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(Former AJC President on CBC Power and Politics)

Revoking Canadian citizenship

Candidates Parm Gill, Jinny Sims and **Marco Mendicino** debate the government's move to strip Canadians of their citizenship if they are convicted of terrorism offences.

Watch clip at: <http://www.cbc.ca/player/News/Politics/Power+%26+Politics/ID/2676460773/>

PS fighting for respect in election, not sick leave

Kathryn May, Ottawa Citizen, October 4 2015

Canada's public servants won't buy Conservative leader Stephen Harper's last-minute love letter to them because respect and the ability to do their jobs — not sick leave benefits and pensions — are what they are fighting for in this election.

Debi Daviau, president of the Professional Institute of the Public Service of Canada, said Harper's recent open letter to public servants, patting them on the back and offering assurances that sick leave reform will be fair and pensions untouched, totally missed the mark of what public servants their and unions are campaigning for.

"We aren't active in this election because of sick leave and pensions ... These aren't public servants' issues and I don't think our members will be fooled by it," said Daviau.

"What it comes down to is that we don't believe that Canada's public service can survive another Harper government mandate."

Harper's letter zeros in on sick leave and pensions — the terms and conditions of public service employment that have been under attack by the Conservatives. Sick leave is the big hot-button issue in the ongoing round of collective bargaining with federal unions.

But Daviau said those are "Harper's issues" and the letter is a "trap" — a last-minute effort to woo the public service vote in Ottawa while portraying public servants for Canadians as "petty" and only concerned with pay and benefits.

Federal unions have been very active in this campaign, their focus on eroding public services caused by budget cuts and the deteriorating relationship between public servants and the government. For



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many public servants, the big concerns revolve around the culture of fear and erosion of the traditional role of the public service.

The Liberals and NDP have both announced public service platforms aimed at rebuilding the relationship and restoring trust.

Harper has taken swipes at the bureaucracy on the campaign and his letter came only after the other parties made their appeals for the public service vote.

But Daviau said the letter must be taken with “grain of salt” because the Conservative party was the only one of the major parties that failed to reply to the union’s survey on top public service issues.

Those issues included the muzzling of scientists, the long-form census, science research, cash-strapped public services, auditing tax evasion, and restoring collective bargaining rights taken away by the Conservatives.

She said all the NDP candidates and Liberals provided full responses but the Conservatives didn’t even acknowledge the survey. She said the Bloc Québécois wasn’t asked to respond but it still sent in its responses.

Daviau said the Conservatives “must be feeling the heat” in the four Ottawa-area ridings unions are targeting to unseat the Conservatives. PIPSC, for example, has an advertising campaign, distributed Vote for Public Services lawn signs, and recruited union members for door-to-door canvassing of public servants,

But pension changes are always a concern. The government doesn’t have to negotiate those with unions and can simply change the legislation, which the Conservatives have already done. As a result, Harper’s efforts to reassure public servants that the government has no plans for further changes to the public service pension plan were met with skepticism and “concern.”

The letter said the government won’t be “moving away” from the current defined-benefit plan to a defined-contribution plan, target benefit plan or any other kind of shared-risk model.

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Members of a new Canadian Coalition of Pension Security said the writing is already on the wall for Crown corporations to convert to target benefit pension plans. Canada Post is already having “consultations” to change its pensions.

Coalition spokesman Jean Guy Soulière said concerns about sick leave and pensions are “expressions of how public servants have been treated” and that “malaise” is creeping among pensioners because if the government attacks employees pension benefits, “they will do it to retirees.”

And the speculation has long been that once the Crown corporations are converted, the government will set its sights on the pensions of the public service, military and RCMP.

“It scares me even more when they come out at the 11th hour saying, ‘Don’t worry, trust us, we won’t come after your pensions,’” said Peter Whitaker, a Canada Post retiree.

“If they get us, they will go after the public service, and then there will be no such thing as a guaranteed pension in the federal public sector.”

NDP and Liberals appealing to federal public servants during campaign

Stephen Harper says he supports public servants and they shouldn't be worried
Julie Ireton, CBC News, September 29, 2015

The NDP and Liberal parties are appealing for the votes of what they perceive as hundreds of thousands of disillusioned and disrespected bureaucrats while the Conservative party stands by its commitment to an efficient public service.

Over the past week, both the Liberals and NDP have issued announcements saying they'll return trust and respect to the bureaucracy, give voice to previously muzzled scientists and restore collective bargaining rights to unions negotiating benefits for public service workers – including the very controversial, sick leave benefit.

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On Tuesday, NDP candidates from across Ottawa-Gatineau along with media and their supporters squeezed into a tiny campaign office in Ottawa's Lowertown neighbourhood to announce the party's plan to fix what it sees as an embattled federal public service.

The NDP says the bureaucracy has been neglected, undermined and abused over the past decade and **Ottawa-Vanier candidate and former federal lawyer, Emilie Taman says she speaks from experience.**

"It's become harder and harder to be a public servant these days," said Taman who was fired from her job with the federal prosecutor's office when she left work to run in this election campaign.

