election. He should explain the rationale for this requirement, meet with Joe and go over s. 115 of the PSEA with him.
- As the designated representative for political activities, you may be invited to participate
- Advise Joe that he must not speak with the media about his interest in being a candidate.
- Joe must not use his media contacts at work to make the announcement. Any announcement by him or his political organization must be through some other route.

Key point: Before he does anything in public, Joe must get PSC permission to seek nomination.

Case Study # 2: Sylvie

- A provincial election is on the horizon! Sylvie wants to be a candidate for The Federation For Farmers First."
- She is a forestry technician with Natural Resources Canada, Canadian Forestry Service. Sylvie gives advice on woodlot management to landowners. Through Sylvie, these property owners often request financial assistance from the federal government to plant and cultivate new forests. In the event of a disagreement with a landowner, Sylvie's EX-01 supervisor would intervene and take charge of the file.
- She is a term employee, a GT- 04, working out of a district office in Thompson, Manitoba.
- Sylvie has requested a leave of absence without pay to seek nomination and, if successful, to be a candidate. If she is nominated and elected, Sylvia will cease to be a federal public servant. If she is not nominated or not elected, she will return to her job with the Canadian Forestry Service. Should the PSC approve her request for a leave of absence?

Reference:

- PSEA, ss. 114. (6) "In deciding whether seeking nomination as, or being, a candidate will impair or be perceived as impairing the employee's ability to perform his or her duties in a politically impartial manner, the Commission may take into consideration factors such as the nature of the election, the nature of the employee's duties and the level and visibility of the employee's position."
- This is a provincial, not a federal, election. This makes no difference.
- Will there be landowners with whom she has dealt in her riding? Does this matter? She does not make decisions on financial assistance. Discuss the notion of visibility. A job in a field office may appear limited in scope but in the community context it may have very high visibility.

- Sylvie's tenure as a term employee is not a factor in the PSC's decision.
- Sylvie's party affiliation is not a factor.
- Sylvie does not approve the funding requests. Financial agreements with landowners are approved by Sylvie's superiors and other government officials.

Key point: Sylvie's ability to perform her duties in a politically impartial manner is not impaired by her political activity because she does not make decisions on financial assistance and she does not manage money. Her duties are of an internal, technical nature and they have limited visibility.

Permission granted.

Case Study # 3: Richard

- Guess what? We're going to have a federal election! The election has not yet been called but the newspapers, radio and television reported this morning that a political party has announced that a federal public servant, Richard Waters, will be its candidate in a downtown Ottawa riding. Richard is quoted as having no comment on the news about his candidacy because he is awaiting a decision by the PSC that is related to this matter.
- As an AS-07, Wade is a desk officer for Iraq at the Canadian International Development Agency (CIDA). He spends a lot of time travelling to and from Baghdad. He holds a very high security clearance. Wade occasionally deals with local officials in rural Iraq, Syria and Afghanistan. He chairs a multinational task force with representatives from Britain and the United States. Its mandate is to supervise elections held in Iraq. He has been in his job for a year. Richard observes and analyses political events in and around Iraq to identify trends. He makes recommendations to his superior on policy positions Canada should take in that region. He also supervises staff. He does not deal directly either with cabinet ministers or with the public. Some of Richard's work is very sensitive in terms of national security. His files often deal with sensitive intelligence matters connected with the deployment of Canadian troops in the region. However, he is not involved in decision- making on troop deployments.
- As the Designated Representative, you have worked with Richard and helped him prepare his request for permission to seek candidacy. In fact, he sent his request to the PSC just last week and is awaiting the PSC's decision.
- Richard has just sent you an e-mail from Baghdad telling you that he was not the source for the stories in today's news. He wants to know when he can expect a decision from the PSC and what his next steps should be. Wade also wonders if he is in trouble at work because of the press reports.
- What advice would you offer Richard? When can he expect a decision? Is he subject to disciplinary action?
- (Unofficially, what do you think the Commission's decision will be and why?)

