



INSTITUTIONS OF RESPONSIBLE GOVERNMENT

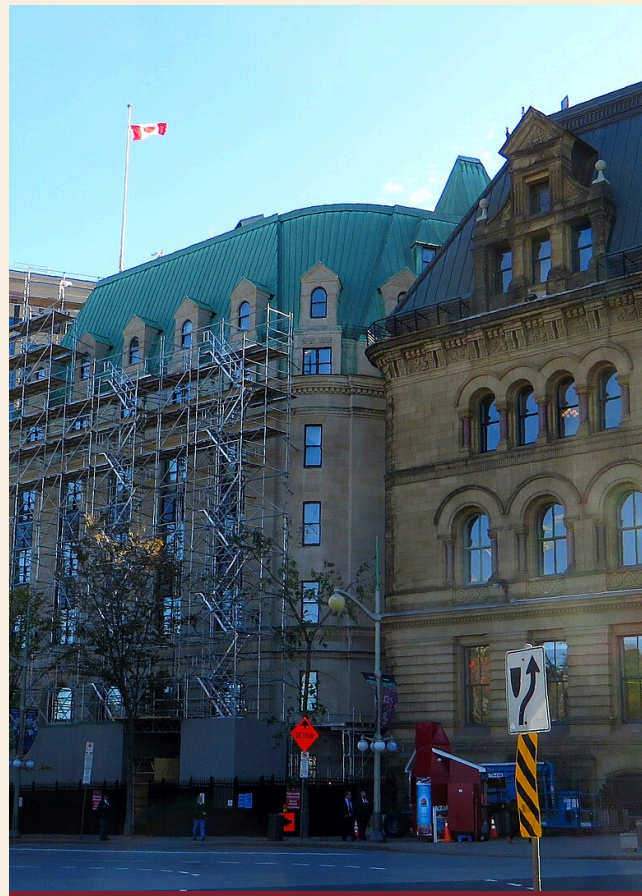
The King's Privy Council for Canada

The enduring institution behind Cabinet

By
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Cabinet decides, ministers answer to the House, and the governor general gives decisions the form of Crown acts. Behind that familiar sequence stands a council created in 1867, whose members are normally appointed for life and which almost never meets as a complete body.

The apparent contradiction explains the system. The Privy Council is the durable constitutional form; Cabinet is its politically active committee. The first attaches executive action to a continuing state, while the second concentrates democratic responsibility in ministers who must retain the confidence of elected members.



The Office of the Prime Minister and Privy Council at 80 Wellington Street, opposite Parliament Hill. The building places two realities side by side: the prime minister's political office and the non-partisan machinery of the Privy Council. Photo: Ken Lund, CC BY-SA 2.0, Wikimedia Commons.

Canadian constitutional monarchy does not remove the executive from democracy. It separates the state's continuing authority from the temporary majority that uses it. The Privy Council is one of the technical hinges of that separation.

THE COUNCIL

Created by the Constitution; members summoned by the governor general and normally appointed for life.

CABINET

The small body of serving ministers that gives political advice and answers to the House.

THE OFFICE

Public servants who organize decisions, preserve records and manage transitions.



THE TEXT OF 1867

A council to “aid and advise”

Sections 11 to 13 of the Constitution Act, 1867 establish the framework: a Privy Council, members chosen and sworn by the governor general, and the legal expression “Governor General in Council.”

“There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada.”

Constitution Act, 1867, s. 11. The historical consolidation says “Queen”; interpretation law adapts the office to the reigning Sovereign.

Three sections, three functions

Section 11 creates the institution and assigns the governor general the summoning, swearing and removal of members. Section 12 carries forward executive powers that existed before Union and says that they may be exercised with the advice of the Council or some of its members, as the case requires. Section 13 defines Governor General in Council as the governor general acting with the advice of the Privy Council.

The formula is not decorative. It identifies the legal act: ministers supply the political choice, but an order is made by the Governor in Council. The state acts in a form that does not depend on the prime minister's personal signature and remains intelligible when the ministry changes.