"The Harper government's disrespect for the work that we do has created toxic work environments."

Parties release plans for public servants

The NDP's commitments include protecting public service whistleblowers, implementing clearer rules around the use of temporary workers, and removing partisan patronage from government appointments.

Meanwhile, the Liberals have delivered a similar appeal to the hundreds of thousands of government workers in this country and several former public servants are also running as Liberal candidates in this election campaign.

Justin Trudeau recently issued an [open letter to Canada's public servants](#).

It sets out the Liberal party's commitments to respect veterans, trust the abilities and advice of the bureaucracy and like the NDP, it would restore the mandatory long-form census, protect food safety and environmental protections.

"Respect and trust for our public servants by the federal government has never been so low," wrote Trudeau. "I want to take this opportunity to assure you that I have a fundamentally different view than Stephen Harper of our public service."

Conservatives support bureaucrats

At a recent campaign event in Ottawa, Stephen Harper responded to questions about public servants.

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"They really should not be worried," said Harper.

Harper made note of the strong political support his party has enjoyed in the Ottawa area in the past – a region that employs the largest number of public servants in the country.

The sick leave issue has been a sore point for unions and workers, but Harper stands by his government's decisions to [book more than a billion dollars in savings by cutting back sick leave plans](#).

"We are committed to a strong package of employee benefits, but one that is in line with what exists in the private sector," said Harper. "But we're not going to pay people who are not sick, sick leave."

The Public Service Alliance of Canada, the largest public sector union, launched its own campaign yesterday called [Vote to stop the cuts](#).

Emilie Taman's a great NDP candidate in a bad riding

David Reevly, *The Ottawa Citizen*, September 30, 2015

When Ottawa-Vanier New Democrat Emilie Taman knocks on doors, she's no longer surprised when voters volunteer that they're public servants.

People in other jobs don't. Just people who work for the federal government. "That's almost like code that they're ready for change," she says.

Local Conservatives acknowledge this problem, as long as their names aren't attached to what they're saying. One who's seen the party's own poll numbers calls the Tories' sliding fortunes in Ottawa "the revenge of the public service."

Taman was a public servant until August: the Public Prosecution Service of Canada fired her as a Crown lawyer for campaigning instead of showing up for work, after she was denied permission to take a leave. As an NDP candidate, she's hoping that the "change" sentiment works for her, even though she's running against longtime Liberal MP Mauril Bélanger.

That's the irony for her: She's the single Ottawa candidate who most embodies government workers' frustration with the Conservatives, running in a riding the Conservatives have never won.

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Bélanger hasn't been part of the government that's overseen years of cuts (the austerity years under Jean Chrétien and Paul Martin in the 1990s didn't hurt him much), and pointedly disregarded public servants' advice on what the government ought to do.

But he has been in office for 20 years, and if you just want "change" generally, maybe that includes changing the MP in Ottawa-Vanier. "I admire Mr. Bélanger for how long he's been doing what he's been doing," Taman says backhandedly.

Ottawa-Vanier is the New Democrats' best chance for a second Ottawa seat, after Paul Dewar's in Ottawa Centre next door. Like Ottawa Centre, it has a university, downtown yuppies in condos, a large working-class population. The NDP vote has crept up and Bélanger's share slipped below 40 per cent in 2011. Since the New Democrats' breakthrough in Quebec that year, the prospect of success in other heavily francophone ridings has seemed a lot more realistic.

Bélanger hasn't won seven elections because he's a lazy campaigner or a crummy MP, and Taman's lashed to a national NDP campaign that's lost momentum. She's still the most impressive challenger the New Democrats have found in Ottawa in quite a while.

She's 38, a mother of three, the daughter of two lawyers (including retired Supreme Court judge and UN refugee chief Louise Arbour), married to criminal defence lawyer Michael Spratt. She worked as a staff lawyer at the Supreme Court before becoming a prosecutor.

Although she was a Crown lawyer and not a policy person, she shares many public servants' frustration with the Tory government. It had built over years, but what propelled her into politics was the Conservatives' recent anti-terrorism act, Bill C-51.

The new law's enhancement of police powers bothered her. "As a justice-system participant, it was increasingly difficult to imagine myself playing a part in implementing that policy," Taman says.

Isn't fretting about potential terrorists' rights a bit unusual for a Crown attorney? No, Taman says.

"Most lawyers, including prosecutors, believe in a fair and balanced system that protects against abuses of power by the state," she says. "I think it's a mistake to think that prosecutors would be in favour of a system that would lead to more convictions if they come because of infringements of people's constitutional rights."

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Bill C-51 landed atop a heap of other Conservative justice policies that troubled her, she says. Case in point: mandatory minimum sentences for some crimes, which remove judges' power to impose lesser sentences based on the facts they've heard in specific cases. "It was done against the weight of evidence if a government is sincerely looking to reduce crime," Taman says. "Mandatory minimums do not deter crime. The overwhelming weight of evidence says that. But they were determined."

