

DATA DIVE WITH NIK NANOS

LIBERALS' EXPIRY DATE MAY BE COMING

Though the party has effectively weathered many storms, recent data suggest the next election could be more difficult

OPINION

Nik Nanos is the chief data scientist at Nanos Research, a global fellow at the Woodrow Wilson International Center for Scholars in Washington and the official pollster for The Globe and Mail and CTV News

Governments are very much like a carton of milk – there is a best-before date after which, many times, things turn sour.

Have Justin Trudeau's Liberals passed their expiration date? Right now, all the major indicators are trending in that direction.

That said, the resilience of the Liberals should not be underestimated. After winning a resounding majority in 2015, the Trudeau Liberals have effectively weathered a number of storms.

Mr. Trudeau survived the SNC-Lavalin controversy, which triggered the resignation of ministers Jody Wilson-Raybould and Jane Philpott. Mr. Trudeau won an election in 2019 while dealing with a picture of him wearing brown-face at an Arabian-themed gala at a school where he once taught. The Liberals survived the WE Charity ethics investigation where he was personally cleared but his finance minister, Bill Morneau, was deemed to have broken the conflict-of-interest rules.

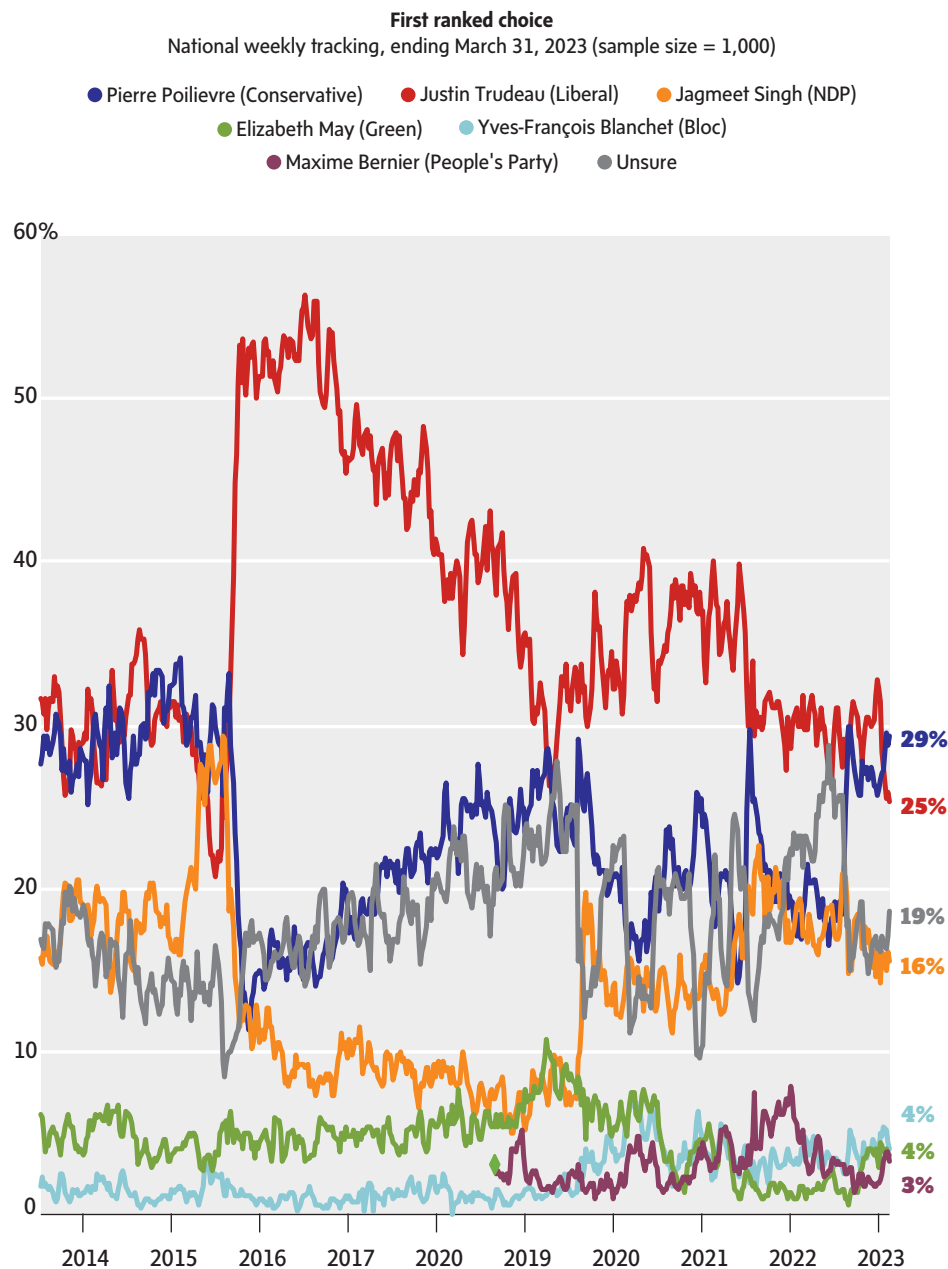
More recently, Mr. Trudeau's hard-line response to the self-described "freedom convoy" garnered him both plaudits and criticism. Now, the Liberal government has found itself responding to allegations of Chinese election interference.