CONSTITUTION ACT, 1867 11. Executive Power Sections 11-14 Constitution of Privy Council for Canada 11 There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the Persons who are to be Members of that Council shall be from Time to Time chosen and summoned by the Governor General and sworn in as Privy Counsellors, and Members thereof may be from Time to Time removed by the Governor General. All Powers under Acts to be exercised by Governor General with Advice of Privy Council, or alone 12 All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, are at the Union vested in or exercisable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of Canada, be vested in and exercisable by the Governor General, with the Advice or with the Advice and Consent of or in conjunction with the Queen's Privy Council for Canada, or any Members thereof, or by the Governor General individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada.⁵² Application of Provisions referring to Governor General in Council 13 The Provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General acting by and with the Advice of the Queen's Privy Council for Canada. Power to Her Majesty to authorize Governor General to appoint Deputies 14 It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor General from Time to Time to appoint any Person or any Persons jointly or severally to be his Deputy or Deputies within any Part or Parts of Canada, and in that Capacity to exercise during the Pleasure of the Governor General such of the Powers, Authorities, and Functions of the Governor General as the Governor General deems it necessary or expedient to assign to him or them, subject to any Limitations or Directions	LOI CONSTITUTIONNELLE DE 1867 11. Pouvoir exécutif Articles 11-14 Constitution du conseil privé 11 Il y aura, pour aider et aviser, dans l'administration du gouvernement du Canada, un conseil dénommé le Conseil Privé de la Reine pour le Canada; les personnes qui formeront partie de ce conseil seront, de temps à autre, choisies et mandées par le Gouverneur-Général et assemblées comme Conseillers Privés; les membres de ce conseil pourront, de temps à autre, être révoqués par le gouverneur-général. Pouvoirs conférés au gouverneur-général, en conseil ou seul 12 Tous les pouvoirs, attributions et fonctions qui, — par une loi du parlement de la Grande-Bretagne, ou du parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande, ou de la législature du Haut-Canada, du Bas-Canada, du Canada, de la Nouvelle-Écosse ou du Nouveau-Brunswick, lors de l'union, — sont conférés aux gouverneurs ou lieutenants-gouverneurs respectifs de ces provinces ou peuvent être par eux exercés, de l'avis ou de l'avis et du consentement des conseils exécutifs de ces provinces, ou avec la coopération de ces conseils, ou d'aucun nombre de membres de ces conseils, ou par ces gouverneurs ou lieutenants-gouverneurs individuellement, seront, — en tant qu'ils continueront d'exister et qu'ils pourront être exercés, après l'union, relativement au gouvernement du Canada, — conférés au gouverneur-général et pourront être par lui exercés, de l'avis ou de l'avis et du consentement ou avec la coopération du Conseil Privé de la Reine pour le Canada ou d'aucun de ses membres, ou par le gouverneur-général individuellement, selon le cas; mais ils pourront, néanmoins (sauf ceux existant en vertu de lois de la Grande-Bretagne ou du parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande), être révoqués ou modifiés par le parlement du Canada.⁵² Application des dispositions relatives au gouverneur-général en conseil 13 Les dispositions de la présente loi relatives au gouverneur-général en conseil seront interprétées de manière à s'appliquer au gouverneur-général agissant de l'avis du Conseil Privé de la Reine pour le Canada. Le gouverneur-général autorisé à s'adjoindre des députés 14 Il sera loisible à la Reine, si Sa Majesté le juge à propos, d'autoriser le gouverneur-général à nommer, de temps à autre, une ou plusieurs personnes, conjointement ou séparément, pour agir comme son ou ses députés dans aucune partie ou parties du Canada, pour, en cette capacité, exercer, durant le plaisir du gouverneur-général, les pouvoirs, attributions et fonctions du gouverneur-général, que le gouverneur-général jugera à propos ou nécessaire de lui ou leur assigner, sujet aux
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Sections 11 to 14 in the official bilingual consolidation. The page connects Privy Council, advice and Governor General in Council. Source: Department of Justice, Constitution Acts, 1867 to 1982, current to 1 January 2024.

Privy Council A permanent constitutional body including former ministers and honorary members.	Cabinet Serving ministers who deliberate collectively, advise and bear responsibility.	Ministry The full body of ministers; Cabinet is its central decision-making forum.
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Why is Cabinet absent from the text?

Written law uses the legal category of the Privy Council. Cabinet is shaped chiefly by conventions of responsible government. Privy Council Office guidance even notes that Cabinet as such has no general statutory standing. That flexibility lets a prime minister organize portfolios and committees, while the confidence rule ties the resulting government to the elected House.

“Council” does not mean personal choice

The governor general does not invite hundreds of councilors to settle a policy dispute. In ordinary practice only serving ministers tender operative advice. Former ministers retain membership and title, but no continuing vote over public affairs. The broad language of 1867 therefore houses a precise political practice.



PEOPLE, OATHS AND INSTITUTIONAL MEMORY

Becoming a privy councillor

A commission and two oaths

On the prime minister's advice, the governor general signs a commission summoning the new member to the Council. The member takes the oath of allegiance to the King of Canada and the Privy Council oath, which requires faithful advice and protection of confidential deliberations, then signs the Oath Book. For an incoming minister, this usually occurs before the oath attached to the ministerial office.