Despite living in Old Ottawa South now (she used to live in Ottawa-Vanier, and says she likes it because it's a microcosm of Canada), Taman defeated three other would-be candidates for the NDP nomination and left her job without authorization, knowing she'd be fired. Whatever you think of her politics, she's a serious person who's put a lot on the line, the sort of person the New Democrats need to attract consistently if they're going to contend.

'Harperman' singer retires from public service

Jason Fekete, *Ottawa Citizen*, October 2 2015

Tony Turner, the suspended Environment Canada scientist whose "Harperman" video went viral and sparked a debate over the role of Canada's impartial public service, has decided to retire.

Turner was sent home several weeks ago on leave with pay pending the department's investigation into the making of Harperman — a song that calls for the ouster of the Conservative government — which has now racked up more than 658,000 views on YouTube.

He was being investigated for whether he breached conflict of interest provisions under the public service's ethics code, specifically if his private interests as a songwriter conflicted with his work as a public servant.

More than 1,000 people came to Parliament Hill on Sept. 17 to sing the Harperman protest song.

Turner's retirement was announced Friday in a news release by the Professional Institute of the Public Service of Canada. Here is the release...

Environment Canada Scientist Retires to Sing Another Day

OTTAWA, ONTARIO—(Oct. 2, 2015) — Tony Turner, the federal scientist whose popular political folk song "Harperman" became a YouTube sensation when it was reported he was under investigation

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for alleged violation of the Harper government's 2012 values and ethics code, has chosen to retire rather than wait days or even weeks longer to learn his fate from his employer, Environment Canada, says the Professional Institute of the Public Service of Canada (PIPSC).

"I have always believed I acted within my rights under the Charter of Rights and Freedoms and that I was not in a conflict of interest with the department's values and ethics code," said Turner, whose notice to retire took effect yesterday. "I have always maintained impartiality and objectivity in the conduct of my duties."

"That said," added Turner, "when Environment Canada suspended me earlier this summer, I was assured a quick investigation and decision. That has not happened, and I have decided it better to retire and continue to express my views as all Canadian citizens are entitled to do."

"Tony has been through a lot as a result of this investigation and its delays," added PIPSC President Debi Daviau. "His decision to retire in no way injures his own rights or those of other federal public servants under the Charter. Those rights were affirmed decades ago by the Supreme Court of Canada," she added.

"But his decision to retire today does free him to speak and perform without fear that it will impact his employment. Sadly, it is a fear too many public servants must currently live with. That's why promoting and defending the Charter rights of all our members will continue to be one of our fundamental priorities."

Stephen Harper writes open letter to Canada's public service, tries to correct 'misinformation'

Jason Fekete, Ottawa Citizen, October 1 2015

After publicly taking swipes on the campaign trail at bureaucrats in Ottawa, Stephen Harper and the Conservatives say they are the party to best protect the interests of federal public servants and are proud of Canada's "world-class public service."

Harper released an open letter Thursday to Canada's public service that thanks them for their hard work on implementing government policies and cutting red tape, but also tries to correct

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“misinformation” he says is being spread by opposition parties and unions about the government’s plans on sick leave and pensions.

With Conservatives facing tough challenges in a number of Ottawa-area constituencies – including John Baird’s former riding of Ottawa West-Nepean – the Tories put on a full-court press Thursday to try to solidify the support of voters in the National Capital Region and combat recent announcements from the NDP and Liberals about their commitments to the public service.

Senior Ottawa Conservative MP Pierre Poilievre, flanked by several Ottawa-area Conservative candidates, Thursday unveiled Harper’s letter to the public service and try to reassure bureaucrats that they have nothing to fear should the Conservatives win another mandate.

Harper, in his two-page letter, lauded the work of federal bureaucrats in Ottawa and elsewhere.

[*\(To view the letter, please click here\)*](#)

“Canadians are well-served by our world-class public service, and I have seen this first-hand as Prime Minister. During our time in Government, we have worked with you to ensure your efforts are focused on the things that matter most to Canadians, and to create a healthier workplace where good work is recognized, red tape is removed, and benefits meet real needs,” Harper says in the open letter.

“Unfortunately, in the current election context, misleading statements are being made about certain issues that matter to you and your families, including sick leave and pension entitlements.”

The Conservatives have come under fire from public service unions and opposition parties over their plan to reform sick leave for federal workers.

Sick leave is the main issue at the ongoing round of collective bargaining with federal unions, but negotiations have slowed since the start of the election campaign. Thirteen of the 17 federal unions recently filed a motion seeking an injunction to stop the federal government from invoking new powers it gave itself in omnibus budget Bill C-59 to unilaterally impose a new sick-leave agreement.

Unions have filed constitutional challenges against the bill, which allows the Conservatives to override the Public Service Labour Relations Act and impose a new deal whenever it wants.

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They argue the changes violate the right to free and collective bargaining as guaranteed by the Charter of Rights and Freedoms.

