

# Changing House: The Law Affecting A Move Between Elected Offices

*This paper identifies, by jurisdiction, statutory provisions that affect holders of elected office intending to stand as candidates for another legislative (or local) office. It is hoped this compact account of dual-office law will be of particular use to those interested in moving into or out of provincial politics.*

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It is not surprising that legislators will pursue several goals in the course of their political lifetimes; politics is a vocation and the political life can be a strongly held taste. Many provincial legislators have become Members of Parliament (MPs) or vice versa, and some have moved from provincial party leadership—sometimes from the office of the premier—to federal party leadership. Municipal office holders of all stripes have entered provincial and federal politics, sometimes finding their way into cabinet, while members of the Ontario legislature have resigned to run for mayoral office.

The move from one political career to another is often governed by statute, although the rules vary depending on the jurisdictions and offices concerned. Legislators considering their options might care to know if they may keep their current seat if they are unsuccessful in their attempt to be elected to another legislature or council. In other words, may the cushion of their present seat be held to soften a possible fall, or must it be given up before the jump is made?<sup>1</sup>

In some cases, candidates must resign their current seats before the new vote takes place or even before declaring their candidacy; in others they must resign only before they take a seat elsewhere. Looking at Canada's federal government and each

of its provinces and territories, this article identifies provisions that affect holders of elected office who seek candidacy for another legislative (or local) office.

## *The Law in Canada*

### **From a Provincial Legislature to the House of Commons**

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Senators are not eligible to be elected to, or to sit or vote in, the House of Commons.<sup>2</sup> Likewise, the following two federal statutes render ineligible members of provincial legislatures from candidacy to the House of Commons:

- The *Canada Elections Act* states that members of provincial legislatures are not eligible, while members, to be candidates for election to the Commons and the election of a person declared ineligible is void.<sup>3</sup>
- The *Parliament of Canada Act* states that a person who is a member of a provincial legislature on the day of nomination for a Commons seat may not be nominated, voted, or eligible for Commons membership. If such a person is nevertheless elected, the election is void.<sup>4</sup>

### **From the House of Commons to a Provincial Legislature**

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In the first few years after Confederation it was possible for Members of Parliament to simultaneously sit in provincial legislatures. The first House of Commons had about 25 dually-elected members; indeed, a majority of the provincial cabinet ministers in Ontario and Quebec were also simultaneously

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federal members.<sup>5</sup> Today, however, a Member of Parliament who is elected to a provincial legislature and actually takes the provincial seat will void his or her election to the House of Commons.<sup>6</sup>

An exception to this rule may be made where the MP (i) was elected provincially without knowing of or consenting to the election, and (ii) resigns the provincial seat within 10 days of being notified of the election.<sup>7</sup> It would be impossible today to be elected without knowing about it, but when this provision was first enacted in 1873, an MP might not find out until after the fact that he had been successfully run in a provincial riding.<sup>8</sup>

A person declared ineligible to be an MP must forfeit \$2,000 for each day he or she sits or votes in the House of Commons.<sup>9</sup>

## *The Law in the Provinces and Territories*

Even if federal statute did not preclude a person from holding a provincial and a federal seat at the same time, many provincial and territorial election statutes would narrow or eliminate the opportunities for doing so. As for provincial and territorial members becoming MPs, although the *Canada Elections Act* makes the matter moot, some jurisdictions also address the issue in statutes.

The provincial and territorial statutes also address Senate membership and local office, and are dealt with in greater detail below.

### **British Columbia**

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If a member of the British Columbia Legislative Assembly sits or votes as a member of the House of Commons of Canada, the person ceases to be a member of the Legislative Assembly and, for as long as the person is a member of the House of Commons, he or she is disqualified from being nominated as a candidate to, being elected to, or holding office as a member of the Legislative Assembly.<sup>10</sup>

There is no statutory restriction on the nomination, election, or seating of a provincial member to or on a municipal council or school board.<sup>11</sup>

### **Alberta**

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A person is disqualified from membership of Alberta's Legislative Assembly if that person (i) is a

member of the House of Commons or Senate at the time of becoming a member of the Assembly, or (ii) becomes a member of either the House or Senate while a provincial member.<sup>12</sup> In neither scenario does the statute require resignation in order to *run* for office.

