



Accountable Government

A Guide for Ministers and
Ministers of State

2011

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Accountable Government: A Guide for Ministers and Ministers of State 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. On the critical issue of ethical conduct, Ministers should ensure that they are thoroughly familiar with the *Conflict of Interest Act*.

This edition of *Accountable Government: A Guide for Ministers and Ministers of State* incorporates a number of changes from the 2008 edition. In particular, the main body of the document has been significantly streamlined to enhance its usefulness as an overview of core principles, with more detailed information being retained in the annexes. Additionally, there is expanded guidance on portfolio coordination, on dealings with federal administrative tribunals, and on the respective roles and responsibilities of public servants and Ministers' exempt staff in supporting their Ministers' departmental responsibilities. Also of note is a new annex (Annex B) entitled "Fundraising and Dealing with Lobbyists: Best Practices for Ministers and Parliamentary Secretaries," which has been included in the online version since November 2010.

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PRIME MINISTER • PREMIER MINISTRE

A Message to Ministers and Ministers of State

When our Government first assumed office, one of the cornerstones of our agenda was the transformation of the accountability regime applicable to the federal government. Since that time, as Canadians have honoured us with strengthened mandates, and greater stability enables us to work with a view to a longer horizon, it remains essential that we never lose sight of our accountability objectives. In this context, I am pleased to present an updated edition of *Accountable Government: A Guide for Ministers and Ministers of State*.

In addition to setting out the central tenets of Canada's system of responsible government as they apply to Ministers and Ministers of State, this document includes practical guidance on the discharge of your responsibilities as head of a department and portfolio, as a member of the Ministry, and as a parliamentarian. It also sets out standards of conduct, including ethical guidelines, political activity guidelines and an overview of the principles governing the avoidance of conflicts of interest.

Key among your duties is to ensure that your department and portfolio are managed soundly and with complete integrity, with careful regard to the particular powers, duties and functions assigned to you by statute and convention. In this, as in all matters, your deputy minister will be your principal source of public service support. You should make effective use of the public service, which is there to provide professional, non-partisan support in discharging your statutory powers, duties and functions, including through the delegated exercise of authorities. At the same time, you must ensure that neither you nor your staff seek to engage public servants in work that is outside their appropriate, non-partisan role. In this way, successive governments can have confidence that the public service will provide the support they

need to fulfill their ministerial functions and mandate without regard to political partisanship.

I would also underscore the need for careful and principled attention to your parliamentary duties, and to seek every opportunity to work on a cooperative, constructive basis with your parliamentary colleagues of every political stripe. As Ministers of the Crown, we are individually and collectively accountable to Parliament. This accountability is given daily expression in parliamentary proceedings, and we must continually demonstrate our commitment to and respect for the parliamentary process.

As a Minister, you are individually accountable to Parliament for the discharge of all responsibilities vested in you. You must answer all questions pertaining to your areas of responsibility, correcting any inadvertent errors at the earliest opportunity. And you must demonstrate that you are taking corrective action, as appropriate and within your authority, to address any problems that may arise within your portfolio.

As a Ministry, we are collectively accountable for all the policies and actions of the Government. This means that you must be prepared to explain and defend the Government's policies and actions before Parliament at all times. It also underscores the importance of Cabinet solidarity and confidentiality. The Government must speak to Parliament and to Canadians with a single voice. To do this, Ministers must be able to express their views in Cabinet frankly, with the assurance that what they say will be held in confidence. All Ministers are bound to confidentiality by their oath as Privy Councillors, as are Parliamentary Secretaries with respect to any confidential information they may have access to in the course of their duties.

The evolution of *Accountable Government* will assist us in maintaining a culture of accountability in everything we do, upholding the highest standards of probity and ethical conduct in recognition of the fact that it is a privilege and a trust to participate in the process through which Canadians govern themselves. *Accountable Government* is a reminder not only of the rigorous legal system that has been enacted to support integrity and accountability in Canadian government, but equally of the fact that public sector ethics require more than mere compliance with legal rules. Ultimately, no system of rules, however comprehensive and robust, can substitute for our individual and collective commitment to the public interest.

I have every confidence that, with the help of this Guide and your own sound judgment, our Government will conduct itself in an exemplary manner and earn the continued confidence of Canadians.

A handwritten signature in black ink, appearing to read 'Stephen Harper', with a stylized, cursive script.

Stephen Harper
Prime Minister of Canada

Introduction

This Guide sets out the duties and responsibilities of the Prime Minister, Ministers and Ministers of State, and outlines key principles of responsible government in Canada. This essential information will help members of the Ministry individually and collectively support the Prime Minister in managing the business of the Government of Canada. The Guide also includes information regarding the duties and responsibilities of Parliamentary Secretaries.

