# Privy Council (for Canada)

The Privy Council for Canada is a group of prominent individuals appointed, for life, by the Governor General. The appointments are made, as a matter of convention, on the advice of the Prime Minister. The Privy Council is tasked with aiding the reigning monarch (and thus the Governor General) by providing advice on significant issues.[1]

**Privy Council – A Brief History**

The origins of the English Privy Council date back to that country's earliest history,[2] but little is known of its structure or procedures before 1540.[3]

In addition to its advisory role to the British Monarch, from 1833 until 1949, the Judicial Committee of the Privy Council served as the highest Court of Appeal for Canada: supreme even to our own Supreme Court.[4] During this period, Canadian constitutional law was largely shaped from London.[5]

The Canadian Privy Council was established by the *British North America Act, 1867* (later renamed the *Constitution Act, 1867*).[6] Unlike its counterpart in the United Kingdom, it never functioned as a court. Instead, it was tasked with advising the Monarch, and with passing all orders-in-council / acts of executive power.[7]

**Privy Council – The Job**

Today, the Privy Council continues its historic role, advising the Governor General on various matters of state, including the use of royal prerogative (e.g. declaring war, assenting to legislation and calling an election).[8] However, advice given by the full council is not binding: the Governor General is, in practice, only obligated to follow the advice of Cabinet (the members of which form the operative branch of the Privy Council).[9]

Despite this obligation – in exceptional circumstances – the Governor General, as head of state, can act unilaterally to protect the Canadian people from "a Prime Minister and ministers who may forget that 'minister' means 'servant' and may try to make themselves masters."[10]

After being summoned to the Privy Council by the Governor General, members are required to swear a general oath of allegiance to the reigning Monarch, and an oath of office as a member of the Privy Council.[11] As for perks, they are allowed to affix the initials P.C. after their names and to carry the title "The Honourable."[12] Additionally, the flag on Parliament Hill is lowered to half-mast upon their death.[13]

Despite the honours granted, this is far from a full-time job. Most of the council's current members have never met together. The most recent gathering called for the entire Privy Council was in 1982 when they met for lunch to celebrate the Queen signing the proclamation of the *Constitution Act, 1982*.[14]

**Privy Council – Who's on it?**

The Queen's Privy Council for Canada consists of:

- Sitting cabinet ministers
- Former cabinet ministers
- The Chief Justice of Canada
- Former chief justices
- Former speakers of the House of Commons
- Former speakers of the Senate
- Former Governors Generals
- (Typically) Leaders of the Opposition, and
- Distinguished individuals (as a mark of honour)[15]
    - Maurice Richard
    - Conrad Black (since removed)[16]
    - Winston Churchill[17]

All federal cabinet ministers, once appointed, must become members of the Privy Council.[18] Although it is technically possible for the whole Council to meet and advise, this almost never happens. It is the current members of federal cabinet that form the Council's operative body (a.k.a. the "Committee of the Privy Council"),[19] performing the advisory duties of the Council on behalf of the other members.

---

[1] Canada, "The Queen's Privy Council for Canada" (19 May 2010), online: <www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=council-conseil&doc=description-eng.htm> [Canada, "Privy Council"].

[2] JG Bourinot, *How Canada is Governed*, 10th ed (Toronto: Copp, Clark Company, 1909) [Bourinot] at 49.

[3] Lord Eustace Percy, *The Privy Council Under the Tudors* (Oxford: BH Blackwell, 1907) at 12-13, available online: <https://archive.org/stream/privycouncilunde00percuoft#page/12/mode/2up>.

[4] Supreme Court of Canada, "Creation and Beginnings of the Court" (11 April 2016), online: <www.scc-csc.ca/court-cour/creation-eng.aspx>. See also Coen G Pierson, *Canada and the Privy Council* (London: Stevens & Sons Limited, 1960) at 1-2 – note (at 22) that for criminal appeals, the Judicial Council's jurisdiction ended with the introduction of the

Statute of Westminster in 1931.

[5] Bourinot, *supra* note 2 at 5, 95.

[6] *Ibid* at 78-79.

[7] *Ibid* at 52: an order in council can be defined as "an order passed by the sovereign by and with the advice of the privy council." For more information, see Queens University Library, "Orders in Council – An Overview" (24 September 2015), online: <www.library.queensu.ca/gov/orders-in-council>.

[8] Frank Mackinnon, "Prerogative Powers" The Canadian Encyclopedia (2 July 2006), online: <www.thecanadianencyclopedia.ca/en/article/prerogative-powers/>; Richard Berthelson, "The Royal Prerogative" (2013), online: <www.canadiancrown.com/uploads/3/8/4/1/3841927/the_royal_prerogative.pdf>.

[9] Eugene A Forsey, *How Canadians Govern Themselves*, 6th ed (Ottawa: Government Publications, 2005) at 34, available online: <http://publications.gc.ca/Collection/X9-11-2005E.pdf> [Forsey].

[10] *Ibid* at 26, 40.

[11] Office of the Governor General, "Oaths of Office", online: <www.gg.ca/document.aspx?id=316>.

[12] Canada, "Members of the Queen's Privy Council" (19 February 2016), online: <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=council-conseil&doc=members-membres%2Findex-eng.htm>.

[13] Tristin Hopper, "The privilege of sworn secrecy: Mulcair joins Privy Council, making him the newest advisor to the Queen" *National Post* (18 September 2012), online: <www.news.nationalpost.com/news/canada/canadian-politics/thomas-mulcair-newest-member-of-the-queens-privy-council>.

[14] Canada, "Privy Council: Interesting Facts" (19 May 2010), online: <www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=council-conseil&doc=facts-faits-eng.htm>.

[15] Canada, "Privy Council", *supra* note 1.

[16] Tristin Hopper, "Conrad Black removed from the Order of Canada and stripped of Privy Council position" *National Post* (31 January 2014), online: <www.news.nationalpost.com/news/canada/conrad-black-removed-from-the-order-of-canada>.

[17] "Becomes Canadian Privy Councillor" *Ottawa Citizen* (30 December 1941), online: <https://news.google.com/newspapers?nid=2194&dat=19411230&id=UfcuAAAAIBAJ&sjid=s9sFAAAAIBAJ&pg=5272,5909124&hl=en>.

[18] Forsey, *supra* note 9 at 34.

[19] Canada, “Privy Council” *supra* note 1; see also Bourinot, *supra* note 2 at 83-84.