The Conservatives want to scrap the existing sick leave regime and replace it with a new short-term disability plan. The government proposes reducing the number of annual sick days a year from 15 to six and abolish much of the 15 million days of banked unused sick leave.

In the letter, Harper said the “current, antiquated sick leave system is failing everyone,” and that the government’s goal is to reach agreements with unions that are “fair and reasonable for both employees and taxpayers.”

“The current sick leave system leaves gaps. The Government wants to fill those gaps so that, if you get sick, you have seamless support. Canadians are best served by a healthy and productive public service,” Harper says.

“You want a healthy workplace and peace of mind knowing that, if you face a serious illness, you will have the support you need. Our Conservative government wants the same.”

The Conservative leader also tried to reassure public servants the government has no plans for further changes to the public service pension plan and “will not be moving away” from the current defined-benefit plan to a defined-contribution plan, target benefit plan or any other kind of shared-risk model.

The government moved in 2012 to increase public servants’ pension contributions to 50 per cent, and it also increased the normal age of pensionable retirement for new federal employees to 65 from 60.

Harper has regularly targeted bureaucrats during stump speeches on the campaign trail, repeatedly trumpeting that dollars are better left in voters’ pockets than spent by the bureaucracy in Ottawa.

In his letter, Harper had a bit of a different tune.

“Our Conservative government has been proud of the good work done by Canada’s public servants as we navigated the global economic recession, cut taxes on families and job-creating businesses, and balanced the budget,” he says.

Poillievre, meanwhile, told reporters “the biggest threat” to public servants is Justin Trudeau because of the Liberal plan to run \$25 billion worth of deficits over the next three years.

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“By adding three deficits and billions in debt, he’s going to have to cut public service jobs just a few years down the road. That is the reality,” Poilievre said.

The Conservative government, in its 2012 budget, announced it was cutting \$5.2 billion in spending and 19,200 federal jobs. However, over the last four years, more than 25,000 federal positions have been cut, according to federal Treasury Board numbers, going from about 282,000 positions in 2011 to 257,000 in 2015 (including agencies). During that time, the core public administration has been cut from about 217,000 positions to 195,500 today.

The Tories take their crack at winning back public servants

David Reevely, Ottawa Citizen, October 1 2015

Capital-region Conservative candidates took their turn at wooing the public-service vote Thursday morning, following previous such events by local Liberals and New Democrats. Like the others, [they released an “open letter” that does most of their speaking on the subject](#) (the link is to a news release describing the open letter, but they’re very similar). The gist:

“Our opponents have been making misleading statements about matters of concern to the public service,” [Carleton candidate Pierre] Poilievre stated. “Today the Prime Minister set the record straight.”

Since coming to office, our Conservative government has made life more affordable for Canadian families and protected Canada’s fragile economy in the midst of the most severe global recession in a generation. We have also been working to improve the sick leave plan for the public service.

“The current sick leave system leaves some public servants without adequate coverage,” Poilievre continued. “The government wants to fill those gaps to deliver seamless support. And, importantly, currently banked sick leave days will be assigned a monetary value under any new system, and will be available to those who need them.”

“Union leaders are also spreading misinformation about public service pensions,” Poilievre said. “We have not proposed any changes to pensions since 2012 and will not be moving away from the current defined benefit plan for the public service.”

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“Our Conservative government has been proud of the good work done by Canada’s public servants as we navigated the global economic recession, cut taxes on families and job-creating businesses, and balanced the budget,” Poilievre concluded.

“Like other families across Canada, we know public servants want Canada’s economy to grow and thrive, despite the continued economic turmoil we see around the world. Our positive low-tax plan for the next four years will do even more, with the help of the public service, to make our country strong and prosperous.”

This addresses a couple of contentious points in collective bargaining with public-service unions, but tax cuts and the fragile economy — notions the statement hits three times in six paragraphs — are somewhat off-point when it comes to the government’s relationship with its own workers.

Wholly unaddressed is the culture of fear created under the Conservatives, occasioned by the routine firings or sidelining of high-level experts who said things the Conservatives didn’t like, and attacks on scientific and statistical bases for government decisions. I’m not a public servant, but if I were, I think that’d be a bigger deal to me than a battle over how sick days will be accounted for in my next collective agreement.

Having different values from those of the government of the day is one thing — public servants have to suck that up because that’s part of being a professional. It’s something else to be hired for certain skills and knowledge with the expectation they’ll be deployed in the public interest, then be told both explicitly and implicitly that the very idea of expertise is no longer valued. Years of lived experience are a bigger challenge to overcome than a relatively technical disagreement over sick days.

While the Liberals and New Democrats argue over who has the more concrete promises for how they’ll improve relations between their potential governments and the public service, the Conservatives really make none. What’s the problem? they say. We’ve been doing a good job with you.

But if we’re honest, the idea that public servants will stampede to the Tories is a fantasy anyway. So it seems pretty clear that public servants are only an incidental audience: the real target is non-public servants who would like some sort of reassurance that government workers are being treated reasonably. And on that front, mission accomplished.