There does not appear to be any statutory restriction on the nomination, election, or seating of a provincial member to or on a municipal council or school board.<sup>13</sup>

### **Saskatchewan**

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No Senator, MP, or member of another provincial or territorial legislature is eligible for nomination and election to the Saskatchewan Legislative Assembly.<sup>14</sup>

Where a member of the Saskatchewan Legislative Assembly is elected to the House of Commons or another provincial or territorial legislature, or is appointed to the Senate, the member's seat in the Legislative Assembly is immediately vacated.<sup>15</sup>

It does not appear that a person's ability to hold concurrent membership in the legislature and a municipal council is restricted by statute.<sup>16</sup>

### **Manitoba**

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Members of the Senate, the House of Commons, or of another provincial legislature are not eligible for nomination as candidates for the Manitoba Legislative Assembly.<sup>17</sup> The election of such a candidate is void, and an ineligible candidate who actually sits or votes in the legislature can be convicted of a summary conviction offence and fined \$200 for each day he or she sits.<sup>18</sup>

Members of the Senate, the House of Commons, and the Legislative Assembly are also disqualified from being nominated for, elected to, or serving as a member of municipal councils.<sup>19</sup> Members of the Senate and the House of Commons are specifically disqualified from being nominated for, elected to, or serving as a member of Winnipeg city council.<sup>20</sup>

The *Municipal Councils and School Boards Elections Act* includes no cross-disqualifications between school board or municipal council membership, on the one hand, and membership in the provincial legislature, on the other.<sup>21</sup>

## Ontario

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In Ontario no person who is a member of the House of Commons or the Senate on the day of nomination for provincial election is eligible to be a candidate for the Legislative Assembly. If such a person nevertheless runs and wins, the person with the next greatest number of votes shall be returned.<sup>22</sup>

Further, a member of the Legislative Assembly is prohibited from holding office as a member of a municipal council,<sup>23</sup> while provincial members, federal MPs, and Senators are ineligible from being elected to or holding municipal office.<sup>24</sup> Likewise, provincial or federal members are disqualified from being elected to or acting as a member of a school board.<sup>25</sup>

The *Municipal Elections Act, 1996* clarifies that a member of the Legislative Assembly, the House of Commons, or the Senate is not ineligible for nomination in a municipal or school board election simply by virtue of being a member of those bodies. Rather, the member will be ineligible where he or she is still a member of one of those bodies at the close of nominations on nomination day.<sup>26</sup> This proviso does not apply to members of the Executive Council of Ontario or federal Ministers of the Crown, which suggests that their resignation from ministerial office would be required before seeking nomination in a municipal or school board election.<sup>27</sup>

A municipal councillor may run for and be elected to the Legislative Assembly without resigning council. The *Legislative Assembly Act* deems the individual to have resigned the council seat when his or her election to the legislature is published in the *Ontario Gazette*.<sup>28</sup> The election to the legislature of a person who is disqualified, ineligible, or incapable of being elected is void and such a person forfeits \$2,000 for each day he or she sits or votes.<sup>29</sup>

## Quebec

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Quebec's *Election Act* provides that members of "the Parliament of Canada" (i.e., Senators and MPs) are disqualified from election to the National Assembly.<sup>30</sup> A seat in the National Assembly becomes vacant if a member is appointed to the Senate or becomes a candidate for election to the Commons or another provincial legislature.<sup>31</sup>

Quebec and federal cabinet ministers are disqualified from membership of municipal

councils.<sup>32</sup> While other members of the National Assembly, the House of Commons, or the Senate may become a member of a municipal council, they must resign from the Assembly or Parliament within 31 days of taking the oath of municipal office, failing which they lose council membership.<sup>33</sup> A council member who becomes a member of the Assembly or a federal House is disqualified from holding office on council while the other membership is continued.<sup>34</sup> There are no corresponding cross-disqualifications for *running*.