A durable title, not an active office

A councillor bears “The Honourable” and the post-nominal P.C. for life, receives a place in the Table of Precedence and, at death, is honoured by the Peace Tower flag being half-mast-

ed. Membership is normally for life but may be withdrawn by the governor general on the prime minister's advice. These marks do not make a former minister a present decision-maker; they record admission to a Crown council and obligations that outlast a political career.

Secrecy: purpose and boundary

Confidentiality lets ministers challenge an option privately and then answer collectively for the decision. It also protects advice to the Crown. It does not require the final legal act to remain hidden: orders are registered and, unless an exception applies, published; ministers still account for policy in Parliament. The system distinguishes candid deliberation from the publicity of exercised authority.



Queen Elizabeth II, Prince Philip, Governor General Vincent Massey, Prime Minister John Diefenbaker and privy councillors at Rideau Hall, 14 October 1957. The original frame is retained so every visible face remains complete. Library and Archives Canada, MIKAN 4301722, e010975772; public domain in Canada.

1891 First appointments outside the ministry: former Speakers of both Houses.	21 June 1957 Ellen Fairclough becomes the first woman sworn to the Privy Council.	14 Oct. 1957 First meeting before the Sovereign; Prince Philip is sworn.	1959 Meeting at Halifax to confirm Georges Vanier's appointment.	1981-1982 Consent to a royal marriage; then a major gathering around constitutional patriation.
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Why the whole Council almost never meets

The body spans generations of former ministers, chief justices, governors general, Speakers and selected distinguished Canadians. A plenary meeting would be too large, politically mixed and inconsistent with ministerial responsibility. The Council assembles only for exceptional state occasions such as an accession proclamation or, historically, consent to a dynastic marriage.

A revealing institutional detail

The last formal gathering was in 1981 to consent to the marriage of the Prince of Wales and Lady Diana Spencer. In 1982 many councillors gathered informally in Ottawa around the proclamation of the Constitution Act, 1982. The Council seldom appears as an assembly, yet remains constantly present in commissions, oaths and the legal style of executive acts.



FROM POLITICAL CHOICE TO ACT OF STATE

How an order in council is made

An order is neither the governor general's personal gesture nor an internal Cabinet note. It is a legal instrument prepared, checked, approved and finally signed in the name of the Crown.

THE ORDINARY PATH OF A GOVERNOR IN COUNCIL SUBMISSION

1 • Department The file identifies authority, purpose, consultations and the recommendation.	2 • Justice Lawyers verify jurisdiction, form and, for regulations, the normative text.	3 • Minister The responsible minister signs the recommendation and owns the policy.	4 • PCO The Privy Council Office checks presentation and prepares the instrument.
5 • Treasury Board For most matters, this committee of the Privy Council approves the submission.	6 • Governor General Signature turns ministerial approval into a decision of the Governor in Council.	7 • Registration A number, date and official file make the legal act traceable.	8 • Publication The order is communicated and, where required, published in the Canada Gazette.

Use	What the Governor in Council does	Where responsibility rests
Regulation	Uses authority delegated by statute and gives the text normative force.	The sponsoring minister, Cabinet and Parliament as delegator.
Appointment	Appoints heads, tribunal members, directors and statutory office-holders.	The government recommends; selection rules and scrutiny constrain the choice.
Proclamation	Brings provisions into force or completes a solemn act authorized by law.	The recommending ministry must explain substance and timing.
Transfer	Reorganizes administrative responsibilities where legislation permits.	The prime minister and affected ministers own the structure selected.

Governor in Council is a relationship

The expression does not identify a second person. It describes the governor general acting with the advice of the Privy Council, in practice Cabinet. The Crown supplies continuous legal capacity; the ministry supplies political judgment and accountability. An unlawful order may be reviewed by a court. An unwise order must be defended by ministers before the House and the electorate.

A scale that is rarely seen

Governor in Council appointments support roughly 2,200 positions in commissions, boards, Crown corporations,

agencies, administrative tribunals and senior offices. The scale shows that the Crown is not present only at a Speech from the Throne. Every week it supplies the form through which numerous executive decisions become public acts.

Treasury Board as a Privy Council committee

Treasury Board is established by statute as a committee of the Privy Council. It therefore combines a political Cabinet role with defined legal powers over finance, administration and regulations. It is a particularly clear bridge between convention, legislation and monarchical form.

1990+

The public orders-in-council database makes federal instruments searchable from 1990 onward. The archive does not replace political debate, but it prevents monarchical form from being mistaken for secret or personal decision-making.



THE INSTITUTION BEHIND THE DECISION

The Privy Council Office and continuity



80 Wellington Street houses the Prime Minister's Office and functions of the Privy Council Office. Physical proximity must not erase the difference between partisan staff and a professional public service. Photo: Ken Lund, CC BY-SA 2.0.