References:

- PSEA, ss. 114. (2) "An employee may, before the election period, be a candidate in a federal, provincial or territorial election only if the employee has requested and obtained permission from the Commission to do so."
- Candidacy Regulations ss. 3. (1) "A request for permission to seek nomination as a candidate ... should be submitted ... no later than thirty days before the date by which the applicant requires a decision from the Commission."
- Richard is not "in trouble" because he did not make the announcement about his possible candidacy. The information was "leaked" by a third party.
- Wade's next step should be to wait for the PSC decision before making an announcement about his interest in candidacy.
- Security clearance is not a factor.
- Staff supervision is not a factor.
- As the Designated Representative you do not know whether his request for permission will be approved, so you cannot advise him on this.

- (Unofficially however, although he works in a dangerous, high- profile area, his duties are primarily of an internal, administrative nature and they have limited visibility. Richard's work is unaffected by political considerations or events in Canada and he does not create policy. He is not a senior manager and is not involved in decision-making on foreign policy or the movement of Canadian soldiers. Unofficially, the Commission's decision will likely be to grant permission.)

Key point: Mr. Waters must have PSC permission before announcing his candidacy.

Case Study: Investigations of Allegations of Improper Political Activities

Case Study # 1:

You have just returned to the office from annual leave. On your desk is the attached correspondence, which has been referred to you by the Deputy Minister's office.

Deputy Minister
Department of Justice
Ottawa, Ontario

Dear Deputy Minister:

The Investigations Branch of the Public Service Commission has received an allegation filed by Mr. Eric Legrand, a lawyer in your Branch, alleging that his team leader, John Stone, has engaged in improper political activity, contrary to subsection 113(1) of the *Public Service Employment Act* 2003. The details of the allegation are attached.

Jan Olivier has been assigned to investigate the allegation. We have notified Mr. Stone of the allegation and of our intention to investigate it. You will be invited to make a submission. We will advise you shortly of the next steps in the investigation.

Yours sincerely,

A. B.
Investigations Branch
Public Service Commission of Canada

Allegation of Improper Political Activity

Name of person making the allegation: ERIC LEGRAND

Address:

E-mail address:

Name of employee or deputy head against whom the allegation is made: JOHN STONE

Organization in which that employee or deputy head is employed: DEPARTMENT OF JUSTICE

Address: OTTAWA

Section of the Act contravened (check one):

- ss. 113(1) An employee engaged in a political activity that impaired the employee's ability to perform his or her duties in a politically impartial manner.
- ss. 114(1) An employee sought nomination in a federal, provincial or territorial election without obtaining permission from the Public Service Commission.
- ss. 114(2) An employee was a candidate in a federal, provincial or territorial election without obtaining permission from the Public Service Commission before the election period.
- ss. 114(3) An employee, during an election period, did not obtain a leave of absence without pay from the Public Service Commission to be a candidate in a federal, provincial or territorial election.
- ss. 115(1) An employee sought nomination , or was, a candidate in a municipal election without obtaining permission from the Public Service Commission.
- ss. 117 A deputy head engaged in a political activity other than voting in an election.

Description of alleged contravention (please provide as much detail as possible):

I am a lawyer employed with the Justice Department in Ottawa. About six months ago, I was assigned to the legal team responsible for advising the Deputy Minister and the Minister of Justice on the drafting of the bill designed to decriminalize the possession of small amounts of marijuana.

Two weeks ago, our team leader, John Stone, asked me if I would like to work for our local Marijuana Party candidate in the upcoming federal election. I turned down the request.

I have reason to believe that Mr. Stone himself is working for that candidate as he offered to give me the name and phone number of the campaign manager in case I changed my mind.

Yesterday Mr. Stone gave me my employee appraisal. He made some highly critical comments about my performance. I believe the comments are in retaliation for my refusal of his request to help the Marijuana Party candidate and because I gave him advice about the bill which he did not want to hear, as it did not conform to the Marijuana Party's platform.

It is improper for Mr. Stone to work for a candidate for this party, given the nature of his responsibilities. I do not believe a person working for the Marijuana Party can be counted on to provide impartial advice to the Deputy Minister or the Minister on issues related to the decriminalization of marijuana.

Please investigate this matter.

Eric Legrand
Counsel
Department of Justice

The Deputy Minister of Justice
Ottawa, Ontario

Dear Deputy Minister:

I have just received notification of an allegation made to the Public Service Commission, filed by Eric Legrand, a member of my team, claiming that I have been engaging in improper political activities. His

allegations are false and scurrilous. Mr. Legrand has had a poor performance record since he joined my team. This was reflected in his employee appraisal, which I gave to him just before he made the allegation. It is clear that his complaint is nothing more than an attempt to discredit me in order to deflect the performance problems that need to be addressed.