Ministers and Ministers of State 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, including Ministers of State, are chosen by the Prime Minister and constitute the Ministry. They all serve at the pleasure of the Prime Minister. Government policy is established by the Cabinet, which does not include Ministers of State. 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.¹

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

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

through statutes that set out the powers, duties and functions for 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 and Ministers of State 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 and Ministers of State 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 blame 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,² 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

² 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 Council³ or as a result of a designation by the Prime Minister (for example, political regional responsibilities). 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. Ministers of State

Ministers of State are chosen by the Prime Minister to provide support to Ministers and to the government as a whole,

³ See Annex D, section 5 regarding Orders in Council.

with specific responsibilities. The support provided by Ministers of State may include: demonstrating policy leadership on one or more specific initiatives relating to their assignment at the direction of the responsible Minister; appearing on behalf of their Minister in Parliament, including Question Period, and before its committees as required; representing their Minister or the government at events; and meeting with stakeholders and other groups.

Although they are not members of the Cabinet, Ministers of State are part of the Ministry and participate in meetings of Cabinet committees relevant to their areas of assigned responsibility. They are bound by collective responsibility and must uphold the confidentiality of any Cabinet information to which they have access.

When Ministers of State are appointed to assist a portfolio Minister, the Minister may also outline specific priorities and tasks for which their assistance will be sought, which may include assistance with the Minister's parliamentary duties. However, Ministers of State do not exercise the statutory powers, duties and functions of the Minister, who remains accountable for the entire portfolio. Since Ministers of State do not themselves preside over a department or any other portion of the public service, the deputy minister of the Minister's department will provide them with departmental support. However, Ministers of State are accountable for the conduct of personal staff and advisors.

In certain instances, the Prime Minister may also appoint a Minister to additional duties in the portfolio of another Minister. In such cases, as in the case of Ministers of State, the portfolio Minister continues to be accountable for the entire portfolio.

II.4. Parliamentary Secretaries

Parliamentary Secretaries are chosen by the Prime Minister and are assigned to assist Ministers. They are key 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 development of the legislative agenda. They play a liaison role within the caucus, the House of Commons and its committees. In committees, they 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 the caucus 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 or Ministers of State may respond to particularly sensitive questions. Given that they work under the direction of a Minister, Parliamentary Secretaries do not introduce their own Private Members' bills or motions.

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.5. Public Service and Exempt Staff Support

In the performance of their departmental duties, Ministers and Ministers of State 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 and Ministers of State are discussed at Annex E, “Support to Ministers and Ministers of State: The Role of the Public Service and Exempt Staff.”

II.6. 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,⁴ 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 or borrowed by the government with the authority of Parliament. Ministers must be prepared to respond to questions on

⁴ See Chapter 1 and Annex F for more information about responsible government.

spending 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, Minister of State 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 and priority items in the government's agenda. On other matters, the government will take a position, and recommend a preferred outcome to the government's caucus.

- *Private Members' business.* Ministers are responsible for managing House of Commons and Senate Private Members' items in their portfolio, in coordination with the government's leaders in the House of Commons and Senate. The government determines its position on all Private Members' items. If an item runs counter to government policy, Ministers who are responsible for the policy should ensure that Members of Parliament, including caucus members, are informed about the government's position, and should seek the support of caucus members for the government's position. Ministers must present the government's position to the National Caucus before the first hour of debate on items. Ministers who wish to support an item that is equivalent to a new government policy decision must seek Cabinet approval to do so.
- *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 parliamentarians generally, Ministers should give particular attention to their relations with members of the government's caucus. It is especially 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 their Caucus Advisory Committees 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 and Ministers of State, such as attendance at votes and leading the government's response to Opposition Day motions.

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 and the Government's Leaders in the Senate and the House. 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 business, and, with the Office of the Leader of the Government in the Senate, acts as a key contact to obtain information from departmental staff for Question Period. Ministers who are assigned a Minister of State or 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.

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. Ministerial Senate Duties

The Leader of the Government in the Senate is responsible for managing the government's agenda in the Senate, and Ministers are expected to work with the Leader of the Government in the Senate on legislation and Private Members' bills for which they are responsible. In carrying out these duties, the Leader of the Government in the Senate is supported by political staff and the Privy Council Office. Ministers are responsible for ensuring that their legislation is piloted through the Senate and that questions related to their portfolio are answered in the Senate.