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NDP to court public service with promises of no cuts

Kathryn May, Ottawa Citizen, September 28 2015

The NDP will release its plans Tuesday to build a “stronger” federal bureaucracy, including the promise of no further spending reviews or job cuts for Canada’s public servants. Public service is shaping up as an election battleground in the National Capital Region, with the NDP and Liberals vying for the votes of federal workers.

Both parties promise to restore respect for public servants and rebuild a broken relationship with government but the NDP is expected to say that the big difference is that the Liberals plan to cut more jobs and the NDP won’t.

“We said we would increase corporate taxes and stabilize the public service and you’re not stabilizing the public service by letting people go, which is in their (Liberal) plan,” said Paul Dewar, NDP candidate in Ottawa-Centre.

“What we really need to see from whatever government comes in is to stop this whiplash of hiring and firing people. We need stability in the public service.”

Local NDP candidates will propose measures that touch on many of the thorny issues Liberal leader Justin Trudeau covered last week in an “open letter” to public servants.

The Liberals have also announced the costing of the party’s campaign, with the billions in new spending and revenues they expect over the next four years if elected Oct. 19.

A Liberal government proposes to run deficits of \$9.8 billion and \$9.5 billion in its first two years, and \$5.7 billion in 2018-19, before producing a slim \$1-billion surplus in time for an election in 2019-20.

That includes \$6.5 billion in new revenue though a tax expenditure and spending review. The measures include reviewing and cutting many programs introduced by the Conservatives, where the Liberals say they expect to find \$3 billion in savings by 2020.

The Liberal party, however, said it expected to find those savings without any cuts to the public service and said an “attack on the public service” is not on the agenda.



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But the NDP argues that the Liberals' spending review, coupled with a defence plan that calls for reducing the size of administration at National Defence to help fund procurement, implies further cuts in a public service that is still swallowing Conservative cuts.

The NDP is expected to restore collective bargaining rights for the public service, which will mean a "re-set" for the ongoing round of collective bargaining on sick leave. It will undo the changes to collective bargaining in Bill C-4, and provisions in Bill C-59 that allow the government to unilaterally impose new sick-leave benefits without negotiating them.

It has promised to repeal Conservative labour legislation that makes it easier to certify and decertify unions, and change the Income Tax Act to force more public disclosure of unions' finances.

The reforms for the public service include a Public Appointments Commission to ensure meritorious appointments to boards and agencies; stronger protection for whistleblowers against retaliation and a code of conduct for ministers and their political staff as recommended by the Gomery Commission to stop political meddling in the work of public servants.

How government is curtailed during the writ period

Kathryn May, Ottawa Citizen, September 25, 2015

Can the federal government, in the midst of an election, send Canada to war? Can it conclude a major climate change or international trade treaty? Can it overhaul refugee policy in a major way?

They're all questions answered – or at least partially addressed – in a rules book the government puts together every election to guide the expected behaviour of ministers, public servants and political staff during the writ period.

This election, Privy Council Clerk Janice Charette, Canada's top bureaucrat, broke with tradition by publicly releasing that rules book – making this the first election in Canada's history where the limits on the decision-making and conduct of a "caretaker" government are no longer under wraps.

"I think it's good that the current clerk has made public a standard by which ministers will be held to account ... Until now it has been ambiguous and amorphous. Now it is codified and that is a good thing," said Mel Cappe, a former clerk of the Privy Council.

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By convention, the government can only exercise its executive powers if it has the confidence of Parliament. Since there is no Parliament during an election, the “caretaker convention” kicks in until a new government is sworn in.

In Canada, the rules have historically been vague and unwritten, with various controversies erupting when governments made decisions during this period without being able to say they had the confidence of Parliament.

For instance, back in 1896, then Governor General Lord Aberdeen refused to approve Prime Minister’s Charles Tupper’s appointments to the bench and Senate because he questioned the government’s legitimacy. (Tupper, a Conservative, wouldn’t resign because the Conservatives had won the most votes while the Liberals won the most seats.)

Almost 100 years later, in the 1993 election, Kim Campbell’s government signed contracts to privatize the Pearson airport in the middle of an election campaign. Newly elected Prime Minister Jean Chrétien then cancelled the contract, saying the caretaker convention hadn’t been respected.

Just before the 1984 election, Pierre Trudeau, in his final days as prime minister, made a batch of appointments to the judiciary, Senate and other government organizations including some that successor Prime Minister John Turner allowed to go through during the writ period. That led to Conservative leader Brian Mulroney’s famous quip – “You had an option, Sir” – in an exchange considered one of the most memorable in a political debate.

The issue of what kind of sensitive information public service officials can release during an election came under the spotlight in the 2006 election, when the RCMP announced a criminal investigation into allegations of insider trading within the Finance department over a possible budget leak.

The Liberals’ slim lead quickly disappeared and some political observers concluded the announcement helped propel a minority Conservative government into power. The investigation – which ultimately found no evidence of wrongdoing– raised questions about the propriety of senior government officials releasing information that could affect an election campaign.