PCO and PMO: two logics

The Prime Minister's Office is political: it advises a party leader, develops strategy and departs with that leader. The Privy Council Office is a department of public servants: it supports the prime minister's governmental functions, services Cabinet committees, records decisions and safeguards state continuity. Conflating the two makes centralization harder to assess because party, ministry and permanent administration disappear into one vague “centre.”

Three roles in the Clerk's office

The Clerk of the Privy Council is Deputy Minister to the Prime Minister, Secretary to Cabinet and Head of the Public Service. As Secretary, the Clerk organizes meetings, ensures that ministers receive coherent analysis, records decisions and monitors implementation. As Head, the Clerk connects long-term administrative capacity to an elected government's priorities. As Deputy Minister, the Clerk advises the prime minister on the machinery of government.

The decisive change of 1940

At Confederation the Clerk kept the Council's instruments and minutes. In 1940, Order in Council P.C. 1940-1121

formally added the duties of Secretary to Cabinet. Wartime complexity and the modern administrative state required coordinated decision-making. A position long regarded as largely clerical became a centre of government without turning the Clerk into a minister or partisan decision-maker.

Memory does not belong to the outgoing ministry

PCO manages transitions, prepares the formation of a new ministry and keeps administration functioning between election, resignation and swearing-in. Yet continuity has a protective boundary: by convention an incoming government cannot inspect the Cabinet papers of its predecessor. Public servants retain institutional capacity while respecting each ministry's confidential political deliberation.

The prime minister is not the state

Separating person, party, ministry and Crown is a constitutional discipline. A prime minister holds great influence, but commissions are not issued in the prime minister's name, officials owe no personal allegiance and orders survive a resignation. The Privy Council chain translates that limit into the ordinary forms of government.

Centralization: the real question

PCO may increase coordination at the centre. The concentration of information and arbitration should therefore be scrutinized. Criticism becomes more exact when professional Cabinet support is distinguished from political-office strategy.

Neutrality: a demanding practice

Neutrality is not an absence of judgment. It requires candid advice grounded in law and evidence, followed by loyal implementation of a legitimate decision regardless of the government's party.



ANALYSIS AND CONSTITUTIONAL BENEFIT

Durable authority, temporary responsibility

The Privy Council sounds archaic if one studies only its name. It becomes modern when one sees the problem it solves: how can an elected government's decisions acquire continuing legal form without making that government the owner of the state?

Element	What remains	What changes	Who answers?
Crown	The state's legal personality, capacity to act and succession without vacancy.	Sovereign and representatives succeed according to constitutional rules.	Ministers for advice; office-holders for performance of duty.
Privy Council	The institution, oaths, records and Governor in Council form.	New members are admitted and the historical body expands.	Present Cabinet, not former councillors.
Cabinet	Collective deliberation and the confidence principle.	Ministers, priorities, committees and parliamentary majority.	Prime minister and ministers before the House.
Public service	Capacity, files, procedures, impartiality and service continuity.	Advice, structures and programmes adapt to the elected mandate.	Administrators for management; ministers for policy.

The presidential comparison

In a presidential republic, the head of state also directs the executive and holds a separate electoral mandate. That concentration offers visible leadership, but personalizes the state and may pit two democratic legitimacies against each other when president and legislature deadlock. Canada chooses differently: political direction comes from a Cabinet removable by the House, while head-of-state acts belong to a non-partisan Crown.

A real advantage, not magic

Monarchy guarantees neither wise judgment nor perfect administration. A Cabinet may centralize, an order may be challenged and a convention may be tested. The advantage is architectural: a prime minister cannot plausibly claim to be the sole source of public legality. The state has a personal and legal continuity that precedes a government and will survive it.

The stabilizing work of form

Oaths, commissions, registers and signatures can look fussy. They create a chain of proof: who recommended,

which authority was invoked, when the act took effect and where it is preserved. During transition or crisis, those forms reduce the risk that urgency is confused with an undefined personal power.

The Council also protects democracy

Because advice comes from Cabinet, the Crown stays outside party combat; because the act comes from the Crown, Cabinet remains a government of the state rather than the state itself. That reciprocity lets Canada change majorities without changing regimes, prime ministers without interrupting authority, and policies without rewriting the country's legal identity.

A federal institution, not the whole Crown

The King's Privy Council belongs to the federal government. Provinces have executive councils and lieutenant governors. The distribution confirms that the Canadian Crown is not merely an Ottawa summit: it is integrated into federalism, with distinct spheres of responsibility and a shared logic of continuity and responsible government.

Conclusion. The King's Privy Council supplies one of the strongest practical arguments for Canadian constitutional monarchy. It lets state authority remain continuous, non-partisan and transmissible while leaving political judgment to ministers responsible to the House. The Crown does not replace democracy; it gives democracy a legal home that does not change owners at every election.