

FEDERAL ELECTION 2011: WHAT ARE YOUR POLITICAL RIGHTS?

What are the restrictions on “Political Activity” for Federal Public Service Employees?

“Freedom of thought, belief, opinion and expression,” along with other civil and political rights, are protected by the *Canadian Charter of Rights and Freedoms*. CAPE believes that its members should be fully entitled to the benefit of these protections.

Unfortunately, the *Public Service Employment Act* (“the Act” or “PSEA”) places restrictions on the right of federal public service employees to engage in political activity. The Act states that the purpose of the political activity portion of the PSEA is to “...recognize the right of employees to engage in political activities while maintaining the principle of political impartiality in the public service.” The express restriction on political activity is set out in section 113 of the Act. Section 113(1) states the following:

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

This section enshrines the right of federal public service employees to participate in political activities while, at the same time, requiring a balance to be struck between this right to participate and an impartial public service. It is important to CAPE that this balance not be unjustifiably tipped so as to unduly restrict the political rights of its members.

What does “Political Activity” Encompass?

In section 111.(1), the Act defines “political activity”, in part, in the following manner:

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

This is a very broad definition that would include anything from wearing a political party or candidate button in public to expressing political opinions or working as a canvasser going door-to-door for a party or candidate.

The Act also includes separate rules that apply if a federal public service employee wants to be a candidate in a federal, territorial, municipal or provincial election.

While the PSEA provides that the Governor in Council may make regulations specifying political activities that are deemed to impair the ability of an employee, or class of employees, to perform their duties in a politically impartial manner, to date no such regulations have been established. Instead, there are regulations touching on matters such as the content of and timelines for requests to the Public Service Commission (“PSC”) regarding candidacy and details concerning the investigation of allegations of improper political activities.

Given this, there is no clear direction in either the Act or its regulations that specify the political activities in which a federal public service employee can safely participate without contravening the restriction on political activity set out in section 113. Rather, there will have to be an assessment on a case-by-case basis of whether a particular activity impairs or is perceived to impair an employee’s ability to perform his or her duties in a politically impartial manner. Based on this type of case-by-case analysis, federal public service employees will have different restrictions on their political activity depending upon their responsibilities. There is no one size fits all answer.

How do I know if I can participate in a particular political activity?

The PSC is responsible for the oversight of public service employees' involvement in political activities. In the absence of any clear direction on permissible political activity, the PSC has made available an on-line self-assessment tool, which it is encouraging employees to complete. The stated intention of the tool is to help employees make decisions about whether their involvement in a given political activity would impair, or be perceived as impairing, their ability to perform their duties in a politically impartial manner.

From the feedback that CAPE has received to date, the PSC’s [self-assessment tool](#) appears to have one effect – to deter employees from participating in any political activity, apart from voting in an election. The PSC has prepared a [Guidance Document](#), which is posted on the PSC website, that purports to provide some direction to employees on what factors they should consider when deciding whether or not to engage in a particular political activity. These factors are the nature of the political activity, the nature of the employee’s duties, and the level and visibility of the employee’s position. Reports from those who have completed the self-assessment tool have revealed that the PSC will raise red flags about participation in relatively low level political activity, for example, wearing a button in support of a candidate or attending a meeting of a political party.

Quite apart from the restrictions on political activity under the PSEA, the PSC has also indicated that even if certain activities do not fit the PSEA's definition of political activity, they are still subject to the [“Values and Ethics Code for the Public Service,”](#) (the “Code”) or similar values and ethics code for organizations where the Treasury Board is not the employer. The suggestion is that while an activity may not be a political one that could result in problems under the PSEA, the same activity could lead to problems under the Code if it leads to a real or apparent conflict of interest or because it somehow breaches the duty of loyalty owed to the employer.

While CAPE understands and fully supports the need for impartiality in the workings of the public service, the PSC's “guidance” to employees on political activity amounts to fear-mongering that will no-doubt inhibit its members from exercising their constitutionally protected rights of expression and free participation in the political process.

If you chose to exercise your political rights, use a common sense approach keeping in mind that you should only engage in political activity during your non-working hours and if you normally wear a uniform, name tag or identification card in the course of your employment, remove them prior to participating in the political activity.

If I have questions about participation in a Political Activity, what should I do?

The PSC has been advising employees to contact their manager or their organization's Designated Political Activities Representative before taking part in a political activity. It is not clear what, if any, confidentiality is in place to protect what an employee discusses with a Designated Political Activities Advisor, especially given that the PSC website indicates that Advisors should direct all political activities inquiries to a PSC email address.

Given that employees can be subject to discipline for participation in political activity that is not permitted, CAPE has concerns about its members going to their managers or Designated Political Activities Advisors. If you have questions about participation in a political activity, if your political rights have been restricted by your employer, or if you have been disciplined for participation in a political activity, contact the CAPE national office immediately.