So making the convention public may be a helpful move. The problem with a convention, however, is that the only sanction for breaching it is political: the potential backlash of voters.

“It’s up to the government to judge and decide whether the action meets its own criteria,” said David Elder, a former senior PCO official and now an adjunct professor at Queen’s University’s School of Policy Studies.

“It can’t be challenged in the House, but the actions can be criticized in the partisan forum created by the election.”

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Even before Charette's decision to go public with the rules, there had always been internal guidelines, and the clerk would brief deputy ministers and ministers on dos and don'ts during a campaign.

Some argue written rules become even more critical in a long election period – a marathon 78 days makes this one the longest in Canada's history – and in a close race when no party may command a majority and coalitions may have to be negotiated.

"The problem with conventions is they rely on shared understanding and agreement on what the rules are and how they should work, and when they are not written down there will be a certain degree of murkiness," said Mark Jarvis, lead of the Mowat Centre's government transformation practice and co-author of *Democratizing the Constitution: Reforming Responsible Government*,

"There is always more murkiness when they are not written down and in a partisan-intensive environment ... is when they are being disputed and the likelihood that we will have that shared understanding and agreement on how these things should work is probably even less."

The now-written guidelines call on the government to exercise restraint and "restrict itself" in matters of policy, spending and appointments.

"The government of the day still has all authority in law, but it must be exercised subject to the principle of the supremacy of Parliament," said Cappe. "Since the confidence of the House cannot be assumed before the election, restraint is the watchword."

That means stick to routine business matters: no new appointments, announcements, spending or contracts and deferring negotiations and other consultations. With such limits, the public service runs on cruise control during an election.

Also, ministers should take care to separate official government business from politics and not drag public servants into partisan activities.

For example, the propriety of Joe Oliver giving a speech at a private club on the future of the Canadian economy in his capacity as Finance Minister during an election campaign would have been questionable under the guidelines, said Elder. And indeed, Oliver cancelled speeches at Toronto's Cambridge and Albany clubs, though his office didn't explain why.

"Without the caretaker convention, an incumbent prime minister who sees the writing on the wall could start making decisions and signing contracts on issues that the leading party made different promises about to the voters," said Andrew Heard, associate professor of political science at Simon Fraser University.

But a caretaker government is still expected to govern and make urgent decisions in a crisis or natural disaster or, as the rules say, "where a major decision is unavoidable during a campaign" because of an

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international obligation or an emergency. That means the government should deal with emergencies such as a major ice storm, terror attack, or flood if they had happened during an election. The prime minister could even send Canada to war in an emergency – though he/she could also consult with the opposition on such drastic action.

The Syrian refugee crisis, now a dominant campaign theme, was a problem long before the election but escalated after the haunting photo of a drowned Syrian toddler on a Turkish beach was published.

Recently, 24 former deputy ministers, along with former ministers and top-ranking bureaucrats, signed an open letter to Prime Minister Harper urging him to rely on the expertise of public servants for a plan to speed up the process of resettling refugees. The former bureaucrats argued there is nothing in the caretaker convention to prevent responding to the crisis – especially when there is all-party support.

The government then announced Canada will provide \$100 million in additional humanitarian assistance for the millions of Syrians crammed into refugee camps. This weekend, it also announced it would speed up the processing of refugees.

The caretaker rules also anticipate the government will continue the Trans-Pacific Partnership trade negotiations during the election. They specifically mention the appropriateness of treaty negotiations as long as any agreement isn't ratified.

Heard finds this "problematic."

"I am a little concerned ... that the guidelines seem to allow anything short of ratifying an international agreement," he said.

"Once negotiators agree to the final wording of complex multilateral agreement like the TPP, it is nearly impossible in practical terms for one party to reopen it. A middle power like Canada would very likely be told to simply take it or leave it."

Heard said the problem could be resolved if the government consulted with the opposition leaders on an agreement before making a decision that binds a new government. A new government, however, could still decide not to ratify the agreement, said Elder.

It's difficult to judge what kind of impact the rules are having on decisions because ministers are privy to so much information about the business of government that Canadians don't have. A big question is whether the rules are clear enough for what could be an indecisive result on Oct. 19.

Things get tricky after an election. Constitutional experts have long debated when the caretaker period ends after a new Parliament is elected. According to the rules, "it ends when a new government is sworn in, or when an election result returning an incumbent government is clear."

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But what if it's uncertain which party can command the confidence of the House?

Experts say the only way to clarify the confusion is for the government to recall Parliament and test the confidence of the House – typically with a vote on the speech from the throne.

“If you are worried about a government acting without confidence at the outset of the election you should be equally concerned about it acting without confidence at the end of the election. In my opinion you should have to test the confidence of the House before you stop behaving in accordance with the caretaker convention,” said Jarvis.

Until then, the decision-making constraints of the caretaker convention remain in place.

“I think that until the House confirms the government’s legitimacy in a vote, the government still has a right to make decisions that it judges necessary,” said Elder.