The Trudeau campaign team has proven its ability to make lemonade out of political lemons. Even with the political turbulence, the Liberals won reelection in 2019 and 2021 despite losing the popular support to the Conservatives both times.

However, a look at the data now suggests that the next election could be more difficult for the Liberals.

First, the Liberals are trailing the Conservatives outside of the margin of error by about five or six percentage points. The Liberals are on the defensive in major key battlegrounds. In Ontario, they trail the Conservatives. In

Canada's preferred Prime Minister



MURAT YÜKSELİR / THE GLOBE AND MAIL, SOURCE: NANOS RESEARCH

Quebec, the Bloc Québécois is on the rise and, in British Columbia, the Liberal-Conservative-NDP-Green vote splits could be bad news for Mr. Trudeau.

For a party that was propelled into power largely on "Sunny Ways" and younger voters, the fact that the Liberals are trailing both the Conservatives and the

NDP among voters under 35 years of age is bad news. Younger voters are leaving the Liberals for either the progressive NDP led by Jagmeet Singh or for the right-wing Conservatives led by Pierre Poilievre. On a positive note, Mr. Trudeau continues to have an advantage among female voters.

Second, the leadership advantage held by most incumbent governments is weakening. Usually, the prime minister of the day enjoys about a five-point baked-in advantage just by occupying the PM's chair. Not so much for Mr. Trudeau. Mr. Poilievre is very competitive when it comes to who voters would

prefer as prime minister – in fact, he's the first challenger since 2015 to be competitive outside of an election cycle. Right now, 29 per cent of voters say Mr. Poilievre is their preferred choice to be prime minister; Mr. Trudeau was chosen by 25 per cent of respondents. At the same time, about four in 10 Canadians think Mr. Trudeau has the qualities of a good political leader, which is basically his lowest score since he became Liberal Leader. Mr. Poilievre has a similar score, but there has been much less variation in the trend line.

The most striking trend line is for accessible voters – those individuals who, regardless of how they vote, would consider voting for another party. The Liberals usually have a noticeable advantage over the Conservatives on accessible voters. Over the decades they have been the party of the "big tent" – occupying the centre of the political spectrum and playing off the NDP and the Conservatives. As a result, they have benefited from having the largest group of potential voters. Currently, the one in four Canadians considering the Liberals as a choice is similar to the level when they were in the political wilderness as the third party in the House of Commons.

Will things get better for the Liberals? Last month saw both a budget announcement and a visit by U.S. President Joe Biden. Foreign visits are platforms for prime ministers to build political stature. Budgets are infomercials for governments to proactively convey priorities. These events in short succession are opportunities for the Liberals to change the trend line which is currently moving against them. So far there has been no bump resulting from the Biden visit and it's too early to see if there is a Liberal lift coming out of the budget. However, what is clear is that the Liberals don't want an election any time soon. Their budget was certainly not a pre-election budget and included the social spending needed to keep the NDP on board.

If the Liberals cannot reverse the trend, it may very well be that they are dealing with a more serious challenge – that they are hitting their best-before date.

What does loyalty really mean for public servants?

EDGAR SCHMIDT

OPINION

Retired general counsel from the federal Department of Justice

The Globe and Mail's recent publication of an article by a Canadian national security official who revealed top-secret documents about foreign interference to the media (and whose name was withheld because of the threat of prosecution) raises an issue of fundamental importance in a democratic state.