I intend to hire a lawyer to represent me and would ask that the Department of Justice reimburse all my legal expenses. Alternatively, I would ask that the Department of Justice assign an in-house lawyer who is acceptable to me as my representative. I will be happy to discuss these alternatives with whomever you assign to address the issue.

Yours sincerely,

John Stone
Senior Counsel/Team Leader
Marijuana Team
Department of Justice

The purpose of the case study is to have Designated Representatives discuss how to prepare their organization for the investigation. Like most real life situations, this case is quite complex and involves a number of issues outside the investigation. Employee performance issues, paying for representation for Mr. Stone and whether to relieve Mr. Stone of his duties will be matters of interest to the department, but should not be the focus of this discussion.

Since the Commission has already made the decision to investigate, the Designated Representative may wish to:

1. Review information on the PSC web-site concerning investigations of allegations
2. Contact the investigator to determine the procedure that will be followed. Information that the rep might wish to ask includes:
 - What method will be followed, for example, will a hearing with all interested parties be held, or will the parties be asked to make submissions in writing? Will the hearing be open to the public?
 - What will the next steps in the investigations process be? For example, will parties be expected to disclose information to each other prior to a hearing?
 - Does either Mr. Legrand or Mr. Stone have a representative to whom you can speak?
 - What does the investigator see as the department's role in this investigation? Is there any information which the investigator would like such as job descriptions, organizational charts, etc.
3. Information gathering within the department in order to develop department's position:
 - Check to see if departmental employees have been informed of the provisions concerning political activities of public servants
 - Have there been any queries about Mr. Stone or this unit before?
 - Are there any witnesses to the conversation between Mr. Legrand and Mr. Stone?
 - Is there evidence to show that Mr. Stone is in fact working on behalf of the Marijuana Party?
 - What is Mr. Stone's involvement with the marijuana bill?

- Who will represent the department during the investigation? If it is not the Designated Representative, that person should be prepared to brief and advise the person who will represent the department.

Case Study # 2:

- In November 2006 you received an urgent call from the Director General (DG) of the Prairie Region. A local newspaper has run an article about the current election campaign for mayor in the town of Springfield, Manitoba. The article, which is entitled "Will our City and the Feds be Embodied in One Woman?", refers to one candidate who is the director of a local Service Canada office. The article goes on to question how she can deliver federal programs when she has been so critical of the federal government during the campaign.
- As the Designated Representative, you have just been advised by the PSC that an allegation has been received from another municipal candidate alleging that the Service Canada director has contravened ss. 115(1) of the PSEA, in that she has not obtained permission from the Public Service Commission before seeking nomination or being a candidate in a municipal election.
- What advice would you give the DG and how would you prepare for the investigation?

Possible discussion points:

- The purpose of the case study is to have Designated Representatives discuss how to prepare their organization for the investigation.
- You will first want to confirm if the public servant involved is a candidate for mayor, and if so, whether she has obtained permission from the Commission. If she has permission, that will be published in the Canada Gazette, or alternatively you could verify this with the Delegation Directorate of the PSC. You will want to verify whether the permission is conditional upon her taking a leave of absence for the period in which she is a candidate and/or if she is elected (s. 115(4)). If she has not obtained permission, then her candidacy is an improper political activity.
- If she has obtained permission, contact the Investigations Branch with this information to expedite the investigation. If she does not have permission, you might wish to contact the Investigations Branch to confirm that fact, and then ask how the investigator will proceed. For example, if the issue is straightforward, could the investigation be carried out by written submissions, with the focus on what corrective action would be appropriate?
- You will want to determine if this public servant knew she was required to obtain permission to be a candidate in a municipal election. How well was this information communicated in your organization?
- Once information is obtained about whether the public servant has the Commission's permission to be a candidate and whether there are conditions to that permission, you should relay this information to the Director General. He may wish to make a statement to the press. The other issue which he will want to address is her critical comments of the federal government during the campaign. She appears to have breached her duty of loyalty to the employer.