III.3. 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, Ministers of State 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, Ministers of State and Parliamentary Secretaries are therefore expected to adhere to the following standards in all circumstances, whether they are acting as a Minister, Minister of State, or Parliamentary Secretary, a member of the House of Commons or Senate, or a private citizen. This chapter outlines key areas where established government standards of conduct apply to Ministers, Ministers of State and Parliamentary Secretaries.

IV.1. Ministerial Conduct

Ministers, Ministers of State 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, Ministers of State 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, Ministers of State, Parliamentary Secretaries and their staff are subject to the requirements of the *Conflict of Interest Act*.⁵ In their capacity as members of the House of Commons they

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

are also 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, Ministers of State, Parliamentary Secretaries and their 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, Ministers of State and Parliamentary Secretaries on their responsibilities under the Act and Code. The obligations of the *Conflict of Interest Act* apply to Ministers, Ministers of State, Parliamentary Secretaries and their 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, Ministers of State 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', Ministers of State's and Parliamentary Secretaries' adherence to the provisions of the *Conflict of Interest Act*, as well as the ethical and political activity guidelines found at Annexe 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, Ministers of State and Parliamentary Secretaries are also held accountable by the House of Commons (or in the case of Ministers who are Senators, by the Senate) for their adherence to the provisions of the *Conflict of Interest Code for Members of the House of Commons* (or the *Conflict of Interest Code for Senators*) in their capacity as Members of Parliament.

IV.3. Lobbying Act

Ministers, Ministers of State 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, Ministers of State 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 and Ministers of State often receive invitations to participate in or endorse events, community initiatives or publications, to meet with people or to travel to various countries. Ministers and Ministers of State 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 and Ministers of State 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 Director of Security Operations in the Privy Council Office. The Director will make inquiries, offer general advice to the Minister or Minister of State and arrange briefings as necessary.

Ministers, Ministers of State 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, Ministers of State 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 Holders⁶

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

⁶ “Public office holders” means all persons falling within the definition of public office holder under the *Parliament of Canada Act*, and includes Ministers, Ministers of State, Secretaries of State, Parliamentary Secretaries, their staff, ministerial advisors, and Governor-in-Council appointees (save for the exceptions enumerated in the *Parliament of Canada Act*, namely: lieutenant governors, officers and staff of the Senate, House of Commons and Library of Parliament, heads of mission under the *Department of Foreign Affairs and International Trade Act*, judges receiving salaries under the *Judges Act*, a military judge within the meaning of the *National Defence Act*, and officers of the RCMP other than the Commissioner).

government place of work; nor should any government equipment or material be used for such purposes.

Statutory Requirements

Public office holders are also subject to the requirements of the *Conflict of Interest Act* and to post-employment and other obligations under the *Lobbying Act*, as set out in Part IV: Standards of Conduct.

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, Ministers of State, 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:

1. The nature of the organization, including whether it is quasi-judicial in character, in which case a much more stringent standard is required.
2. 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.
3. The nature of the contemplated political activity, including:
- its profile or visibility; and
 - its active or passive character.
4. 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, Ministers of State and Parliamentary Secretaries

Ministers, Ministers of State 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, Ministers of State and Parliamentary Secretaries are expected to follow to maintain appropriate boundaries between their official duties and political fundraising activities. It is important that Ministers, Ministers of State 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, Ministers of State 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, Ministers of State 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*.

General Principles

- Ministers, Ministers of State 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, Ministers of State, Parliamentary Secretaries, or their staff or departments.

Departmental Stakeholders

In this document, “departmental stakeholders” includes:

- lobbyists registered to lobby Ministers, Ministers of State, Parliamentary Secretaries, their staff or their departments;
- employees of lobbying firms retained to lobby Ministers, Ministers of State, Parliamentary Secretaries, their staff or their departments;
- employees of corporations and organizations whose employees are registered to lobby Ministers, Ministers of State, 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, Ministers of State, 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, Ministers of State and Parliamentary Secretaries should adopt the following best practices:

1. Ministers, Ministers of State and Parliamentary Secretaries should not seek to have departmental stakeholders included on fundraising or campaign teams or on the boards of electoral district associations.

2. Ministers, Ministers of State 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.
3. Ministers, Ministers of State 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.
4. Ministers, Ministers of State 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.

5. Ministers, Ministers of State, 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.
6. Ministers, Ministers of State and Parliamentary Secretaries should ensure that fundraising communications issued on their behalf do not suggest any connection between fundraising and official government business.
7. Ministers, Ministers of State, 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 and Ministers of State 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 *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 and Ministers of State 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 and Ministers of State 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 and Ministers of State 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 subject to the *Access to Information Act*.