Federal and provincial members are disqualified from election as school commissioners; this appears to mean that provincial and federal members would have to resign to seek election as a commissioner.<sup>35</sup>

*It would be impossible today to be elected without knowing about it, but when this provision was first enacted in 1873, an MP might not find out until after the fact that he had been successfully run in a provincial riding.*

## New Brunswick

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Although legislation in New Brunswick formerly disqualified members of the House of Commons and the Senate from being elected as provincial members, this prohibition was repealed in 1993.<sup>36</sup> Currently only mayors and councillors of municipalities are ineligible to be members of the Legislative Assembly or to sit or vote in the Assembly.<sup>37</sup>

There appear to be no cross-disqualifications involving school boards and the legislature.

## Nova Scotia

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No member of the House of Commons or the Senate, and no person holding a nomination for election to the House of Commons, may be nominated for election to the Nova Scotia legislature, or sit or vote in the legislature, until the federal membership or nomination has been resigned and the Provincial



Politicians considering a change in jurisdiction should be aware of laws which may disqualify them from certain offices.

Secretary so informed.<sup>38</sup> A provincial seat becomes vacant if the incumbent becomes a Senator or is nominated for federal election.<sup>39</sup> For further certainty, anyone ineligible under any statute for membership in the legislature is incapable of being nominated for election to the legislature.<sup>40</sup>

Members of the House of Commons, the Senate, and the provincial legislature are disqualified from membership of a municipal council.<sup>41</sup> A councillor who is elected to the Legislative Assembly or the House of Commons, or who is appointed to the Senate, must resign from the office of councillor within 30 days of such election or appointment.<sup>42</sup> For elected officials considering a move to or from a municipal council, there does not appear to be any prohibition on retaining their current seat while *running*.

### Prince Edward Island

No member of the House of Commons or the Senate is eligible as a member of the Prince Edward

Island legislature, nor shall he or she sit or vote in the legislature while a member of the House of Commons or the Senate.<sup>43</sup> The *Election Act* effectively prohibits the nomination for election to the legislature of any person who is ineligible under any statute for membership.<sup>44</sup>

There do not appear to be any prohibitions on a provincial legislator seeking election to municipal office in Prince Edward Island. Further, any mayor or councillor of the City of Charlottetown or the Towns of Stratford and Cornwall must be granted, for the purpose of running in a federal or provincial election, a leave of absence without remuneration, beginning when the person files nomination papers and continuing until the end of the election.<sup>45</sup>

The *School Act* has no cross-disqualifications involving school boards and the legislature.<sup>46</sup>

## Newfoundland and Labrador

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Newfoundland's *Elections Act, 1991* does not say anything about the effect on provincial membership of serving municipally or federally.<sup>47</sup> A person is, however, disqualified from being nominated as a candidate for city councillor if he or she is a member of the House of Commons, the Senate, or another provincial legislature.<sup>48</sup>

The *Schools Act, 1997* creates no disqualifications for school board membership based on provincial membership.<sup>49</sup>

## Yukon

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No member of the House of Commons, the Senate, or the legislative assembly of any province is eligible to be a member of Yukon's legislature.<sup>50</sup> A Yukon member who sits and votes in the House of Commons, the Senate, or the legislative assembly of any province becomes ineligible to sit in the Yukon legislature.<sup>51</sup>

A member of council who is elected as an MP, to Yukon's Legislative Assembly, or to the legislative assembly of a province is disqualified from the council.<sup>52</sup> A member of council who has been disqualified from holding office is liable for a fine of up to \$1,000.<sup>53</sup>