Frequently Asked Questions (FAQS)

Public Service Commission Web site: http://www.psc-cfp.gc.ca/psea-lefp/political/faq_e.htm

Glossary

Public Service Commission Web site: http://www.psc-cfp.gc.ca/psea-lefp/political/glossary_e.htm

Section Four - Communications Tools

Model Deputy Head Letters on Political Activities

Model Reminder Letter to Deputy Heads on Political Activities for Their Employees at Election Time:

I am writing to remind you of the provisions of the (recently implemented) *Public Service Employment Act* (PSEA) respecting the rights and obligations of public servants should they wish to be politically active in a federal, provincial, territorial or municipal election. These provisions, which exist to protect the political impartiality of the public service, must be respected.

The (new) PSEA expressly provides that employees may engage in any political activity so long as it does not impair, or is not perceived as impairing, their ability to perform their duties in a politically impartial manner. As each situation is unique, political activities have to be assessed on a case-by-case basis. A self-assessment tool is intended to help employees make reasonable decisions about their involvement in political activities. It can help assess whether a given political activity would impair or could be perceived by others as impairing employees' ability to perform their duties in a politically impartial manner, based on their specific circumstances.

Employees are also strongly encouraged to discuss their specific circumstances with their manager and/or head of human resources or the departmental resource person identified in their organization. It should also be noted that any activities that do not fit the definition of political activity are subject to the *Values and Ethics Code for the Public Service*.

An employee may only be a candidate if he or she receives permission to do so from the Public Service Commission (PSC). Permission may be granted if the PSC believes that the employee will be able to carry out, and be seen to carry out, his or her duties in a politically impartial way upon returning to work after the election. The PSC may require the employee to take leave without pay for part or all of the period during which he or she is seeking candidacy or is a candidate. If a public servant wishes to run for elected office, he or she must have received PSC approval before making a public announcement of his or her intention to seek nomination. If nominated without PSC permission, he or she will be in contravention of the PSEA.

The public servant's right to seek candidacy or to be a candidate must be examined in light of the need to maintain a politically impartial public service. The principle of political impartiality of the public service is a fundamental value that ensures that Canadians benefit from a non-partisan delivery of services. Employees should bear in mind that anyone may make an allegation of improper political activity against a federal public servant. A founded allegation may lead to corrective measures that could include dismissal.

It is recommended that a reminder letter be sent to all employees to provide them with this useful information. A model letter is available on the PSC *Web site* for your convenience.

Information on political activities, including the self-assessment tool and procedures related to candidacy, may be found at, http://www.psc-cfp.gc.ca/psea-lefp/political/index_e.htm. You will also find a list of contact persons at the PSC.

Thank you in advance for your attention to this matter.

c.c. Designated Representatives

Model Reminder Letter for Deputy Heads to Send to Their Employees at Election Time Regarding Federal Employees' Involvement in Political Activities:

I am writing to remind you of the provisions of the (recently implemented) *Public Service Employment Act* (PSEA) respecting the rights and obligations of public servants should they wish to engage in a political activity at the federal, provincial, territorial or municipal level.

As you may be aware, the new *Public Service Employment Act* (PSEA) recognizes both your right as an employee to engage in any political activity at the federal, provincial territorial or municipal level and the need to maintain the political impartiality of the federal public service. More specifically, the (new) PSEA stipulates that employees may engage in any political activity so long as it does not impair or is not perceived to impair their ability to perform their duties in a politically impartial manner.

Your right as a federal public service employee must, therefore, be examined in light of the need to maintain a politically impartial public service. The principle of political impartiality in the public service is a fundamental value that ensures that Canadians benefit from a non-partisan delivery of services.

You should also bear in mind that any person may make an allegation of improper political activity against federal public servants, and the PSC may investigate these allegations. A founded allegation may lead to corrective measures that could include dismissal. Disciplinary measures may also be imposed by departments with respect to unacceptable political activities, even if no allegation has been made.

Given that each situation is unique, political activities, other than those linked to candidacy, must be assessed on a case-by-case basis. In this respect, there is a tool available that is intended to help employees make reasonable decisions about their involvement in political activities, based on their specific circumstances. Should they require further advice, employees are also strongly encouraged to discuss their specific circumstances with their manager and/or head of human resources, or the designated departmental/agency representative in charge of the political activities file.