Some “caretaker” decisions

Questions about the legitimacy of decisions and actions taken – or not taken – by a “caretaker” government have emerged during many elections campaign over the years. Here are some examples:

1974: There are precedents for significant decisions to made during election campaigns. Prime Minister Pierre Trudeau was defeated in the House on May 9 on a motion on the budget, and about 10 days later, after India exploded a nuclear bomb, he suspended nuclear co-operation with India.

His government also made a series of appointments and participated in international negotiations on the Law of the Sea. He also established a Royal Commission to investigate the pricing of steel.

1979: After Parliament’s dissolution, Prime Minister Joe Clark condemned the Soviet Union’s invasion of Afghanistan and joined the U.S. in imposing sanctions. It was also during the election period that the Canadian government, with support from the CIA, participated in the successful rescue from Iran of six American diplomats who had been hiding at Canadian diplomats’ residences after they evaded capture during the hostage-taking at the United States embassy in Iran.

Clark, however, decided not to proceed with a \$2-billion contract for CF-18 fighter jets because he had lost confidence of the House and felt he didn’t have the authority to proceed with the purchase.

2004: Prime Minister Paul Martin attended the G7/8 meeting in Sea Island during the election campaign to represent Canada, raising concerns that it gave him a boost as an international statesman and took him away form the election campaign.

2006: Parliament was dissolved Nov. 29 2005 after the Liberals lost a confidence vote with the election called for January 2006. At the time of dissolution, Environment Minister Stéphane Dion was chairing

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the UN Climate Conference in Montreal – the biggest international event in Montreal since Expo – on what was arguably the most controversial issue of the caretaker period.

Who are ‘Indians’ within Parliament’s legislative authority and why does it matter?

Daniels v. Canada at the Supreme Court of Canada
Jason Madden, Canadian Lawyer, September 28 2015

On Oct. 8, the Supreme Court of Canada will hear arguments from Canada, Alberta, Saskatchewan, the Métis Nation, First Nations, and other groups in *Daniels v. Canada*. The *Daniels* case — initiated by well-known Métis leader Harry Daniels in 1999 — will hopefully lead to Canada revisiting its arbitrary and exclusionary policies towards Métis and non-status Indians (*i.e.*, members of First Nations who are not able to register as “status Indians” under the Indian Act).

As acknowledged in Canada’s internal documents that were disclosed in the litigation, these federal policies (or lack thereof) have produced the “most disadvantaged of all Canadian citizens.”

The case will answer the longstanding question of whether the Métis and non-status Indians are included within the meaning of s. 91(24) of the Constitution Act, 1867. This head of power grants “exclusive Legislative Authority” for “Indians, and Lands reserved for the Indians” to the federal Parliament.

In recent times, Canada has taken an extremely narrow interpretation in relation to this jurisdiction, which conveniently excludes the Métis and non-status Indians. This has resulted in these groups being treated as proverbial “political footballs” and falling between the jurisdictional cracks of this country.

In the words of the trial judge, this gamesmanship has created a “large population of collaterally damaged” Aboriginal people.

Based on the voluminous evidentiary record, both the [Federal Court](#) and Federal [Court of Appeal](#) concluded that s. 91(24) was necessarily broad enough to include all of the aboriginal peoples (*i.e.*, First Nations, Métis, and Inuit) Canada encountered as it expanded from coast to coast to coast post-confederation.

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In other words, s. 91(24) was not limited to “Indians” as defined by Canada through the Indian Act. Nor did it exclude the Métis — who emerged as a distinct Aboriginal Peoples in the western territories — prior to Canada becoming the Canada we know today.

On appeal to the Supreme Court of Canada, the federal government continues to argue for an arbitrarily narrow interpretation of this unique head of power, which would exclude these groups from treaty-making and thwart meaningful reconciliation with them.

In particular, for the Métis, this case is a part of their “hunt for justice.” After it became apparent that governments were not going to negotiate with them in order to give meaning to their inclusion in s. 35 of the Constitution Act, 1982, the Métis have repeatedly turned to the courts to uphold this country’s honour and fulfil the constitutional promise made to them more than 30 years ago.

From [R. v. Powley](#) in 2003 (which recognized that Métis communities have pre-existing aboriginal rights protected by s. 35) to [Cunningham v. Alberta](#) in 2011 (wherein Chief Justice Beverley McLachlin urged that “the time has finally come for recognition of the Métis as a unique and distinct people”) to [Manitoba Métis Federation v. Canada](#) in 2013 (which recognized the outstanding constitutional grievance of the Manitoba Métis flowing from land grant provisions set out in s. 31 of the Manitoba Act, 1870), the Supreme Court of Canada has been consistent and unequivocal: s. 35 demands good faith and meaningful negotiations and reconciliation with the Métis people as well.

Unfortunately, Canada has not been listening.

The Métis continue to be excluded from federal comprehensive and specific claims processes available to First Nations and the Inuit. They are denied access to desperately needed programs available to other aboriginal groups. They are often excluded from Crown consultation on their rights because governments simply “put their heads in the sand” when it comes to Métis issues.