## Northwest Territories

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A person is not eligible in the Northwest Territories to be a candidate for the legislature during membership in the House of Commons, the Senate, or another provincial or territorial legislature.<sup>54</sup>

Members of the legislature are disqualified by the *Local Authorities Elections Act* from being nominated for, or running for, municipal office or school board membership.<sup>55</sup>

## Nunavut

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A person is not entitled to be a candidate for an election to Nunavut's Legislative Assembly if, on the day the person files his or her declaration of candidacy, the person is a member of the House of Commons, the Senate, or the legislature of any province or of another territory.<sup>56</sup> The election of any person who is ineligible to be a candidate is void.<sup>57</sup>

Nunavut has adopted the Northwest Territories' *Local Authorities Elections Act* and members of the legislature are therefore disqualified from being nominated for, or running for, municipal office or school board membership.<sup>58</sup>

## Conclusion

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This paper has set out statutory provisions in Canada affecting an elected official's move toward candidacy for another legislative or local office. Other Commonwealth jurisdictions have also adopted restrictions on an elected official's ability to run for or occupy another elected position, although they vary from country to country. In Australia, for example, a member of either House of Parliament is incapable of being chosen for, or of sitting as, a member of the other House.<sup>59</sup> In the United Kingdom, it is possible for a member of the House of Commons to simultaneously hold a seat in the devolved bodies in Scotland, Wales, and Northern Ireland, although it appears that this practice is ending in the latter two jurisdictions.<sup>60</sup>

While the law in Canada does not always require candidates to resign their current seat before seeking a different office, it may still be politically advisable for them to do so. Candidates may want to consider demonstrating their commitment to the new office and avoid any perception of conflict of interest by resigning their current seat.<sup>61</sup>

## Notes

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- 1 Running in several federal ridings in the same election—Sir John A. Macdonald once ran in three—was once a favoured method of increasing one's chances, but this is no longer possible (J. Patrick Boyer, *Election Law in Canada: the Law and Procedure of Federal, Provincial and Territorial Elections* (Toronto: Butterworths, 1987), vol. 1, p. 545). It is specifically forbidden by some—but not all—election statutes in Canada, but even where not specifically forbidden, the practice is unknown. See Boyer, *Election Law*, p. 541, and F.F. Schindeler, *Responsible Government in Ontario* (Toronto: University of Toronto Press, 1969), p. 84.
- 2 *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5, s. 39.
- 3 S.C. 2000, c. 9, ss. 65(c) and 76.
- 4 R.S.C. 1985, c. P-1, s. 22.
- 5 Boyer, *Election Law*, p. 541.
- 6 *Canada Elections Act*, s. 23(1).
- 7 *Ibid.*, s. 23(2).
- 8 Boyer, *Election Law*, p. 541.