As for political activities related to candidacy (e.g., seeking nomination to be a candidate or being a candidate), specific rules apply. For example, an employee may only be a candidate if he or she receives permission to do so from the Public Service Commission (PSC). Permission may be granted if the PSC believes that the employee will be able to carry out, and be seen to carry out, his or her duties in a politically impartial way upon returning to work after the election. The PSC may require the employee to take leave without pay for part or all of the period during which he or she is seeking candidacy or is a candidate. If a public servant wishes to run for elected office, he or she must receive PSC approval before making a public announcement of his or her intention to seek nomination. If nominated without PSC approval, he or she will be in contravention of the PSEA. The public servant's right to seek candidacy must be examined in light of the need to maintain a politically impartial public service.

It should also be noted that any activities that do not fit the definition of political activities are subject to the *Values and Ethics Code for the Public Service*.

Additional Information on political activities, including the self-assessment tool and procedures related to candidacy, may be found at, http://www.psc-cfp.gc.ca/psea-lefp/political/index_e.htm. You will also find a list of contact persons at the PSC.

Thank you in advance for your attention to this matter.

Content for Letters of Offer

It is suggested that deputy heads include the following paragraph in letters of offer for appointments or deployments:

"You will also find enclosed a brochure which contains general information regarding the rights and obligations of federal employees wishing to engage in political activities. It is important to bear in mind that employees must respect the requirements set out in Part 7 of the *Public Service Employment Act* if they wish to engage in such activities."

(Note: the brochure for employees includes a web address - it is to be used at the implementation stage and on an ongoing basis thereafter.)

It is suggested that the paragraph regarding political activities follow the one related to the *Values and Ethics Code for the Public Service* which reads as follows:

"You will find enclosed a copy of the *Values and Ethic Code for the Public Service*. This Code is a key policy for the management of human resources and is part of your conditions of employment."

Content for Orientation Sessions

Possible content of a few slides to be included in departments and agencies orientation session:

Political Activities ... Your Rights and Obligations ...

Part 7 of the new *Public Service Employment Act* (PSEA) - recognizes the right of employees to engage in political activities, while maintaining the principle of political impartiality in the public service.

The legislation defines "political activity" as:

- any activity in support of, within or in opposition to a political party;
- any activity in support of or in opposition to a candidate before or during an election period; or
- seeking nomination as, or being, a candidate in an election before or during the election period.

As a result, employees may engage in any political activity so long as it does not impair, or is not perceived as impairing, the employee's ability to perform his or her duties in a politically impartial manner.

Your right as an employee must, therefore, be examined in light of the need to maintain a politically impartial public service. This measure will ensure that Canadians can benefit from non-partisan delivery of services.

It should be noted that political activities that do not fit the above definition are subject to the *Values and Ethics Code for the Public Service* (the Code) and could, therefore, be problematic for reasons other than those related to the PSEA.

For example, speaking out to the media against the federal government or against a federal policy generally would not be a political activity according to definition in the PSEA. Such an activity may, however, in certain circumstances be problematic under the Code because it may give rise to a real, apparent or potential conflict of interest, or because it may violate the duty of loyalty you owe to your employer.

The Act also requires that employees who wish to seek nomination and/or to be a candidate in federal, provincial, territorial or municipal elections must first obtain PSC permission to do so. As a result, an employee may only engage in such political activity after receiving permission.

As for the consequences of your engaging in an unacceptable political activity, it is important to know that anyone may make an allegation of improper political activity against federal public servants and the PSC may investigate these allegations. A substantiated allegation may lead to corrective measures that could include dismissal. Disciplinary measures may also be imposed by organizations with respect to unacceptable political activities, regardless of whether or not an allegation has been made.

For additional information regarding political activities, please consult the following Web site http://www.psc-cfp.gc.ca/psea-lefp/political/index_e.htm which contains:

- regulations, policies and procedures, including how to request permission from the PSC to seek nomination or to be a candidate in an election, as described above;
- general information on this subject matter, e.g., to whom these provisions apply, examples of political activities, factors to take into consideration;
- a tool to help you make reasonable decisions as to whether or not the political activity (other than candidacy) you wish to engage is unacceptable, based on your specific circumstances; and Frequently Asked Questions (FAQs), etc.

You may also wish to discuss this matter further with your manager, your head of human resources or the designated departmental/agency representative in charge of the political activities file (the Designated Representative).

(Possible hand-outs: employee brochure regarding PSEA and *Values and Ethics Code* if not included with letter of offer)