Ministerial records include official records pertaining to the office of the Minister or Minister of State, 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 or Minister of State'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 or Minister of State 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 and Ministers of State may remove only their personal and political papers. However, to ensure the security of sensitive documents in personal and political papers, Ministers and Ministers of State 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 and Ministers of State 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 and Ministers of State 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 and Ministers of State 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 and Ministers of State 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' and Ministers of State's 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' and Ministers of State's offices;
- contracting policies and procedures;
- budgets, expenditure authorization, and accounting for expenditures charged to Ministers' and Ministers of State's budgets;
- office accommodation and supplies; and
- travel and use of government aircraft and ministerial vehicles.

Ministerial responsibilities include ensuring that all expenditures in Ministers' and Ministers of State's 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, Ministers of State and Parliamentary Secretaries are expected to conform to applicable government policies and withstand close public scrutiny, including by Parliament. Ministers and Ministers of State, 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 and Ministers of State 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 and Ministers of State 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’ and Ministers of State’s 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 and Ministers of State 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 and Ministers of State 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 and Ministers of State 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 and International Trade.

Ministers and Ministers of State 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 and Ministers of State 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 with their Caucus Advisory Committees 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 certain key statements of government policy and priorities as well as by electoral commitments. 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. 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 are made after a Cabinet decision and after the Treasury Board's approval of any resources required to implement the decision.*

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 and Senate Leaders. 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 the House of Commons.

The first stage in this process is Cabinet approval of a Minister's policy proposal. 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.⁷ 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.

Currently, most collective ministerial deliberations take place in Cabinet committees. 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.

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

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. Ministers of State are part of the Ministry and, while not members of Cabinet, attend the meetings of the Cabinet committee relevant to their area of assigned responsibility and are bound by collective responsibility. 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.

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 or borrowed by the government only with the authority of Parliament. A money bill, for the raising or spending of revenue, must originate in the House of Commons, as the House is the custodian of the public purse. The *Constitution Act, 1867* also requires money bills to be recommended to the House by the Governor General in the form of a Royal Recommendation. This ensures executive control over revenue raising and spending initiatives, and is obtained by the Leader of the Government in the House of Commons.

Parliament exercises its authority over government financial administration by means of a package of instruments comprising enabling legislation such as the *Appropriations 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.⁸

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

Annex E

Support to Ministers and Ministers of State: 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 and Ministers of State 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.⁹ 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

⁹ See Annex F, section 3 for a definition of Governor in Council.

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 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.

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. It is important in all cases, however, 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. Further, 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 and Ministers of State 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.

The purpose of establishing a Minister's or Minister of State's office is to provide Ministers and Ministers of State 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.

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.

Good working relations between the Minister's or Minister of State'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.

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 and Ministers of State receive other support provided by the House of Commons or the Senate. Such support is provided and used only in accordance with established House of Commons and Senate 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 committee 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 (such as a Minister of State or, if desired, ministerial staff) 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.¹⁰

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—

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

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.

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

In formal terms, executive government in Canada is vested by the *Constitution Act, 1867* in The Queen of Canada, who is the head of state. The Governor General is the representative of The Queen, and exercises the power and functions of the Crown on her behalf.

In Canada's democratic system of government, the Governor General is almost always bound to act only on the advice of the elected representatives who belong to the party that has the confidence of the House of Commons. Advice is offered directly by the Prime Minister on some matters, or is provided formally by the Cabinet. It is the personal prerogative of the Prime Minister to convey the view of the government to the Governor General. The Governor General's consent must be

obtained, when required, *before* decisions can take legal effect or be announced.

In constitutional terms, the chief advisory body to the Sovereign is the Queen's Privy Council for Canada,¹¹ composed of all those sworn in as Privy Councillors. It is exceedingly rare for the full Privy Council to meet as a body and, even then, it does so only for ceremonial purposes. Functionally, the Cabinet of the day acts as the chief advisory body to the Governor General.

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 (usually by holding a majority of the seats), 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

¹¹ This institution differs from the Privy Council Office, which is a department in the public service.

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 Ministers of State 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, Ministers of State 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

Members of the *Ministry* include Ministers and Ministers of State. Ministers are also members of the *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 and Ministers of State, 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.

F.4. Ministers and the Law

Legal requirements form part of the framework 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 within limits laid down by Parliament. 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* (principally departmental Acts) provide for the appointment of Ministers; establish the scope of their mandates; provide a basic framework of powers, duties and functions they may exercise in delivering on their mandates and for which they are accountable; and create departments, over which they preside, to organize resources to support them in the discharge of their responsibilities.
- The *Public Service Employment Act* establishes a continuing, professional and non-partisan Public Service of Canada.
- The *Financial Administration Act* shapes virtually all aspects of government management through the powers it grants to the Treasury Board to oversee 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 disclosing the information could adversely affect the public interest. The *Privacy Act* protects personal information held by the government from unauthorized disclosure.