- 9 *Canada Elections Act*, s. 24(1).
- 10 *Constitution Act*, R.S.B.C. 1979, c. 62, s. 32.
- 11 *Local Government Act*, R.S.B.C. 1996, c. 323; *School Act*, R.S.B.C. 1996, c. 412.
- 12 *Legislative Assembly Act*, R.S.A. 2000, c. L.9, s. 26.
- 13 *Local Authorities Election Act*, R.S.A. 2000, c. L.21.
- 14 *Legislative Assembly and Executive Council Act, 2007*, S.S. 2007, c. L-11.3, s. 11(1) (d) and (e).
- 15 *Ibid.*, s. 11(2).
- 16 See e.g., s. 26.1(1) of the *Local Government Election Act* which only disqualifies judges, as well as auditors or solicitors of a municipality, from being nominated or elected as municipal councillors (S.S. 1982-83, c. L.30.1).
- 17 *Legislative Assembly Act*, C.C.S.M., c. L110, s. 11.
- 18 *Ibid.*, ss. 19 and 21.
- 19 *Municipal Act*, C.C.S.M., c. M225, s. 91(c).
- 20 *City of Winnipeg Charter Act*, S.M. 2002, c. 39, s. 23(2)(d).
- 21 *Municipal Councils and School Boards Elections Act*, C.C.S.M., c. M257.
- 22 *Legislative Assembly Act*, R.S.O. 1990, c. L.10, s. 7(1).
- 23 *Ibid.*, s. 9(1).
- 24 *Municipal Act, 2001*, S.O. 2001, c. 25, s. 258(1)3. See also the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A, s. 203(1)3.
- 25 *Education Act*, R.S.O. 1990, c. E.2, s. 219(4)(d).
- 26 *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched., s. 29(1.1).
- 27 *Ibid.*, s. 29(1.2).
- 28 *Legislative Assembly Act*, s. 9(2).
- 29 *Ibid.*, ss. 13 and 16(1).
- 30 *Election Act*, R.S.Q., c. E-3.3, s. 235(4).
- 31 *Act respecting the National Assembly*, R.S.Q., c. A-23.1, s. 17(3) and (4).
- 32 *Act respecting Elections and Referendums in Municipalities*, R.S.Q., c. E-2.2, s. 62(3).
- 33 *Ibid.*, s. 300(4).
- 34 *Ibid.*, s. 300(5).
- 35 *Act Respecting School Elections*, R.S.Q., c. E.2.3, s. 21.
- 36 *Elections Act*, R.S.N.B. 1973, c. E-3, s. 48 [repealed].
- 37 *Ibid.*, s. 48.1(1).
- 38 *House of Assembly Act*, R.S.N.S. 1989, c. 1, s. 17(1)).
- 39 *Ibid.*, s. 19.
- 40 *Elections Act*, S.N.S. 2011, c. 5, s. 63(c).
- 41 *Municipal Elections Act*, R.S.N.S. 1989, c. 300, s. 18(1)(a) and (b).
- 42 *Ibid.*, s. 18(4).
- 43 *Legislative Assembly Act*, R.S.P.E.I. 1988, c. L.7, s. 16(1).
- 44 *Election Act*, R.S.P.E.I. 1988, c. E-1, s. 36(c).
- 45 *Charlottetown Area Municipalities Act*, R.S.P.E.I. 1998, c. C-4.1, ss. 11.1 and 86.1.
- 46 *School Act*, R.S.P.E.I. 1988, c. S-2.1.
- 47 *Elections Act, 1991*, S.N.L. 1992, c. E-3.1.
- 48 *Municipal Elections Act*, S.N.L. 2001, c. M-20.2, s. 15(5).
- 49 *Schools Act, 1997*, S.N.L. 1997, c. S-12.2.
- 50 *Legislative Assembly Act*, R.S.Y. 2002, c. 136, s. 5(1).
- 51 *Ibid.*, s. 5(2).
- 52 *Municipal Act*, R.S.Y. 2002, c. 154, s. 193(4). Curiously, this section omits any reference to the Senate.
- 53 *Ibid.*, s. 200.
- 54 *Elections and Plebiscites Act*, S.N.W.T. 2006, c. 15, s. 79(4).
- 55 *Local Authorities Elections Act*, R.S.N.W.T. 1988, c. L-10, s. 18(2)(b).
- 56 *Nunavut Elections Act*, S.Nu. 2002, c.17, s. 11(2)(a).
- 57 *Ibid.*, s. 13.
- 58 *Local Authorities Elections Act*, R.S.N.W.T. 1988, c. L-10, s. 18(2)(b), as duplicated for Nunavut by s. 29 of the *Nunavut Act*, S.C. 1993, c. 28. When the territory of Nunavut was established on April 1, 1999, laws from the Northwest Territories were simply duplicated and many remain in force in Nunavut today.
- 59 *Commonwealth of Australia Constitution Act*, s. 43.
- 60 *Wales Act 2014*, c. 29, s. 3; *Northern Ireland (Miscellaneous Provisions) Act 2014*, c. 13, s. 3.
- 61 Boyer, *Election Law*, p. 533.