The big question: to whom do public employees owe their duty of loyal service? Is it to the temporary officers of the state, such as ministers, individually or acting together as a state executive cadre or "government"? Is it to their managers in the public service? Or is there a larger and more enduring reality to which this duty is owed?

In general, the law says that employees owe their loyal service to their employer, within the larger context of the prevailing laws. When the employer is a collective entity, such as a business corporation, university or charitable organization, the Canadian legal system has long been clear that such employees serve that collectivity as a whole – not its board nor its temporary officers, such as its chief executive officer or its president. While CEOs and other officers do serve as leaders of the collectivity, their directions do not override the interests of the collectivity itself for employees of the collective enterprise.

A group or collectivity must adopt some rules according to which it will operate. In fact, one of legal scholar Hans Kelsen's profound insights was that an "organization" essentially amounts to a

set of operational rules – for example, rules that define how the organization will make decisions and how it will acquire and use resources. Such governance questions include: Will decisions of the collectivity be made by its members, by a representative body, by a majority vote, or by a vote of a special plurality? Will unanimity be required? Will the rules vary depending on the kinds of decisions? If votes are involved, how will such votes be initiated, governed and counted?

Typically, these governing rules are structured in a kind of hierarchy, with some of the rules being fundamental, constraining any lesser rules that may be made – the articles establishing a corporation, for example, or the constituting instrument of a university.

Respect for and observance of these rules and their hierarchy is important for the integrity of an organization's functioning. If the governors of a university can arbitrarily decide to convert it into a theme park, say, and divert the resources that the university's founders provided for higher education to some other purpose, that represents a betrayal of the founders' purposes.

That is why common-law legal systems in Canada and beyond have held that those holding an office, such as a director or an officer of an organization, must act in the interests of that organization and in accordance with its obligations. The law characterizes such obligations as "fiduciary," meaning that the organization's powers and resources are entrusted to the custody of these people. Therefore, they must use those powers and resources not for their own benefit or as they personally prefer, but in the interests of the organization and according to that organization's rules of operation.

Now, let's consider those basic

Since public employees are employed by the state, they owe their duty of loyal service to the state as the instrument of the citizens, not to the temporary occupants of state offices, such as ministers. And as employees of the state, public servants owe their employer the duty to act in their employer's interests and according to the employer's rules – not according to any contrary preferences of the state's officers or managers.

organizational principles in relation to that rather powerful organization of which Canadian citizens are the owning members: the democratic Canadian state.

First, a note about language: the organization is best called the "state." Its executive cadre is the "government," and changes from time to time, but the enduring entity is the state itself; ministers, including any first or prime minister, are simply the state's temporary officers. Public employees are employed by the state, not by its ministers nor, for that matter, by their managers in the public service. This should be obvious to anyone, since the resources from which their salaries are paid are state monies, and the facilities that they use in their work are the property of the state, not of any ministers or managers.

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Thus, public employees are not acting disloyally when they act in accordance with the state's constitution and its democratically enacted statutes, even if those actions defy the orders or wishes of ministers or managers. In fact, such employees are acting in accordance with their true obligations.

There are perverse consequences when employees act out of misguided loyalty to officers, rather than the collectivity. With regard to the democratic state, we recently observed how important

it was that at least some public officers and servants in the administration of former U.S. president Donald Trump understood their public duties to the state, rather than the executive, and acted in accordance with the U.S. Constitution and state laws rather than doing the things that Mr. Trump wanted them to do in his own interests, which were often contrary to the American state's own interests.

There are similar examples from the corporate world. One such case was the Enron corporation, where the company's auditors – Arthur Andersen, once one of the world's largest auditing firms – failed to act in accordance with their true duties, aligning with the interests of the executive officers and board members rather than those of the organization and its shareholders. The financial shenanigans of these officers, with the apparent failure by the auditors to fulfill their responsibilities, led to the collapse of both Enron and Arthur Andersen in the early 2000s.

If Canada is to continue to have a functional democratic state, it is important that our press and public commentators challenge and expose as false the "disloyalty" accusations that ministers and senior public servants often direct at public servants who choose to act in the public interest according to law, rather than being silent or complicit in an illegal or against-the-public-interest activity. It is also important that ministers and senior managers in the public service understand their proper duties and the proper loyalties of public servants, and the limitations of their authority.

Let's not allow those who prefer misguided loyalties and allegiances to control the discussion about the true meaning of public service.