- Other important Acts 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*.

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 and Ministers of State 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, Ministers of State, 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 the central point of communication and coordination with Ministers, Ministers of State, 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 and Regional Coordination

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 Prime Minister is assisted by the Minister of Intergovernmental Affairs in coordinating intergovernmental relations. The Privy Council Office is the public service department that advises and assists the Prime Minister and the Minister in carrying out their 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.

The Prime Minister may also designate *regional Ministers* for each province or major area, who play an important role in coordinating regional or provincial issues with the federal government's activities. However, the position of Minister with regional responsibilities is political in nature and does not in itself carry any legal authorities. The administration of departmental programs in every region remains the individual responsibility of departmental Ministers.

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 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).
- 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. Communications and Public Announcements

Communicating with the public is an important responsibility of the government. Communications must be 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.

The communications implications of an announcement 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 regional Ministers and affected caucus members on impending announcements, and to work with their own deputy ministers.

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 or Minister of State 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—which are generally broadly mandated and have presiding Ministers vested with powers, duties and functions;
- agencies, which take many forms under a variety of names (e.g. agencies, boards, commissions, offices, centres); they generally have more specialized mandates and authorities are vested in the organization or its deputy head, with varying residual responsibilities for Ministers;
- administrative tribunals, which make decisions and hear appeals at arm's length from the government

following quasi-judicial processes, with varying residual authorities vested in Ministers; and

- Crown corporations, which provide specific services, usually on a commercial basis, with considerable operational autonomy under the oversight of a board of directors, usually with certain powers of direction reserved for Ministers.

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

The Minister who is the appropriate Minister for a Crown corporation must have dealings with the corporation on a variety of matters. While the precise responsibilities of a Minister with respect to a particular Crown corporation may vary with the governing statute, the Minister is in all cases ultimately accountable to Parliament for the overall effectiveness of the Crown corporation in achieving the purposes for which it was established. Accordingly, the Minister has direct responsibility for such broad orientations as framework legislation and recommending appointments, as applicable; for reviewing and approving corporate plans; for assessing the ongoing relevance of the corporation's mandate and its effectiveness as a policy instrument; for providing broad policy direction to the corporation (e.g. to help guide development of the corporate plan); and for dealing with appropriations and recommending these to Cabinet. These guidelines do not affect such dealings.

However, the Minister does not become involved in the day-to-day operations of a Crown corporation, nor does his or her staff. Because of the wide range of activities carried out by individual Crown corporations, the appropriate role of the Minister must be determined on a case-by-case basis.

The following guidelines will assist Ministers in fulfilling their representative duties, while preserving the managerial autonomy of Crown corporations within their portfolio. The principles underlying these guidelines also apply to Ministers of State.

- No Minister should personally promote the private interests of any individual, corporation or non-governmental organization, including a constituent, with any Crown corporation.
- It is always appropriate for a Minister to raise the concerns of a constituent directly with the Minister responsible for a Crown corporation.
- The staff of a Minister when dealing with constituency matters may, however, make representations to a Crown corporation.
- The staff of the responsible Minister, because of their special responsibilities in support of their Minister, may not make representations, on behalf of a constituent, to any Crown corporation that falls within their Minister's portfolio of responsibilities.
- It is recommended that the office of the Minister responsible for a Crown corporation establish a procedure, in cooperation with the corporation, to enable the Minister's office to pass on as a referral, for the corporation's appropriate action, representations or inquiries that the Minister or his or her office receives from parliamentarians, other Ministers or their offices, the Minister's own constituents or, more generally, the public. The Office of the Conflict of Interest and Ethics Commissioner will work with Ministers' offices and Crown corporations in establishing these procedures.
- More broadly, these guidelines do not prevent any Minister or his or her political staff from social contact with the officers and staff of Crown corporations, nor from participating in briefing sessions initiated by the corporation.

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.

Dealings with Quasi-Judicial Tribunals on Behalf of Constituents

There are limitations on the ability of a Minister or Minister of State to act on behalf of constituents as far as quasi-judicial bodies are concerned. Ministers, Ministers of State and their staff may seek information on the status of a matter or other information that is available to the public. Further, several departments have set out instructions on how Ministers' offices, usually in the constituency, can deal with inquiries regarding such matters as

disability benefits, employment insurance, old age security, or citizenship and immigration.

Guidance can be obtained from the Conflict of Interest and Ethics Commissioner, who can provide briefings on this subject to Ministers and members of their staff, including those dealing with constituency issues.

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.