While a positive outcome in the *Daniels* case won’t change this reality overnight, it will remove one of the last vestiges Canada hides behind to justify its complete lack of leadership and inaction when it comes to dealing with the Métis.

Notably, independent experts, including some hand-picked by the current federal government, have come to similar conclusions.

In his April 2015 report prepared for Canada on the federal comprehensive claims process, Vancouver-based lawyer Douglas Eyford wrote, “Canada must do more in its relationship with

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the Métis.” He went on to recommend that Canada “develop a reconciliation process to support the exercise of Métis s. 35 rights and to reconcile their interests.”

In the same vein, the United Nations Special Rapporteur on the Rights of Indigenous Peoples has criticized Canada for not having “a coherent process or policy in place to address the land and compensation claims of the Métis people.”

With these developments, it should be clear to everyone what needs to happen. Real negotiations on issues such as Métis rights, lands, and self-government must be engaged.

Just and lasting settlements with the Métis, whether they are called treaties, modern-day land claims, or some other type of agreement, must be reached and given legal force and effect with s. 91(24)’s certainty.

Hopefully, the next federal government will finally see the writing on the wall and move forward on these issues. If not, the Métis are hopeful the Daniels case will provide additional judicial direction that federal inaction on Métis rights and claims is no longer an option.

Supreme Court again asked to rule on scrapping early parole law

Ian MacLoed, Ottawa Citizen, October 4 2015

The federal government is asking the Supreme Court to uphold a 2011 law abolishing early parole for certain criminals, a portion of which the court already struck down as unconstitutional.

In an 8-0 decisions last year, the high court effectively ruled the Abolition of Early Parole Act did not apply to criminals sentenced before the law came into force on March 28, 2011. Before then, first-time, non-violent offenders were eligible for day parole after serving one-sixth of their sentence. But the repeal of “accelerated parole review” meant they could only apply six months before their full parole eligibility date, or six months into their sentence, whichever was longer.

The act was a key piece of the Conservatives’ tough-on-crime agenda and the first in a series of such legislation to be struck down as unconstitutional by the Supreme Court.

Justice Richard Wagner, writing for the court, said retroactive application of the law had the effect of punishing inmates twice. “The effect — extended incarceration — was automatic and without

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regard to individual circumstances,” he wrote. Section 11(i) of the Charter of Rights and Freedoms guarantees that anyone convicted of a crime be given the lesser punishment if the punishment has changed between the time of their crime and the time of sentencing.

Lower court decision have since ruled that the repeal of early parole review also does not apply to offenders who committed crimes before the act became law. The British Columbia Court of Appeal in May 2014 upheld a lower-court ruling that the act violated an inmate’s Charter rights and should not apply in cases where the person’s crime was committed before March 28, 2011. The federal government sought leave-to-appeal to the Supreme Court but was rejected.

Again in late May, the Ontario Court of Appeal issued similar rulings in two other cases, including that of cocaine trafficker Raymond Lapple, 54. In both Ontario cases, the court found that the repeal of the accelerated parole law had the effect of increasing the offenders’ punishments between the time of their crimes and sentencing.

Lapple’s crime, involving 43 kilograms of cocaine, was committed in 2009 but he wasn’t convicted and sentenced until 2013. He received 12 years, but was awarded 7.5 years off the sentence for time in custody awaiting trial. He was released from prison in June, 19 months later than he would have been under the old law, he says.

The department of justice is once again seeking leave to appeal to the Supreme Court, this time over the appellate court judgment in Lapple. In its application, it asks the high court to consider whether section 11(i) guarantees offenders, “the benefit of the most favourable parole regime when the parole regime varies between the time of the commission of an offence and the time of their sentencing?”

The government says the appeal court decisions have created a patchwork of parole regimes. As of Aug. 2, it says 747 federal inmates would have been eligible for accelerated parole review had it not been abolished. Of those, 276 were in Ontario and B.C. and, because of the recent court decisions, are still eligible for early parole review. But 471 other offenders, “in the same position in the rest of Canada are not.” (Superior courts in Quebec and Manitoba have held the repeal of accelerated parole review does not violate section 11(i), but those decisions are under appeal.)

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The government says Parliament, “requires the guidance of the court to reconcile apparently inconsistent jurisprudence before it can consider a legislative amendment to resolve the patchwork of arrangements.” It adds that accelerated parole review was abolished because, “mounting evidence suggested (it) failed to achieve its sentence-management goals and could actually jeopardize public safety, rehabilitation, reintegration and recidivism.”

Lapple is appealing his conviction and contemplating a civil suit against the government. “The attorney general of Canada is taking me and 747 other inmates back to court after the courts have already dealt with this issue. Some inmates were detained three and four years longer for no fault of their own,” he said in an email from his home in Stouffville, Ont.

In its 2014 judgment, the Supreme Court limited its Charter ruling to inmates sentenced before accelerated parole eligibility was abolished and acknowledged that, “the purposes served in limiting the parole eligibility of all offenders are within the prerogative of Parliament.”